

**GREENING THE NAFTA: ROLE OF NORTH AMERICAN  
AGREEMENT ON ENVIRONMENTAL COOPERATION (NAAEC)  
AND THE COMMISSION FOR ENVIRONMENTAL  
COOPERATION (CEC): 1994-2004.**

**THESIS SUBMITTED TO JAWAHARLAL NEHRU UNIVERSITY  
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**DECLARATION**

I declare that the thesis entitled “**Greening the NAFTA: Role of North American Agreement on Environmental Cooperation (NAAEC) and the Commission for Environmental Cooperation (CEC): 1994-2004**” submitted by me for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other University.



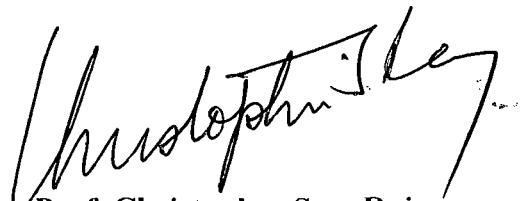
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**CERTIFICATE**

We recommend that this thesis be placed before the examiners for evaluation.



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## ABBREVIATION

APEC	-	Asia Pacific Economic Cooperation Forum
BECA	-	U.S.- Mexico Border Environmental Cooperation Agreement
BECC	-	Border Environmental Cooperation Commission
CEC	-	Commission for Environmental Cooperation
CEC	-	Commission for Environmental Cooperation
CIEL	-	Center for International Environmental Law
CITES	-	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CNF	-	Canadian Nature Federation
CUSFTA	-	Canadian United States Free Trade Agreement
EDF	-	Environment Defense Fund
ENGOS	-	Environmental Non-Governmental Organization
EPA	-	Environmental Protection Agency
EU	-	European Union
FOE	-	Friend of the Earth
FTAA	-	Free Trade Area of the Americas
GAC	-	Government Advisory Committee
GATT	-	General Agreement on Trade and Tariffs
INE	-	National Institute of Ecology
ITAC	-	International Trade Advisory Committee
JPAC	-	Joint Public Advisory Committee
MEA	-	Multilateral Environmental Agreement
NAAEC	-	North American Agreement on Environmental Organization
NAC	-	National Advisory Committee
NADBank	-	North American Development Bank
NAFTA	-	North American Free Trade Treaty
NAS	-	National Audubon Society
NGO	-	Non-Governmental Organization
NRDC	-	Natural Resources Defense Council



NWF	-	National Wildlife Federation
OECD	-	Organization for Economic Cooperation and Development
PCBs	-	Polychlorinated biphenyls
PFMA	-	Federal Attorney General for Environmental Protection
PROFEPA	-	Office of the Attorney General for Environmental Protection
SAGITS	-	Sectroal Advisory Groups on International Trade
SEDESOL	-	Secretariat for Development (Secretario de Desarrollo Social)
SEDUE	-	Secretariat for Urban Development
SEMARNAT	-	Secretariat of the Environment and Natural Resources
UNCED	-	United Nations Conference on Environment and Development
USTR	-	United States Trade Representative
WCED	-	World Commission on Environment and Development
WTO	-	World Trade Organization
WWF	-	World Wildlife Fund

**CHAPTER – V**

**180-204**

**NAFTA AND THE ROLE OF ENGOs AND COMMUNITIES:-**

1. NGOs and its Influence
2. NGO and International Institutions
3. The CEC and NGO
4. Citizen Submission Procedures
5. Secretariat Submission and NGOs
6. NGOs and JPAC
7. Public Access and NGO Involvement

**CHAPTER – VI**

**205-227**

**ROLE OF NAAEC IN GREENING THE NAFTA:**

1. Green Building of NA
2. Transparency and Public Participation
3. NAFEC.

**CHAPTER – VII**

**228-239**

**CONCLUSION**

**REFERENCES**

**240-258**

**APPENDIXES**

To achieve the environmental objectives of NAFTA and also to assess its effects on the environment. The NAAEC which is administered by the Montreal-based CEC, both are created after strong public pressure on to write environment protection into NAFTA. We will study the ongoing monitoring of the environmental changes occurring throughout North America in the wake of NAFTA and the side agreement negotiated in conjunction with it.

In recent years the debate about the costs, benefits and longer-term implications of free trade and economic globalization has moved to the forefront of public policy concerns. Among the key issues shaping the free trade and economic globalization debate is the question of how trade liberalization affects environmental quality, either in terms of direct effects on our environment, or indirectly, for instance, the effects that such trade laws as those codified in the NAFTA and WTO have on hard-fought national environmental standards and regulations. Work in assessing the environmental effects of free trade continues to undergo significant improvements; assessment methodologies have improved; environmental data although still filled with gaps and lack of comparability among trading partners continue to become more robust and tools able to draw links between trade-related economic changes and environmental changes continue to be developed.

Among these and many other improvements, perhaps the most important will be establishing the means for ensuring that civil society is engaged early, and engaged meaningfully, in environmental assessments of the free trade agenda. Indeed, of all the grievances leveled by civil society against trade agreements, the lack of transparency and public participation remains perhaps the loudest.

Since the mid-1990s, the North American Commission for Environmental Cooperation (CEC) has examined the effects of NAFTA and other trade commitments on the environment. A guiding assumption of the Commission's work is the central importance of transparency and meaningful participation in assessment work. In late 1999, upon the completion of the CEC Analytical Framework for Assessing the Environmental Effects of NAFTA, the Council of the CEC issued a public call for

research papers to be presented at a public forum on trade and environment: in essence, these studies were to translate the methodological or “how to” work into action. The transfer of authority in dealing with the environmental issues to private or civil society actors is in fact, a major trait of the NAFTA policy mechanism.

### **Scope and the Focus of the Study:**

The proposed study primarily focuses on how instrumental structure of liberal trade order, especially NAFTA has addressed the issue of environmental protection during the period of 1994 to 2004.

At the macro level, study has examined NAFTA’s provision of NAAEC, the relevance and role of NAAEC as a legal and political institution apparatus in effecting environment protection, trade and environment process in North America.

At the detail or micro level as NAAEC work through the Commission for Environmental Co-operation (CEC), the latter’s appraisal of environmental effect of NAFTA during the period under review has been undertaken. At the outset the study has examined the role of CEC in harmonizing, spreading and improving the environment legislation and implementation in three countries of NAFTA. Secondly focus of study has been the role of environmental groups under the Art.14, of NAAEC that challenging the NAFTA countries failure in enforcing environmental law. So far the reports indicate that 12 major challenges presented by NGOs against Canadian, Mexico and the US Governments for the violation of NAAEC agreement in context of environmental protection.

The third aspect of the focus has been in examining the internal conflict of the CEC. Preliminary research reveals that there has been insufficient communications between the Council and the Secretariat, in particular between ministers and the executive director. The Parties are concerned that the Secretariat is not micro-managing its activities and inappropriately circumscribing its autonomy. Joint Public Advisory Committee (JPAC) and the Council have reached stalemate on certain priority issues, leading to frustration by JPAC members and government officials. The result has been

high transaction costs for everyone and an unfulfilled potential for the CEC as a whole. The Ten Year Review and Assessment Committee (TRAC), also found that the CEC is immersed in a vicious cycle: the Council does not assume leadership of the Commission nor does it commit to generating a real consensus on institutional and procedural aspects with the CEC because it does not see concrete results.

The fourth aspect of the study has been attempted to examine achievement and failure of Commission. Available facts indicate that there are some important achievements inspite of Commissions failure mainly because of lack of financing. Their appears a five main achievements of CEC which presence study has examined. These are:-

- Coordination of trinational actions to deal with shared environmental problems (for example, Persistent organic pollutants or threats to biodiversity).
- Promotion of accountability, transparency and citizen participation (for example, ministerial meetings open to the public, public work program and citizen submissions process).
- Sponsorship of capacity-building measures on environmental issues in Mexico in several important areas: pollution prevention, control of toxic chemical substances and development of inventories of emissions of pollutants.
- Gathering of environmental information and assurance of public asses to the information.
- Provision of a neutral forum for the analysis of complex issues and discussion of possible strategies for dealing with them (for example, the relationship between environment and trade, electricity markets and the risks of contamination of corn by genetically modified varieties).

Among the major obstacles and concerns of CEC functioning are: -

- After a decade, the main actors of the CEC, including the three governments, the Secretariat and the JPAC did not have a common vision of the CEC's mandate or its functions. These differences have led to considered friction.

- The most innovative mechanism of citizen participation, the citizen submission process, has been very controversial.
- The work programme of the CEC is atomized and the results are not always clear.
- Links with the trade institutions of NAFTA and CEC influence have been very weak.
- The CEC has not managed to sufficiently involve business organizations or indigenous peoples.

### **Objectives of the Study:**

1. Study the origin and objectives of side agreement NAAEC and its relationships with the NAFTA.
2. Study the broad mandate of central institution of NAAEC, the Commission for Environmental Co-operation and its components.
3. Study the quasi-judicial role and power of the components of the Commission in their aid to NAFTA Parties in avoiding and resolving environment and trade disputes.
4. Study the internal and external factors affecting the implementation of the NAAEC and Operation of CEC.
5. Study the role and position of the NGOs of all the three countries in influencing the CEC programmes and activities.
6. Study the increased level of environmental sensitivity in NAFTA/NAAEC package as compared to other trade agreement such as EU and WTO.

### **Hypothesis:**

1. The strong NGO debates seeking reconciling of international trade with environmental goals including social agenda, promoted by America, Canada and the Mexican governments to include unprecedented environmental provision in NAFTA and to sign a supplemental North American Agreement on Environmental Co-operation (NAAEC).

2. The overall performance of the CEC has been impacted by different levels of economic development between Canada, US and Mexico, which has given rise to different environmental priorities, strategies and capacity to address the problems.
3. The Joint Public Advisory Committee (JPAC) has been viewed as critical link between the public and CEC but the process used by JPAC for translating and prioritizing the comments, positions and requests presented at the public meetings by NGOs as advices for the Council have not been clear, thereby limiting the credibility of the JPAC.
4. Although Secretariat which prepares reports for Council by promoting considerable public participation in its work, consultations have been perceived by some as not being broad based or representative enough, with important sectors of the civil society being entirely left out the consultation processes, such as indigenous groups from Mexico.
5. Continued large asymmetries in the capabilities of Canada, the United States and the Mexico requires considerable capacity building support including data sharing, training and exchange of best practices, in order to avoid “environmental cooperation fatigue”.

### **Research Methodology:**

The proposed research is based on historical, descriptive and analytical methods. To understand compulsions of balancing trade and environmental concerns attempt has been made to examine primary documents of NAFTA, NAAEC, CEC, Transboundary Environment Impact Assessment, Secretariat Reports, Citizen Submissions, Factual Records, Annual Report of CEC, and Project Reports. A select bibliography of secondary sources including Books, Articles, Reviews and Comments of Eminent Experts on the subject is additional resources for understanding the present study.

The study would also use information available in website of Canada, US and Mexico Government Agencies, the NGOs and Indigenous peoples.

**The present study is divided into seven chapters:**

Chapter I: Introduction: Linking between Trade, Environment and Sustainable Development; An overview of Global Development

The chapter has provided a detail overview of Brundtland Report and new paradigm of trade and sustainable development; Economic and environment linkage in North South discussion; The 1992 Earth Summit in Rio and towards reconciling international trade and environment goals; Economic policy and linkage to environmental goals upholding global interdependence.

Chapter II: Environmental Policies of Canada, US and Mexico

This chapter provides genesis of environmental policies signed between the countries of North America, Environmental Issues in Canada, US and Mexico and also the Multilateral and Regional Initiatives.

Chapter III: Formation of NAFTA and negotiation for environmental provisions: Origin of NAAEC

In this chapter attempt has been made to identified and examined factors leading to the signing of North American Free Trade Agreement (NAFTA) by Canada, United States and Mexico; Controversy and debate of environmental issues during NAFTA Treaty process promoting environmental provision in treaty; Conclusion of supplemental North American Agreement on Environmental Cooperation (NAAEC); Harmonization of environmental standards in all NAFTA countries; Nature of NAAEC and its relation with main treaty; NAAEC for “greening” NAFTA from outside; Providing agenda for environmental community; Enumerating the ecological challenges of North America; Environmental statutes and regulations; Dispute settlement and trade sanctions.



#### Chapter IV: Structure, process and role of the Commission for Environmental Cooperation (CEC)

This chapter describes in detail the NAAEC purpose and objective in creating Commission for Environmental Cooperation (CEC); The structure of the CEC: the Council, Secretariat and Joint Public Advisory Committee (JPAC); Mandate of CEC; The CEC and Non-governmental Organizations; Environmental concerns of indigenous groups; CEC Annual Reports on environment effects.

#### Chapter V: NAFTA and the role of ENGOs and Communities

The chapter is a study and note on agenda and objectives of various groups of CEC and North American Environmental NGO Community; The Secretariat and submission of NGOs report on enforcement of environment law; NGOs representation to JPAC; Public assessment and NGO involvement.

#### Chapter VI: Role of NAAEC in Greening the NAFTA

The chapter focuses on the agenda of Cooperation and Program Development, NAFEC, Obligations, Challenges, its transparency and public participation.

#### Chapter VII: Conclusion

The study upholds that environment is the victim in the ongoing neo-liberal globalization, with increasing liberalization of trade and investment, decreasing control by nation-states within the territories and the growing power of transnational companies all these factors contribute to the destruction of the environment, especially the North American Eco System.

NAFTA and NAAEC agreement between Canada, US and Mexico addressed the problems of expanding trade resulting in environmental destruction. NAFTA an agreement met the high tide of the trade and environment debate, where NGOs, government officials, academics, international experts and scientists along with broader

audiences, share the same platform and began considering the fact that environmental implications were a central element of trade negotiations.

Moreover, NAFTA and NAAEC agreements provided strategies of collaboration and cooperation. The collaboration made between citizen, industries and government of these countries attempted protecting environment and facilitative economic growth. By the strategy of cooperation between trade and environment bodies the problem of environment degradation was addressed.

NAFTA and NAAEC is believed to be more attentive to environment-related concerns than some of the preceding trade agreement, including the Canada-USFTA, the old GATT, the Uruguay Round and the Original European trade liberalization text. Indeed NAFTA became the first international trade pact to envision the need for an international forum where synergies and tensions arising from trade and the environment would be address.

## ***Chapter I***

### ***Introduction:***

### ***Linking between Trade, Environment and Sustainable Development; an overview of Global Development***

The emergence of the often emotionally charged trade and environment debate was absent as public policy is concerned. Though in 1960s environmental issues have moved to centre stage the linkage between trade and environment was not the theme. Acid rain, species loss, toxic waste, nuclear contamination, pesticide use were all there as issues, but was not link to trade. Indeed in 1960s and 1970s decades environmental issues were largely considered to occur within localized areas, with their effects operating either within national borders or if not within national borders across pairs or groups of countries, eg., acid rain, between Canada and the US, between Germany, Poland and Sweden or else where between pairs of European Countries. So the problems were not seen within a global ecosystem interacting with a global economy.

This all changed in 1980s with such issues as global warming, ozone depletion and other global environmental phenomena. In global warming debate link was made between the activities of the global economy through its extraction, refinement and use of carbon-based energy products, and the long-term and potentially cataclysmic threat posed by major increases in earth temperatures due to carbon dioxide emissions. Other global environmental issues such as stratospheric ozone depletion caused by chlorofluorocarbons and halons were also linked with industrial activity. Other global environmental issues, such as deforestation and its impact on global warming and biodiversity emerged. Deforestation, in turn, was thought to be linked, in part, to the export of tropical timber by developing to developed countries, and hence environmental concerns were explicitly linked to trade.

These issues called for global management, to imply some form of the regulation or intervention in the global economy and inevitably, some degree of management of global trade.

Environmental stress has often been seen as the result of the growing demand on scarce resources and pollution generated by the rising living standard of the relatively affluent. But poverty itself pollutes the environment, creating environmental stress in different way. Those who are poor and hungry will often destroy their immediate environment in order to survive: they will cut down forests; their live stock will over graze grasslands; they will overuse marginal land; and in growing number they will crowd into congested cities. The poverty itself a major global scourge. On the other hand where economic growth has led to improvement in living standards, it has sometimes been achieved in ways that are globally damaging in the long term. Much of the improvement in the past has been on the use of increasing amount of raw materials, energy, chemicals, and synthetics and on the creation of pollution that is not adequately accounted for in figuring the costs of production processes. This trends have had unforeseen effects on the environment. Thus today's environmental challenges arise both from lack of development and from the unintended consequences of some form of economic growth.

Another form of environmental threat the green house effect - - a life supporting system, threat to it, results from increased resource use such as fossil fuels and cutting and burning of forest leading to release of carbon dioxide. The accumulation in the atmosphere of carbon dioxide and certain other gases trap solar radiation near the earth's surface, causing global warming. It could also raise the sea level and also upset the agricultural production and trade system of national and international. Another threat arises from the depletion of the atmosphere ozone layer by gases released during the production of foam and the use of refrigerants an aerosol. Loss of ozone would effect on human and live stock health and on some lives at the marine food chain.

Dispose of toxic wastes from chemical industries, involve unacceptable environmental risks. Radioactive waste from the nuclear industry remains hazardous for centuries. Desertification and deforestation result in loss of species of plants and animals.

To put it in simple language the environment problems arise when the nature which is supporting and maintaining life on earth is indiscriminately exploited by the

mankind for his needs by means industrialization, urbanization, resource utilization and globalization. Once the capacity of the earth is known as the sustainability of nature or ecosystem or the environment once altered its initial state occur, its ability to revert back is lost. So environmentalists have proclaimed that we are in position where not only the other life forms on this planet, but also the very existence of mankind is been threatened.

The quality of common diminished as individuals tried to meet their needs and degrade spaces through both agriculture and industries by north-south countries. When trade has grown rapidly, environmental issues have become the subject of international trade disputes.

It was realized and asserted that if growth continued unbridled at the then existing rates, it would exhaust the limited stock of natural resources of the earth during 1970s. Although technological innovations have contributed in pushing outwards the 'limits to growth', it is now being argued that there may be limits in terms of the 'carrying capacity' of the environment. There is a consensus over the fact that growth without commensurate efforts at environmental protection will represent a global threat.

The global environmental problems are a tragedy of the commons. When all men rush each pursuing his own best interest in a society which believes in the freedom of the commons. Freedom in commons brings ruin to all. International society is only slowly waking up to the consequences of its own actions toward the global commons. The challenge is how to legislate temperance using the only means at our disposal, international law to regulate environment stress and effects of global trade on environment depletion. Since 1968 the development of environmental concerns and subsequently law were initiated by United Nation (UN) and its agencies<sup>1</sup>. (Sand, P. (1995), p.69-89)

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<sup>1</sup> United Nation an International Organization established in 1945, goal in maintaining peace and security, but the scope has expanded in human right, development and environmental degradation.

### *The Stockholm Conference – 1972:*

UN's subsidiary organ of the Economic and Social Council (ECOSOC) and the Economic Commission for Europe, taken responsibility for certain questions relating to environmental implications. In 1956 its Transport Committee turned its attention towards the question of the pollution of continental navigable waterways. Afterwards, the coal and energy committees concerned themselves with air pollution caused by coke works and power stations. (Momtaz, Djamchid (1996), p.261) It was only in the 1968 that ECOSOC took a direct interest in environment question and recommended the convening of a world conference on the environment to the General Assembly of the United Nations.

In the late 1960s, Sweden and other Nordic states proposed an international conference on the environment. The first international conference on the biosphere was held in 1968 under the UNESCO's auspices.<sup>2</sup> (Sand, P. (1995),p.33) The resolution of July 1968 proposed by Sweden, noting the continuing and accelerating impairment of the quality of the human environment and recommending the General Assembly to consider the desirability of convening a UN Conference. Such a Conference was held in 1972 from 5<sup>th</sup> to 16<sup>th</sup> June, under the Chairmanship of Maurice Strong, a Canadian business man, provided the leadership to bridge the divergent interest of North and South by forging the conceptual links between development and environment.

The Conference also known as UN Conference on the Human Environment (UNCHE), was attended by 114 Nations and Non-governmental Organization, each reporting the State of his or her nation's environment and forest, water, farmland, and other natural resource. The industrialized countries areas primarily concerned about pollution, overpopulation and conservation of resources. The less developed countries were more troubled by problem of poverty and scarcity hunger, disease and employment.

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<sup>2</sup> 1972 Stockholm Conference can be traced to an Intergovernmental Conference of experts on the scientific basis for rational use and conservation of the resources of the Biosphere convened by UNESCO in 1968 (Biosphere Conference). The considered the human impact on the biosphere including the effect of air and water pollution, overgrazing, deforestation and the drainage of wetlands and adopted twenty recommendation reflecting themes adopted at the 1972 conference.

They also view that technology and industry is essential key to the betterment of lives. In some respect the declaration was a masterpiece. It suggests that we have a right now to a life of dignity and equality in an environment quality, but that we also have a solemn responsibility to protect and improve the environment for present and future generation. (Palmer, Geoffrey (1992), p. 266)

The document contained the following issues of global significance, which have increased in scope in the intervening years: Sustainability; conservation of wild life and habitat; toxic substance; pollution of the seas; population growth; nuclear weapons and the ecological balance of the biosphere. (Ibid, p.237).

The conference adopted three non-binding instrument:

- a) Resolution on institutional and financial arrangement. These are the recommendation and definition of a framework for future action to be taken by international community.(Sands, P. (1995), p.35) Recommendation on institutional and financial arrangement proposed that action be taken by UN General Assembly to established four institutional arrangement:-
  1. an intergovernmental government council for environmental programs to provide policy guidance for the direction and coordination of environmental programs
  2. an environment secretariat headed by an executive program.
  3. an environment fund to provide financing for environment program,
  4. an inter-agency environmental coordinating board to ensure cooperation and coordination among all bodies concerned in the implementation of environmental program in UN system.
- b) Action Plan comprises 109 recommendations. (Sohn, Louis B. (1973), p.423) Action Plan was recommendation for creation of new institution and establishment of coordinating mechanism amongst existing institutional. Its main subjects are :-

1. planning and management of human settlement for environmental quality
2. identification and control of pollutant and nuisances of broad international significance,
3. environmental aspects of Natural Resource management,
4. educational, informational, social and cultural aspects of environmental issues,
5. development and environment,
6. International organizational implication of action proposals. (Caldwell, L.K. (1991) p.62).

c) Declaration of 26 Principles. They are general guiding principles to the people of world for preservation and enhancement of the human environment. These 26 principles reflected a compromise or understanding between states, essentially to undertake responsibility believes to stimulate public awareness of and concern over environmental issues. From legal perspective the most relevant provision are:

Principle 21- Affirmed the responsibility of state to ensure that activities are within jurisdiction.

Principle 24- Called for cooperation to control, prevent and reduce the environmental effect.

Principle 23- Limited role for international regulation and suggested that nationally some standards would be determined.

Other principles are non-legal language:

Principle 1- linked environmental protection to human rights norms,

Principles 2, 3, 5- guidelines to safe guard the natural resources,

Principles 4, 6, 7- recalling the special responsibility of man to safe guard and wisely manage the heritage of wild life and habitats,



Principles 8 to 15- recognize the relationship between environment, social, and economic development,

Principles 16 to 20- recognize the need for appropriate demographic policies and supported the development of national institution.

According to one commentator Stockholm enlarged and facilitated means toward international nation previously limited by inadequate perception of environmental issues. So Stockholm was element of innovation in;

1. the redefining of international issues,
2. the rational for cooperation,
3. the approach to international responsibility and
4. the conceptualization of international organization relationship. (Ibid).

Stockholm resolution reinforced the issues like marine pollution, transboundary air and water pollution, and protection of endangered species etc. (Ibid, p.62). Conference set the tune for international activities at regional and global level and influenced legal and institutional development up to and beyond UNCED. In post Stockholm the period was marked by a proliferation of international environmental organization and an effort in existing institutional to address the environmental issues. It was also development of new sources of international environmental obligation from acts of such organization. A new environmental norm establish by treaty, also led to the development of new techniques for implementing environmental standards including environmental impact assessment and access to information. This conference also led to the formal integration of the environment and development in relation to international trade and development assistant.

Stockholm effectively put environmental issues on the agenda of UN and many Governments, initiated the piecemeal construction of the international environmental institution, and expanded the environmental agenda. The Stockholm also facilitated the acceptance of international environmental standards and of the monitoring regimes. The Conference significantly promoted relevance of an extensive involvement of NGOs,

Scientific, Technical group, in policy making efforts. Importantly it pushed into a popular consciousness the notion of 'spaceship earth'. The slogan "think globally, act locally", became an important symbol of the movement. (Karns, Margaret P. & Karen A. Mingst (2005), p.464).

Stockholm Declaration, a soft law,<sup>3</sup> statement, called for coordination and proclaimed obligation not to damage the environment of other States. It recognized the principle that environmental policies should enhance developing countries economic potential and not hamper the attainment of better living conditions. The principle accomplishments of the Stockholm Conference were two fold the official recognition of the environment as a subject of general international concern and the institutionalization of the concept in the United Nations Environment Program (UNEP),<sup>4</sup> (Ibid 475) a new UN machinery to serve as a catalyst in developing and coordinating an environmental focus in the programs of other organization.

Because of the UNCHE success, UN convened the number of strategic conference on the issues such as population, water, food, habitat and desertification, resulting in a number of declarations and resolutions. Thus the General Assembly Resolution convening the Stockholm Conference noted that eliminating the impairment of the human environment was necessary for sound economic and social development. Thus the linkage between environment and development has been expressed since the outset of the UNCHE.

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<sup>3</sup> Soft Law are refers to international standards, codes and guidelines that are not legally binding even though such standards do not hold the weight of legally binding international agreements, they have often been very effective means for furthering environmental protection and sustainable development. Furthermore in some instances 'Soft Law' has served as the basis for negotiating legally binding agreement, eg., UNEP 1987 Cairo Guidelines for the Environmentally Sound Management of Hazardous Wastes served as the basis for the Basel Convention on that subject in 1989. While numerous UN Organization and other institutions have long been involved in the development of 'Soft Law' the following are some: WHO, FAO, ILO, IAEA, UNEP and IMO.

<sup>4</sup> UNEP a chief product of the Stockholm Conference. Maurice Strong has its 1<sup>st</sup> Executive Director, headquarters in Nairobi, Kenya. The first UN agency based in a developing country. UNEP became a champion of the new environmental agenda. It serve as an early warning system to alert the international community to environmental dangers, provide guidance for the direction of environmental programme in UN system, and review implementation of these programme.

### *North-South Environmental Discourses:*

Since the 1972 Stockholm Conference for the Human Environment, when the developing nations managed to generate a conference approving set of principles that challenged prevailing approaches to economic development and environmental protection, the North-South debate has intensified. North-South split is often portrayed as a battle over money and technology, but there is more to this conflict than economic and scientific ascendancy. Some observers paint the South nation as a supplicant; the North is portrayed as a wealthy by selfish benefactor unwilling to share its technical secret.

In planning to restructure the whole global economic system in 1970s, South called for an New International Economic Order (NIEO). A list of demands for redistribution of wealth, which would include a new system of international commodity agreements, a unilateral reduction of barriers to imports from developing states in to industrialized countries, enhancement of developing countries capabilities in science and technology, increase Northern financing of technology transfer, and changes in patent laws to lower the cost of such transfers. (Sauvant, Karl P. & Hajo Hasenpflug, (1977).

It was a strong bid for equality. Form late 1970s onward NIEO faded away, North became strong. So the income gap between the industrialized world and developing world continued to grow. Existing patterns of North-South economic relation contributed to the degradation and depletion of natural resources. Sudden increase in demand stimulated increased exploitation of the resources in the North. In South the pressure on natural resources increased when falling commodity prices are combined with debt burdens and protectionism. These countries were heavily indebted; they depended on the commodity export often. Often developing countries suffered from the protectionism also. Subsidies on agricultural exporters in Organization for Economic Cooperation and Development (OECD) countries deprived developing country producers of markets and depress world prices for those goods, exacerbating trade unbalancing and developing country indebtedness.

### *The Brundtland Report: 1987:*

When the Stockholm kept light on environment and development, it was challenged by the South, by contending that environmental concerns divert attention from the need for changes in the international power structure, while Northern environmentalists questioned the continuing emphasis on economic growth in the face of diminishing global resources. Two major reports; (a) Brandt's Commission Report on "Programme for Survival and Common Crisis" (1980) dealing with North-South issues and (b) Palme Commission Report on "Common Security" (1982), essentially dealing with disarmament issues, did not address specifically environmental problems. Therefore North-South environmental tension led the UN General Assembly in 1983 to establish World Commission on Environment and Development (WCED), to develop the concept of sustainable development. This report tried to balance ecological concerns with economic growth necessary to reduce poverty. The report underscored that South cannot develop in the same way as North because humanity could not survive a similarly radical transformation in the environment.

The World Commission on Environment and Development was created as a consequence of General Assembly resolution 38/161 adopted at the 8<sup>th</sup> Session of the United Nations in the fall of 1983. The resolution also called upon the Secretary-General to appoint the Chairman and Vice-Chairman of WCED. This was formally done by the Secretary-General in December 1983 when he appointed Gro Harlem Brundtland, Prime Minister of Norway, Chairperson and Dr. Mansour Khalid former Foreign Minister of Sudan as Vice-Chairman.<sup>5</sup> The Commission was established as an independent body linked to, but it was outside the control of Government and the UN system.

The Chairperson Brundtland was called upon to address the "global agenda for change," (Documents (1989) , p. 784), which was formulated by UN General Assembly when it created the WCED.

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<sup>5</sup> World Commission on Environment and Development (1987), *Our Common Future*, Oxford University Press, Oxford.

The agenda included:-

- To propose a long term environmental strategies to achieve sustainable development by the year 2000.
- To recommend the ways to have the environment cooperation between developing countries and between countries at different stage of economic and social development and lead to the achievement of common and mutually supportive objective that takes account of interrelationships between people, resources, environment and development.
- To consider ways and means by which the international community can deal more effectively with environmental concerns.
- To define the shared perception of environmental issues and appropriate efforts needed to deal successfully with the problems of protection and enhancing the environment.

**The Commission Mandate:**

The Commission mandate officially adopted at its Inaugural Meeting in Geneva, on 1-3 October, 1984, states:<sup>6</sup>

The WCED has been establishing at a time of unprecedented growth in pressures on the global environment with grave prediction about the human future becoming common place. The Commission is confident that it is possible to build a future that is more prosperous, more just and more secure because it rests on policies and practices that serves to expand and sustain the ecological basis of development.

Commission was convinced that this will not happen without significant change in current approaches:

1. changes in perspective, attitudes and life styles,

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<sup>6</sup> WCED (1987), p. 356.

2. changes in certain critical policies and the ways in which they are formulated and applied,
3. changes in the nature of cooperation between governments, business, science and people,
4. changes in certain forms of international cooperation which have proved incapable of tackling many environment and development issues,
5. changes above all, in the level of understanding and commitment by people, organization and government.

**Mandate for Change :**

1. perspectives on population, environment and development,
2. energy, environment and development.
3. industry, environment and development.
4. food security, agriculture, forestry , environment and development.
5. human settlement, environment and development.
6. international economic relation, environment and development.
7. decision support system for environmental management and
8. international cooperation.

It agreed that it would examine this issues form the perspective of years 2000 and beyond and from the perspective of their common sources in economic, social and sectoral policies.

When the Commission met, the tragedies were:

- African famines,
- Leakage of methylisoyanati gas at the pesticides factory at Bhopal, India, 1984,
- Nuclear disaster at Chernobyl nuclear reactor in Europe.( 1986),
- USSR appeared to justify the grave prediction about the human future that was becoming common place during mid 80s.

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The Commission realized that it is impossible to separate economic development issues from environmental issues, i.e., they both are not separate challenges<sup>7</sup> and that many forms of development erode the environmental resources upon which they must be based and environmental degradation can undermine economic development. The link between poverty, inequality and environmental degradation formed a major theme in analysis and recommendation of the commission.

The Brundtland Commission issued its report, "Our Common Future", in April 1<sup>st</sup> 1987, which outlined measures for strengthening the governing body of international environmental law. A core concept that highlighted in the report is "Sustainable Development", (Document, (1989),p.784) said that it is guiding principle for global environmental policy. Commission defined Sustainable Development as "development that meets the needs of the present without compromising the ability of future generation to meet their own needs."<sup>8</sup> The concept of "Sustainable Development", and the Brundtland's Commission Report as a whole have had a strong influence on the debate at international forum on environmental issues and have prompted new institutional efforts to move without slipping the global environmental problems and development.

It was a call for action<sup>9</sup> as over the year keeping in the view that the relationship between the human world and the planet that sustains has undergone a change. The rate of change was outstripping the ability of scientific disciplines and our current capabilities to assess and advise. The attempt of political and economic institution evolved in different, more fragmented world, to adopt and cope. Not only one nation lies in problems but all were threatened. Again here it's observed that developing nations faced the challenges of desertification, poverty alleviation, (Documents (1993), p. 896) deforestation and pollution and endure most of the poverty associated with environmental degradation.

The entire family of nations would suffer from disappearance of rain forests in tropic including the loss of plant and animal species. Industrial nation face the life

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<sup>7</sup> Ibid, p. 37.

<sup>8</sup> WCED (1987), p.40.

<sup>9</sup> Ibid p. 22.

threatening challenges of toxic chemicals, toxic wastes and acidification. All the nations may suffer from the releases of carbon-dioxide and the gas that react with the ozone layer. So it was a call, the Commission noted a number of actions that must be taken to reduce risk to survival and to put future development on paths that are sustainable.

The Commission has been concerned with people of all countries and all walks of life. And declared that it is the people, to whom this report is addressed,<sup>10</sup> believing to bring the change in their attitudes, the security, well-being and for the survival of the planet.

### **Circumstances:**

Environmental trends that threatened the planet that Report enumerated were:

- Every year 6 million hectares of productive dry land turns into worthless desert.
- 11 million hectares of forest are destroyed yearly.
- In Europe, acid precipitation kills forests and lakes and also damages the artistic and architectural heritage.
- The burning of fossil fuels meets into the atmosphere. Carbon dioxide which causes the global warming, green house effect, increases rise of sea level to flood coastal cities and disrupt national economies.
- Industrial gases, threaten to deplete the planets protective ozone shield.
- Industry and agriculture input of toxic substances into the human food chain and water is beyond reach of cleansing.

### **Recommendation:**

The Report made specific recommendation in respect of each of these matters that identify challenges for the development of international law, including the impact of national sovereignty and the management of the global commons. Report identified 6 priority areas for legal and institutional change and identified the existing legal order as part of the problems.

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<sup>10</sup> WCED (1987), p. 23.



1. Getting at the sources:-

Governments, regional organization and international organization or bodies and agencies were called upon to support the development which would be economically and ecologically sustainable, to integrate the environment fully into their goals and activities and to improve cooperation and coordination.

2. Dealing with the effects:

It sought reinforcement the role and capacities of environmental protection and resources management agencies<sup>11</sup> to deal with effect including a strengthened UNEP as the principles sources for environmental data, assessment and reporting the principal advocate and agent for change and international cooperation.

3. Assessing Global Risk:

It called for an extension of the capacity of the international community to identify, assess and report on global risk even the sustainable future will be marked by increasing risk of irreversible damage to natural system regionally (for eg., acidification, desertification or deforestation and globally through ozone layer depletion or climate change) have become significant. So the new International Program for Cooperation among NGOs, Scientific bodies and Industrial groups should establish.

4. Making Informed Choices:

It recognized the need to expand the right, roles and participation in development planning, decision making and project implementation of an informed public, NGOs , Scientific community and industry groups because the transition to sustainable development will require a range of public policy choices that are inherently complex an politically difficult

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<sup>11</sup> World Environment Center (1989), World Environment Handbook, New York.

5. Providing the Legal Means:

In recognizing that international law is being rapidly outdistanced by the accelerating pace and expanding scale of impact on the ecological basis of the international law related to the environment in order to find ways to recognize for their health and well being, to prepare under UN; a Universal Declaration on Environment Protection and Sustainable Development and a subsequent convention, and to strengthen procedures for avoiding or resolving disputes on environment and resources management issues.

6. Investing in Our Future:

The Report recognized the need to invest in pollution control by providing financial assistance through the World Bank, IMF, and other regional development banks. The Report also called for a UN Program on Sustainable Development and an international conference to review progress and to promote follow up arrangement. The WCED legal principles falls 3 categories, including general principles: rights and responsibilities and principles.

Brundtland Commission stressed the need to view global environmental challenges as an integral part of the problems of global development. So the link between trade and environment came to light because of their interdependent and integrated a word 'Sustainable Development' was born. The vision for sustainable development are: respect and care for the unique and irreplaceable; ensuring the fulfillment of fundamental needs for all people on earth including access to basic request such as food, water, clothing and shelter; ensure fairness in the global distribution of wealth; ensuring democracy and participation for people in all direction involving in their own environment; foresighted nature utilization.

This concept of sustainable development found expressly or implicitly in many environmental treaties and other instruments in the period prior to publication of BR in 1987.<sup>12</sup>

The World Conservation Strategy<sup>13</sup>, gave currency to term 'sustainable development' and had led to the preparation of national sub-national conservation strategies in most states. It has subsequently influenced international legal development. The 1980 strategy emphasized on three objectives:-

1. Essential ecological processes and life support system must be maintained.
2. Genetic diversity must be preserved.
3. Any use of species or ecosystem must be sustainable.

World Conservation Strategy was aimed at policy makers, development practitioners and conservationists. It defined conservation in human term as 'the management of human use of the biospheres that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspiration of future generation'. Development, it said was the 'modification of the biosphere and the application of human, financial living and non-living resources to satisfy human needs and improve the quality of human life. For development to be sustainable it must take account of the ecological factors as well as economic ones: of the living and nonliving resources base and of the long term as well as the short term advantages and disadvantages of alternative actions'.

World Conservation Strategies of 1980s identified six main obstacles to the fulfillment of objectives.

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<sup>12</sup> Climate Change Convention, Art.3, Chapter 19, P.734-41.

<sup>13</sup> World Conservation Strategy was prepared by the International Union for Conservation of Nature and Natural Resources now called the World Conservation Union (IUCN), in cooperation with the World Wildlife Fund (WWF), the United Nations Environment Programme (UNEP) and other UN agencies such as Food and Agriculture Organization and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

1. the failure to recognize that living resources conservation is a process that cuts across all sectors.
2. the failure to integrate conservation with development,
3. a development process that is inadequate in environmental planning and management,
4. lack of capacity to conserve due to inadequate legislation and lack of enforcement,
5. lack of awareness the benefit of conservation,
6. the inability of deliver conservation based on development where it is most needed including rural areas of developing countries. (Caldwell, L.K. (1991), P.322-3).

Brundtland Report while reflecting the ideas which first proposed in the WCS, it further said 'the concept of sustainable development does imply limits not absolute limit but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities. But technology and social organization can be both managed and improved to make the way for a new era of economic growth'. It advocated the idea of sustainable growth.

### **Brundtland a new paradigm in Trade and Sustainable.**

Brundtland commission, talks about positive side of development by observing that there, can be produce more food and more goods with less investment of resources, science and technology giving the information about the better potential and the knowledge of natural resources. And also noted that people can build a future that is more prosperous, just and secure. It had reconciled human affairs with natural system. It studied the earth as an organizations, earth's health depends on health of all its parts. It also expressed confidence that human has power to reconcile their affairs with natural laws and to thrive in the process.

The report “our common future”, see the future possibility of a new era of economic growth that based on policies that sustain and expand the environmental resources base instead of increasing environmental decay, poverty and hardship in an ever more polluted world among ever decreasing resources. It also says that growth is essential to relieve the great poverty that is deepening in much of the developing world.

Commission hopes that future should be conditional on decisive political action; manage environmental resources to ensure both sustainable human progress and human survival. It acknowledges that its report is not the forecasting a future, but it is serving a notice which is based on scientific evidence. It is a pathway by which people of world may enlarge their spheres of cooperation in securing the resources to sustain and also for the coming generation.

Commission though non-economist, taken the side of economist. As new set of economist viewed economic system as being a sub set of global ecosystem, believes that economic system depends on it. The traditional economist treated natural resources as being a sector of economy and not something large than economics itself.

Commission widely argues fundamentally changes in the international trading system and global economic relations will be required to achieve sustainable development. The Report suggested that ‘two conditions to be satisfied before international economic exchange can become beneficial for all involved; firstly the sustainability of ecosystem on which the global economy depends must be guaranteed, secondly the economic partners must be satisfied that the basis of exchange is equitable. But for many developing countries neither of condition is met’.<sup>13</sup>

Report identify both long term and of unequal international economic relations which force against sustainability by intensifying ‘those forces that lead to environmental deterioration and resource depletion occurring at the expense of long-term develop’.<sup>14</sup> Unequal is reflected, in unstable and adverse commodity terms of trade, rising debt service ratios, net resources transfers from poor to rich countries, reduced new capital

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<sup>13</sup> WCED (1987), p 6.

<sup>14</sup> Ibid, P 67-68.

flow of IMF, and protectionist trade policies in Organization for Economic Cooperation and Development (OECD) economics.

Moreover Brundtland Report explains: “Debts that they cannot pay force the developing nations relying on commodity sales to overuse their fragile soil, thus turning good land into desert. A Trade barrier in the weakly nations and in many developing ones makes it hard for developing to sell their goods for reasonable returns, putting yet more pressure on ecological system”. (Susskind, Lawrence E. (1994), p.21)

The perspectives on the Global Environment of the developing, nations have been shaped accordingly to their preoccupation with economic growth, their fears of high costs of environmental protection and their general distrust of the policies of industrialized states. Their environmental priorities have been urban air and water pollution, the erosion and salinization of agricultural land and toxic chemical contaminations; but for most developing countries, economic growth, employment and overcoming poverty have been the dominant concerns. Although developing countries are now active participants in many of the “northern regimes”, their main concern is usual to ensure that their economic interests are protected.

Third world disagreement with Brundtland Report is because it only explain meaning and direction of economic development and also its idea of sustainable development (which postulate the link economic development and environmental protection) assumes that effective responses to global environmental threats can be found within the framework of the current pattern of economic development, if the actor would accept the importance of sustainability generally view of the North. South viewed that problems such as population growth, food shortage, the loss of forests, the difficulties of producing energy, the impact of industrialization, and the burdens of massive urbanization as by product of the dominant economic development pattern. South wants the North to accept the responsibility for causing these problems by pursuing a form of economic growth and an approach to development that is fundamentally at odds with sustainability. South pursued that their should be some pattern of development, and fairer way of sharing the world’s resources that we ought to obey it because if every nation

sought to achieve the level of percapita energy use and resources consumption currently enjoyed by the US, the world's reserves would quickly be exhausted.

Brundtland Report observes that North-South conflict will not be resolved by additional money and technologies available on favorable terms. The South expects the North to accept greater share of responsibility for the difficulties that developing national face. The south is also waiting for the North to acknowledge that there must be a change in Northern life style if greater fairness in the allocation of the world's resources is to be achieved for all. North's standpoint has been that neither demand is reasonable. Meanwhile the entire South is adamant to sacrifice development for the environmental protection.

The main features of Brundtland Report in explaining environmental problem of the world view could be broken down into three elements which are briefly presented below:

1. Same boat ideology says that environmental degradation like nuclear weapons is a threat to all inhabitants of the planet earth so all are in same boat, with no choice rather than dialogue and cooperation. So the whole world might lose or win together.
2. Slogan of 'sustainable development' implies no contradiction between ecological sustainability and economic development with the nuclear conflict also arise the North-South conflict. So the sustainable development has come to mean that ecological sustainability is good for economic development and economic development is good for ecological sustainability.
3. Brundtland Commission concluded with Global Environmental Management an answer the challenge of Global Ecology. It means that self appointed global environmental manager will promote sustainable development with approval of world citizens.

We can remark the Brundtland Commission implicit conception of 'global politics' might be at least as important outcome. (Sachs, Wolfgang (1993), p.44), Within

the UNCED process it was an efficient means to pursue that dialogue as the miracle solution to the global ecological crisis between the civil society and political leader of different nations. Global politics promoted by BC's far from solving the ecological crisis; it has indeed helped the nation states and their government to reduce also the threat posed by global ecology and global environmental movements.

Brundtland Report identifies Critical for environment and development policies that flow from the concept of the sustainable development which include:

- Reviving growth and changing its quality; developing countries are interdependent on world economy and their prospects also depend on the levels of patterns of growth in industrialized nations. The growth rate of industrialized countries should be environmentally sustainable if they continue to use less material and energy intensive activities and the improvement of their efficiency in using material and energy. Through this the industrialized countries provide market for commodities of developing countries.
- Change in quality of growth; the process of economic development must be more soundly based upon the realities of the stock of capital that sustain it. In all country, rich or poor economic development must take full account in its measurements of growth of the improvement or deterioration in the stock of natural resources.
- Meeting the essential human needs; the linked basic needs of housing, water supply, sanitation, health and energy etc are environmentally important. The satisfaction of human need is the objective of the sustainable development.
- Ensuring a sustainable level of population; developing country cities are growing much faster than the capacity of authorities to cope. A growing proportion of city dwellers live in slums and shanty towns, many of them exposed to air and water pollution and to industrial and natural hazards.
- Conserving and enhancing the resources base; pressure on resources increases when people lack alternative. Development policies must widen people's options for earning a sustainable livelihood, particularly for resource poor household and in areas under ecological stress. In a hilly area for instance, economic self interest



and ecology can be combined by helping farmers shift from grain to tree crops by providing them with advice, equipment, and marketing assistance. Program to protect the incomes of farmers, fishermen and foresters against short term price declines may decrease their needs to over exploit.

- Reorienting technology and managing risk; technology of industrial countries are not suited for environmental condition of developing countries. But not enough is being done to adopt recent innovation in materials technology, energy conservation, information technology and biotechnology to the need of developing countries. These gaps must be covered by enhancing research, design, development and extension capabilities in third world countries.
- Merging environment and economic in decision making; the common theme throughout this strategy for sustainable development is the need to integrate economic and ecological consideration in decision making. This will requires change in attitudes and objectives and in institutional arrangement at every level. (Sands, P. (1999), p. 389-407).

This strategy promotes harmony among human being and between humanity and nature. In context of development and environment crisis of 1980s which the nations and international political and economic institution can not over come the pursuit of sustainable development requires.

The concept of sustainable development and the Brundtland Report as a whole have had a strong influence on the debate at international forum on environmental issues in subsequent years and have prompted new institutional efforts to come to grips with global environmental and development problems.

In 1989, Brundtland in her speech outlined the view on what should be the aim for preparation for environment conference in 1992.

1. 1992 conference should base environment on sustainable development without linking to the broader economic and social development process as that will not be able to solve the Global Environmental Problem.

2. so the preparation should focus on allocating additional financial resources needed as developing countries would need increased assistance so that they would not repeat the mistake that the developed country did over and over again.
3. we should set up a time frame for negotiation on global climate convention during 1992 Conference.
4. make a new commitment effort to strengthen our institution to deal with the challenges of world climate. (Document (1989), p 784).

Brundtland Report concludes its discussion of international economic relations with the statement that “new dimensions of multilateralism are essential for human progress”, and an expression of its confidence that the mutual interest involved in environment and development issues can help generate the needed momentum and can secure the necessary international economic changes that will make it possible.

### **Sustainable Development:**

Though the sustainable development concept developed in the 1960s when people became aware of the detrimental effects of industrialization on the environment, it was gradually upheld and could become the most important socio-economic concept only in the 1990s. Today it is the most politicized catchword of international developmental conferences and programs. It has been realized that the rate of consumption of natural resources is faster than their regeneration and feared of depleting natural resources, so sustainable development emerged to control the earth's precious and limited resources base and to offer a long term planning for productive techniques industrial processes including equitable distribution policies for the exploitation of resources such as coal, oil, and water.

The term sustainability refers to a process or state that can be maintained indefinitely; it says natural resources be used in ways that do not create ecological debts by overexploiting the carrying and productive capacity of the earth; a minimum necessary condition for sustainability is the maintenance of the total natural capital stock set or above the current level.

The term development means a social and economic improvement. It refers to a holistic growth of the human and natural environment toward autonomy and freedom. It indicates a growth pattern which makes nation more decisive in their internal and external environment.

So the sustainable development brings the environmentalist ideas into the central theme of the economic development policy.

**Objectives of the Sustainable Development:**

1. To maintain the standard of living of the large number of people with equity and justice. The consideration of transboundary and cumulative impacts in decision making to be realized;
2. To conserve and protect earth's natural resources from misuse and wasteful consumption. This demands respect for the land and its diversity as the foundation for healthy communities;
3. To innovate new technology and scientific techniques which work in unison with laws of nature and not opposed to it. There needs to be a consideration of sharing the risks and benefits from developmental policies undertaken by different nations.
4. To respect diversity and involve local and indigenous communities for a more grassroots oriented and relevant developmental policies. This would involve consideration of economic viability, culture and environmental values, as policies an program are development;
5. To decentralize governance institutions and make them more resilient, transparent and accountable to people. They should have an open, inclusive and participative decisions making;
6. To plan international institutions which recognize the requirements of poor nations and support them to achieve their growth targets without destroying their natural wealth and environment;
7. To seek peaceful coexistence of all nations of the world because only peace can allow them space to innovate for the larger interests of humanity. This may

demand honoring of treaties and fiduciary obligations and international agreements.

### **Globalization, Trade and Sustainable Development:**

Globalization creates wealth, it also results in an increase in economic inequality and a large population cut off both from their former communities and from any access to political power in the broader society, in which the political process is dominated by the interests of wealthy elites and transnational corporations. Achieving sustainability thus requires a consciously dualistic development strategy. In those areas where market is developed, required the standard economic techniques for “internalizing externalities” and promoting energy and resource efficiency have potential to limit environmental damage. In the rural areas it proposes the strategies to promote self-sufficient in rural communities, including the areas of food production, crafts and light industry, resource husbandry and ecosystem maintenance, and the use of renewable energy sources.

Trade is not merely a question of exchanging goods. It also involves culture, information and environment. Free trade may succeed on its own terms by increasing the volume of goods production and consumption, but at the expense of damaging communities and the environment. But the political and cultural responses to social and environmental issues took place from local to regional to global.

### **Earth Summit:**

One of the most publicized large scale political events after the cold war, over the couple of weeks in June 1992 was the attention of world media focused on the largest gathering of world leaders in Rio de Janeiro attending the United Nation Conference on Environment and Development (UNCED). They met to discuss question of global environmental situation and the problems of development and formulated responses to these crises.

During 1980s, a series of key scientific finding that suggested mounting international environmental problems, namely the discovery of the ozone hole over

Antarctica, the growing evidence of global warming or climate change and the accumulating data on loss of biodiversity and depletion of fisheries. These developments shaped the Rio Conference agenda and were crucial steps in the struggle to get North and South to work together. In December 1987 the UN General Assembly noted the Brundtland Report and called the following year for UN Conference on environment and development. In 1989 General Assembly resolution 44/228 called for convening a UNCED for June 1992. This global convocation drew 178 states, (Percival, Robert V. & Dorothy C. Alevizatos, (1997), p.36) more than fifty intergovernmental organization and several thousand corporation and non-governmental organizations. UNCED charter declared: The conference should elaborate strategies and measures to halt and reverse the effect of environmental degradation in the context of strengthened national and international efforts to promote sustainable and environmentally sound development in all the countries.

UNCED adopted three non-binding instrument which were:-

1. Rio declaration on environment and development;

It supported the development of 'procedural' techniques for implementing international standards including the provision of and access to information relating to environmental matters and recognizing the need for participation of concerned citizens supporting environmental impact assessment and called for notification, information exchange and consultation. Matters addressed were:

- relationship between environmental protection and free trade obligations,
- the development of national and international law regarding liability and compensation for the victims of pollution and other environmental damage.
- the need to eradicate poverty and decrease disparities in standards of living,
- the reduction and elimination of unsustainable patterns of production and consumption,
- promoting appropriate demographic policies. endogenous capacity building and scientific understanding as well as the transfer of technologies,

- support the participation of women, youth and indigenous people and their communities,
- recognizes that peace, development and environmental protection are interdependent and indivisible and that there is need for peaceful resolution of environmental disputes,
- provides a framework for the development of environmental law at the national and international level which will serve as an important point of reference to guide decision making.

## 2. Agenda 21;

It is a non-binding blue print and an action plan for a global partnership for sustainable development. The document was eight hundred pages in length and included more than forty chapters plus appendices. It was conceived as a plan for action by and for the whole of the international community, designed to integrate environment and development concerns for the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystem and a safer, more prosperous future.

- it reflects a global consensus and political commitments at the highest level towards the implementation of national strategies, plans, policies and processes to be supported and supplemented by international cooperation,
- it constitutes an extensive series of programmed areas setting out basis for action, objectives, activities and means of implementation,
- it aims at developing the concept of the international law of sustainable development and calls on competent intergovernmental and non-state actions to cooperate to provide governments and legislators, upon request, with an integrated program of environment and development law (sustainable development) services, carefully adapted to the specific requirement of the recipient legal and administrative system. (Sands, p (1995), p.59).

3. Non-legally binding authoritative statement of principle of a global consensus on the management, conservation and sustainable development, for all types of Forest or UNCED Forest Principles;

The guiding objective of forest Principles is to contribute to management, conservation and sustainable development of forest and to provide for their multiple and complementary functions and uses.

- global consensus on forest which serves future legal instrument, applies to all types of forest and provides that forest issues are to be dealt with holistic and balanced manner,
- makes limited reference to institutional arrangement and their development, endorse public participation, scientific research forest inventories and assessment education and training, international exchange of information and the utilization of indigenous knowledge,
- positive and transparent action are called for in developed countries by means of reforestation, rehabilitation, afforestation, forest conservation.

Along with this above explained three non-binding instrument, UNCED also formulated two other treaties: Convention on Biological Diversity<sup>15</sup> and UN Framework Convention on Climate Change<sup>16</sup> was opened for signature.

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<sup>15</sup> The Convention calls for the countries to prepare policies, programs, and plans to conserve and protect biological diversity. Each signatory is supposed to do everything it can to ensure access to its genetic resources as well as to technologies (for the sustainable use of the biological diversity) that will help the other signatories. The developing nations are promised the full increment of aid required to meet the terms of the treaty, although amounts are not specified and mechanisms for distribution must be worked out at a later date.

<sup>16</sup> Climate Change Convention calls on all countries to do all they can to mitigate Climate Change by reducing or preventing the emission of green house gases, promoting sustainable development, cooperating in preparing for adaptation to the impact of climate change and exchanging relevant scientific information. North called to adopt national policies and take measures to reduce the emission and also promised to provide South with 'new and additional financial resources to meet the agreed full cost incurred in complying with the treaty'. European Community was adamant to support the convention, as it did not include mandated targets and time tables for reduction in the emission of greenhouse gases.

All the delegates approved by consensus three non binding documents but US refused to sign Biodiversity Convention<sup>17</sup> and agreed to sign the Climate Change Convention

Earth summit and the events preceding offered conclusive evidence of the weaknesses of the existing environmental treaty making system and also revealed that there was no international agreement on the range or content of the environmental threats that had to be addressed. UNEP and then the UNCED Secretariat determined the process rules, other went along, there were little or no philosophical agreement on the types of solution likely to be most effective, or even on the most importantly it denotes a new level of international attention to problems that must be recognized before collective action is possible. Additional funding was promised by the North, and a great deal of public attention was focused on the idea of sustainable development

After the ten year of UNCED in Rio, which put environment and development high on the global agenda, witnessed the World Summit for Sustainable Development (WSSD), in Johannesburg in Sandston City South Africa from 26<sup>th</sup> August to 4<sup>th</sup> September 2002. (Krishnakumar, Asha (2002), , 27<sup>th</sup> September.)

Over 180 nations, historic opportunity for over 10000 NGOs and civil society groups and also 1000 corporation gathered at summit. UN Secretary General, Kofi Annan brought into focus five priority areas; water sanitation, energy, health, agriculture and biodiversity and ecosystem management (popularly called WEHAB).

Johannesburg became a battleground as countries and participants slugged it out on crucial issues as targets and time frames; common but differentiated responsibility, new and additional finance, good governance, corporation responsibility and trade and globalization.

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<sup>17</sup> US was unconvinced that the interest of country would not be well served. Though US took the lead in putting the issue of biodiversity loss on the international agenda in 1987 during Reagan's Administration, getting the UNEP Governing Council to create an ad hoc working group of experts to study an "umbrella convention" to rationalize activities in biodiversity conservation.



Diluting government promises and empowering global business to protect the earth from degradation and in the process, undermining the problems faced by millions of poor people whom WSSD promised to protect, Summit came out with highly compromised:

Plan of Action, Political Declaration and non-binding Type-II partnership between business, NGOs and Government.

The summit said with loud and clear that 'global corporation would provide the solution for a sustainable world'.

### **Reconciling International trade and environment:**

UNCED was pressed to look after the developing country's trade and to ensure that their future market access to industrial country's market is not unduly hampered. It was feared that the stringent environmental provision particularly in areas which are more immediate interest to industrial countries would threaten their growth prospects also developing countries kept the issues that it should not bear the environmental cost disproportionate to their contribution to variety of global problems.

UNCED trying to build consensus between a spectrum of environmental problems which are related to the exploitation of natural resources and affect of the economic wellbeing of nations. Even though economic and trade consideration over rode argument for environment and resources protection on the question of biodiversity and forestry practices, the process of seeking agreement will not stop, for eg,. US rejection to biodiversity treaty and their was division between the developed and developing countries on forestry practices; Malaysia was concerned about its economic development of forest resources, feared that agreement on international standards for environmentally sound forestry practices might retard their progress. Nonetheless agreement on a statement of principles with respect to practices conducive to sustainable development was reached and work hoped with continue towards acceptance and implementation of the practices on global basis. Here going to put light on from conflicting interest to the reconciling trade and environment of the Earth Summit.

**Conflicting interest differing perceptions:**

Earth Summit made visible that the interest stands in the way of economies i.e., the degradation of rivers, lakes, forest, fields, fishing ground etc. people are seeking to re-establish, as for them the degradation means loss of dignity and independence security, livelihoods health. In contrast the government, business and international organization whose livelihood do not depends directly on what is around them tend to view environmental degradation and the protest it provokes as threat to their political interest. For them environment is not what is around their homes but what is around their economies. Within the UNCED Northern leaders were preoccupied with how to keep a growing South from tapping resources and filling up waste sinks which North has grown accustomed to using, which simultaneously was maintaining the global capital flows which would help the global economy expand. South leaders were willing to get benefit from Northern capital to be equal and they were occupied with extending boundaries of economies by bringing more land under the plough, logging more forest, diverting more water to industry so on. However with common grassroots groups for them the question was not how their environment should be managed but who will and in whose interest the environment is managed.

The preferred response of world leaders and mainstream environmentalists has been to seek further enclosure of the common by market and state, in hope of that environmental damage has been caused can be remedied by more far-reaching enclosure in the future.

This approach seeks to preserve the economic expansion through programme of global management of both the environment and people. It is this path which chosen by the

Secretariat and virtually all delegation, at UNCED as well as by the major multilateral development agencies and many scientific and conservation organizations.

### *The Threat of Economic Contraction:*

Tighter environmental standards not to speak of environmental degradation itself now threaten to stress on the resources in the global economy. As the Brundtland Commission puts it: 'we have in the past been concerned about the impacts of economic growth upon the environment. We are now forced to concern ourselves with the impacts of ecological stress.....upon our economic prospects'.<sup>18</sup>

Environmental stress and the pressure to ease it is already denying resources to the global economy, while simultaneously depriving it of sinks into which the waste products of industrialization could be readily and cheaply be disposed. As soils are eroded, so land is taken out of production; as the seas are over fished and rivers polluted, so fisheries crash; as forests are logged out or succumb to damage from air pollution, so timber supplies are threatened; and as the economic costs of mitigating damage rise, so capital is diverted away from productive growth. In the US alone, soil compaction the direct result of modern mechanized agriculture is estimated to have cost farmers some \$3 billion in lost yields in 1980 alone. The damage already incurred through acid rain and pollution related forest damage in Europe and the US has been put at \$ 30 billion, while the estimated cost of cleaning up the 2000 worst polluting toxic waste dumps in the US has been put at \$ 100 billion. And also losses of species alone make the price tag incalculable.

So North and South argued that such cost could not be born without increase in global economy and believed that it bring the possibility of reclaiming the common, of restoring what development has destroyed and of living with dignity.

The economic contraction provides a space in which the commons can regain some of its authority, which poses a direct threat to those whose power rests on the ability to sustain productive growth becoming a permanent features of the economy as a result of environmental degradation and environmental protest has thus caused alarm bells to ring in corporate headquarters and other centers of power.

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<sup>18</sup> WCED (1987), p.5.

### **Containing Challenges:**

In history it is not the first time that the movement for social change has threatened the power of established commercial and political elites. It is the ability of the elite to survive with their power through turning the challenge so their advantage. But now the environmental degradation and environmentalism can no longer be ignored and outright resistance to change is giving way to strategies for managing that change. The emphasis has been on blocking those demands that cannot be contained without loss of power. Within UNCED for eg., elaborate maneuvering enabled individual industries to head off measures that would impose too heavy a cost on their activities. Most notably, corporate interest effectively blocked discussion of the environment impact of Transnational Corporation (TNC): recommendation drawn up by the UN own Centre for Transnational Corporation (UNCTC), which have imposed tough global environmental standards on TNC activities, were shelved and instead a voluntary code of conduct, drawn up by the Business Council on Sustainable Development, a corporate lobbying groups, was adopted as the Secretariat's input into UNCEDs Agenda21. Instead of being subject on a mandatory code of conduct, negotiated multilaterally, the TNCs emerged from UNCED without their role in causing environmental destruction even having been scrutinized in the official process, let alone curtailed.

Governments of North and South protected the interest of their industrial and commercial lobbies. Similar posture was adopted in the negotiation on biodiversity wherein the main priority of US negotiators had been to block any measures that might harm the interest of biotechnology companies or undermine the patenting of intellectual property.

### **Capturing the Debate:-**

UNCED saw a conscious attempt by corporate and other mainstream interest to capture the debate on environment and development and to frame it in terms that suit their purposes. Here are number of strategies that came into play;

- There was an effort by governments and industry to distance themselves from the destructiveness of policies, because of references within the official document to recent satellite data and new studies conveyed that ecological degradation was a recent phenomenon. In the past there was no scrutiny, now the public were asked to look after future as well industries are aware of the environment. Thus 'fox could now be put in charge of the chickens.' (Hildyard, Nicholar (1993), p.30).
- There was no institutional framework of global society for scrutiny. So UNCED promoted the rosy-tinted view of where all humanity united by common interest for survival and constant references to humanity's common resources was made.
- UNCED made environmental problem as a global crisis, by observing that all humans share a common responsibility for environmental destruction either because of the demand they are currently placing on environment or because of demand they are expected to exert in future.
- UNCED by making the environment problem and solution a global issue, it also added impetus to those multinational interests who would extend their global reach.
- There was an attempt to frame problem in terms of solution were North and South can provide; for eg. Insufficient capital - - solution: increase Northern investment in the South; outdated technology - - solution: open South to Northern technology; lack of expertise - - solution: bring in Northern educated managers and experts; for faltering economic growth - - solution: push for an economic recovery in North.
- UNCED attempted to inspire environmentalist and industrialist alike with a 'crisis management mentality', in which the need for action was considered as more important than settling difference on what action should be taken by whom, so and whose interest paramount. Within UNCED the nature threat was justified by giving more authority to the power to legitimize program which would remove control from local people and to sanction more management, more top down development more policing and still greater control of people. Also required fast acting intervention instruments such as international environmental police force should intervene where there is crisis in any country.

**UNCED Prescription: Further Enclosure:**

NGOs in UNCED Conference have constitutionally been outmaneuvered. They have embraced the government and business to more green direction. UNCED has set in motion the new management regimes capital flows and technology transfers etc. The new environmental manager behind the Agenda 21 have priorities that to manage those aspects of the environment that have value to the global economy from germplasm for biotechnology to pollution sink and other commodities that can be traded.

UNCED opened a new way for new institutions, administered for the need of trade and commerce, to assume environmental management at all levels.

Within the agriculture the policies promoted by the UN Food and Agriculture Organization at UNCED foresee the best land in third world countries being zoned for cash crop only in those area where national resources limitation or environmental or socioeconomic constrains preclude intensification would farmers be allowed to grow their own food for their own use. With the Zoning Policy government were allowed to evaluate the carrying and population supporting capacity of major agriculture areas and where such areas are considered to be overpopulated, take step to change the man/land ratio or accommodate the migrating population into better endowed area.

But displacement is likely wind up as laborers of tied producers growing cash crops under contract to large corporation.

This sustainable agriculture policy do not consider the possibility that ecology stress in managerial areas would be better relieved by reclaiming high potential area for peasant agriculture.

Significantly the benefit of commercial interest is justified in the name of the environmental protection. Under the new rule or regime it is not to provide raw material, cheap labor, and markets to an international economic system but also to supply environmental repair or caretaker service to mitigate the problem that system itself has created. In Rio the new and additional financial resources agreed to reinforce that

management strategy. The loans agreed by Global Environment Facility (GEF),<sup>19</sup> essentially aims to help developing countries to contribute toward solving global environmental problems. Its terms of reference are restricted to the Global rather than local.

### *Earth Summit Debacle:*

Summit went according to plan. The net outcome was to minimize change to the status quo. UNCED process had been unwilling to question the desirability of economic growth, the market economy or the development process itself. UNCED never had a chance of addressing the real problems of environment and development. Its Secretariat provided delegates with material for a convention on biodiversity but not on free trade on forests, agribusiness, climate, automobiles. The Agenda 21 summit action plan featured clauses on: enabling the poor to achieve sustainable livelihood but none on rich to do so.

UNCED was no real tending commitments made toward rectifying any of environmental problem discussed because of disagreement between North and South.

Developing countries were hopeful that using conference increased Northern commitments to objectives such as debt relief, increased access to international liquidity and a reversal in the declining trend in commodity prices, although they were not successful in achieving these objectives. The summit mapping out of future course for the earth is simply not enough as it failed to obtain specific financial resources urgently needed to contain global environmental degradation. Some believed that summit was landmark for global cooperation, other expressed that it divided the world sharply

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<sup>19</sup> Global Environment Facility (GEF) was established in 1990 as a three year experiment to provide grants for investment projects, technical assistance and research to developing countries to protect the global environment and to transfer environmentally benign technologies. The establishment of GEF followed a proposal by France, in September 1989 and material prepared in 1990, by World Bank in consultation with UNEP and UNDP on the understanding that no new institutional structure would be created and only some change would be made to three implementing agencies. Resolution 91-5 of the Executive Directors of World Bank, November, 1991; resolution 16/47 of the UNEP governing Council, 13<sup>th</sup> May 1991 and the Decision 92/16 of UNDP Governing Council, 26 May 1992, endorsed the establishment of GEF. It established to address five main global environmental problems global warming, pollution of international water, destruction of biological Diversity and depletion of ozone and land degradation (desertification and deforestation).

between rich and poor, the powerful and the powerless, between the world's structured mechanisms and great bureaucracies and those that are its perpetual victims.

Dr. Swaminathan, said that 'summit convention were disappointing in that it postponed firm decision as there was no targets and time tables. The unspecified financial resources were also unlikely to take the programme very far'. He also said that Agenda 21 is too much like a big shopping list no focus on major issues as, poverty (no prioritization of action), population stabilization, pollution, and public policy for action. UNCED also failed to address the basic issues of power structure and international relations, especially in economic terms.

Anil Aggarwal, Director of Center for Science and Environment, New Delhi, who was member of summit said that the World Bank and IMF were operating in Third World in such a way that these countries were forced to opened their markets to transnational corporation and enormous destabilization was occurring through their structural adjustment policies and devaluation of currencies in these countries.

Both the UN Secretary General Butros Ghali, and Maurice Strong the Secretariat of the summit or the Organizer of UNCED have warned in their concluding remarks that the current level of commitment is not comparable to the size and gravity of the problems.

### **Rio blazes a New Trail:**

Nevertheless the global community witnessed some achievement of the summit. As longer term perspective on the UNCED negotiation, could emphasize that they did establish new norms in a number of areas, such as popular participation in resources, sustainable consumption patterns in industrialized countries, prices that reflect environmental cost and reduction of subsidies for resource consumption that tare inconsistent with sustainable development.

UNCED has truly opened the doors to increased transparency and democracy of the negotiation. UNCED created the UN Commission on Sustainable Development, new



financing institution GEF. It was argued that developing country's priority had been economic development if necessary environment be sacrificed, but now they understand the need to integrate environment into their development policies. At the same time developed countries have become increasingly aware of the need to cut down on their wasteful consumption partners. The new wisdom is: want economic progress but also want to live in harmony with nature.<sup>20</sup>

UNCED put environmental issues at top of agenda and new pressure on the rich that cannot afford to ignore the crucial issues. It led to a vital lesson that development and poverty alleviation had to go hand in hand with environmental cleaning realized by interdependent and interaction between North and South needed compromise to accommodate each other's concerns. Important upshot at Rio was that the developing nations found the confidence and strength to project their point of view effectively.

Finally the package of convention, Rio declaration and Agenda 21 emerged from summit are good basis for advance in the environmental field both as path setting document and an action plan.

### **Trade and Sustainable Development in UNCED:-**

The document of UNCED, the Rio declaration and Agenda 21 language of trade policies reflects the interest of developing countries and other concerned about the potential for the growing use of environmentally motivated trade restriction.

Principle 12; of the Rio declaration say the states cooperation to promote and open international economic system. Trade policy measures for environmental purposes should not constitute a means of arbitrary or arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.

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<sup>20</sup> Koh, Tommy (1997), Five Years after Rio & Fifteen years after Montego Bay: some personal reflection, Environmental Policy and Law, 27 (4): p.242.

Environmental measures addressing transboundary or global environmental problems should as far as possible be based on an international consensus.

Principle 14: It includes a provision calling on countries to cooperate in discouraging the relocation of activities or shipment of substances that would cause environmental damage and / or be harmful to human health.

Principle 16; countries are to institute environmental policies according to the 'polluter pay principle',<sup>21</sup> although this is to be done without distorting international trade and investment.

Agenda 21, chapter 2 ; all countries benefit from an open trading system, trade barriers should be removed to improve developing country market access. Export market diversification should be strengthened. Uruguay Round negotiation supported National and International Policies should 'address the root causes of environmental degradation so as not to result in unjustified restrictions on trade'. The role, such as UNCTAD and GATT should be clarified in this regard.

Rio principles reflect wariness on the part of developing countries with respect to international attempt to limit the use of natural resources or to harmonize environmental standards and obligation. Developing countries were also insistent on disciplining the use of trade restriction for environmental purposes.

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<sup>21</sup> Polluter Pays Principles is the requirement that the costs of pollutions should be borne by the person responsible for causing the pollution and consequential costs. It traced back from the convention on civil liability for nuclear damage the 1960 parts convention and the 1963 the International Atomic Energy Agency (IAEA) Liability Convention, were influenced by the desire to channel compensation from those responsible for the activity causing damage to the victims. In 1969 Convention on Civil Liability for Oil pollution (CLC) however, the ship owner is precluded from relying on the limitation of liability if the incident occurred as a result of his actual fault or privities. Similarly the preamble to the 1971 Oil Fund Convention reflects the consideration that the economic consequences of oil pollution damage should be borne by shipping industry and oil cargo interests.

### **Economic Institution with Environmental Regime:**

The decade of the 1990s we also see the era of liberalization and the existence of the regional and global economic agreement. Where NAFTA was established in 1994 and the WTO in 1995, in which environmental protection became a key consideration in cross-border investment and trade policy. This shows that transnational and global issues dominated by environmental problems in which the profiles of international trade issues and international environmental issues have generated an increasing sensitivity to the inter-relatedness of the economic activity and environmental problems. These economic institutions are taking the leading in concerning the environmental risk in their economic policies, so seeing the international environmental concern and activity is migrating from the UN and social forum to economic institution (Johnson, Pierre Marc & Andre Beaulieu (1996), p.21) or the processes like the World Bank, the GATT/WTO, NAFTA, EU, the OECD and even G-7 summits.

At the global level the system of Multilateral Environmental Agreement which brought the norms, rules, principles and institutional arrangement, often interpreted as the most important institution for protecting and advancing environmental interest. But these arrangements are poorly coordinated and integrated. At the moment there are some 180 MEAs in effect (Porter et.al., 2000), without any overall layout, without one institutional basis and with only slowly growing commonalities in leading principles, compliances, dispute settlement procedure, monitoring and reporting requirement etc. Out of the all MEAs only some contains the environmental trade measures such as CITES, the Montreal Protocol and Basle Convention etc are main ones.

The WTO/GATT is generally seen as the most important institution that rules the multilateral trade investment regimes is much more developed and have a longer history dating back the 2<sup>nd</sup> world war. But within the GATT/WTO regime a few steps have been made to deal with environmental issues related to trade, most notable is Article XX (one exception), to generate rules and principles including provision for some environment. Established the Commission on Trade and Environment (CTE), which started after the finalization of the Uruguay Round in 1994.

The Article XX been interpreted narrowly, limiting the scope for trade restriction on environmental ground. Environmental policies restricting free trade are only justified if more GATT consistent alternative to reach the same goals are unavailable. Conservation measures are not allowed if they aim to protect the global commons outside the jurisdiction of the nation state imposing the measures such as oceans, the atmosphere and the ozone layer. In addition trade restrictions on environmental ground are only permitted if they refer to the physical or chemical characteristics of the product, not if they refer to how it is produced: the so-called processes and production methods (PPM).

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In some of the regional economic institutions have gone further in attempts to integrate environmental interests with economic development and liberalization issues most notably the EU and NAFTA. NAFTA and its side agreement North American Agreement on Environmental Cooperation is recent institution. Created a free trade area encompassing Mexico, Canada and the US has the strong environmental component. It explicitly addresses certain trade-related aspects of domestic and international environmental regulation. Parties are encouraged to utilize the revenues from trade and economic growth to enforce their substantive environmental considerations into its text. Also environmental concerns are addressed separately in a side agreement the NAACE. Environmental concerns have been central to NAFTA since its inception.

The preamble of NAFTA expressly recognizes environmental objectives. There is specific provision in the NAFTA extending protection to certain listed MEAs such as the Basel Convention and CITES. NAFTA also prohibits parties from lowering their environmental standards to attract investments. NAACE commits NAFTA parties to a series of obligations to advance the environmental sustainability of NAFTA related trade. NAAEC is primarily concerned with effective enforcement of domestic environmental

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<sup>22</sup> Several WTO rulings in the traditional tuna-dolphin case which aimed to prevent countries from limiting imports of goods produced in an “unnecessarily” environmentally harmful way (eg; fur, shrimps, petrol) had a major implication for eco-labelling schemes once they move from voluntary to more obligatory schemes. Since these labels often include process and production methods standards in addition to product characteristic (of Commission on Trade and Environment, WTO). The WTO debate on eco-labelling has shown a clear North (necessary) versus South (discriminatory) division.

law in each party and creation of new institutional arrangement for cooperation between them. The Commission for Environmental Cooperation (CEC), created a three member commission. A cabinet the decision making body, with a secretariat seated in Montreal to carry out the environmental provisions and the joint public advisory committee which provide the channel for environmental groups (NGOs), academics, the private sector, indigenous and local communities, civil society and other.

But often the existing trade rules are limited in coverage and ambiguous as to their interpretation in the environmental area, despite the rapid escalation of the trade and environment debate and certain recent clarifications of trade rules. There has been conflict over the interpretation of the environmental content of GATT articles, as in the tuna-dolphin dispute between Mexico and US. In Europe there has been disagreement as to whether or not the unified market provisions of the Treaty of Rome restrict domestic environmental policies as in the Danish reusable containers case. In North America there is ongoing debate over whether or not the Canada-US Free Trade Agreement has resulted (or will result) in lowered environmental standards in such areas as pesticide use and asbestos standards. Attempts to obtain clarifications, interpretations and proposals for new trade rules arrangements have proliferated. NAFTA has given a very limited role to the nongovernmental organizations input. All of this has led to a heightened sense of clash between trade and environment policies.

## *Chapter II*

### *Environmental Policies of Canada, US and Mexico*

The goal of the environmental protection seems to have high on countries priority list, going both by its participation in international efforts as well as by its efforts within the country. Active participation in the international conference, signing of the important conventions relating to environmental conferences and thereby taking on international legally binding obligations, which helps the countries to cope with the protection of the environmental.

The wide range of environmental challenges faced by different countries in line with their respective geographical, ecological and climatic features makes country specific approaches indispensable. Each country is expected to have its own approaches, in line with its social and economic priorities, its cultural values, institutions and political structures. Many environmental problems have the global dimensions.

The environmental policy scene is changing in North America. In Canada, most emphasis is on regulatory reform, federal/provincial policy harmonization and voluntary initiatives. In US the impetus for introducing new types of environmental policies has increased and the country is developing market-based policies such as the use of tradable emissions permits and agricultural subsidy reform. Voluntary policies and private sector initiatives, often in combination with civil society, are also gaining in importance. These include voluntary pollution reduction initiatives and program to ensure responsible management of chemical products. The region is generally active in supporting and complying with regional and global (Multilateral Environmental Agreement) MEAs.

Public participation has been at the heart of many local resource management initiatives. Environmental policy instruments are increasingly developed in consultation with the public and the business community. Participation by NGOs and community residents is increasingly viewed as a valuable part of any environmental protection programme.

Increasing accountability and capacity to measure the performance of environmental policies is an overarching trend. Target setting, monitoring, scientific analysis and the public reporting of environmental policy performance are used to keep stakeholders involved and policies under control.

### **The State of the Environment:**

The environment remains no small problem. Even after several decades of its increased awareness, tons of pollutants are still dumped into the air and water or stored in rusting barrels with the potential to poison the land for years. It is difficult to determine the amount of disease and the number of deaths that result from such pollution or to estimate the amount of property damage it causes.

The scientific research published during the 1980 identified a gradual warming trend in the earth's atmosphere the greenhouse effect, which could alter the climate and guessed it as global warming. Then other scientists have pointed to the destruction of ozone in the earth's atmosphere which will permit more ultraviolet radiation to reach the surface and thus increase the risk which lead to the change in climate because of the release of chlorinate fluorocarbons (CFCs), into the atmosphere by the aerosol cans, refrigeration units and numerous industrial application. Still other scientists warned of the destruction of the tropical rain forests that supply not only much of the world's oxygen but also provide the large extent of the trees. Even also observed a gradual erosion of biodiversity has been observed in the US and in the rest of the world. The US exports acid rain to Canada and imports some water and air pollution from Mexico and Canada. (Peter, B. Guy (), p. 373-374)

North American trends in environmental quality are mixed. On the positive side are improvements in some aspects of air and water quality and reduce levels of soil erosion in much of the region. On negative side are sharp declines of the species and other threats to biodiversity and increasing of toxic organisms in estuaries and coastal zones associated with the run-off of nutrients. In North America its believed the success in phasing out production of CFC's and other ozone-depleting gases must be balanced

against failure to reduce emissions of carbon dioxide, the primary greenhouse gas and the regions growing contribution to the risk of climate change.

The scale of economic activity in North American brought many benefits, stimulating job-creation and increasing welfare and opportunities for the region's inhabitants. But at the cost of putting increasing pressure and the stress on regional environmental quality and has major impacts across the global environment. North American here refers to US, Mexico and Canada. US and Canada has the highest per capita consumption of energy and other natural resources in the world, and they contribute a disproportionate share of global emission of greenhouse gases. North American consumption also provides strong incentives for increasing international trade, leading to increased industrialization and resource use throughout the world. Coming to the Mexico, is highly affected because of the cross-border issues such as conservation of biodiversity and migratory species, transportation management, watershed management and air pollution.

A glance on the social and economic background:

North American region is characterized by continuing economic growth with strong market oriented economies, which creates the new regional and global opportunities, but also exacerbating some existing environmental stresses and creating new one. As the region rich in fossil fuels attracts the population. It had also the lowest energy prices in the world, which favored the development of energy intensive economies and promoted widespread reliance on automobiles. Energy use is not the only aspect of the existing for serious environmental consequences, there are decline in the price of the natural resources also, that have let to impacts on coastal, freshwater, forest and other ecosystems. With all this the political trends have favored diminished state intervention in markets, accompanied by deregulation, privatization and reductions in government expenditures in North American countries.

Environmental health problems, especially those associated with agricultural and industrial pollutants continue to be an issue of concern. Natural Resource Defense



Council reports that US pesticide use reached an all time high in 1995. (NRD 1996). Then the development was also critical on biological resources in an important issue across the region. Especially the non-indigenous species are of particular concern. Increased air traffic and changes in global trade have added to this problem. There are many ways the alien species disrupt entire ecosystem by replacing native species, changing existing water and nitrogen-cycling regimes and depriving indigenous animals of their normal diets.

The issues of the environmental equity or justice have emerged in recent years as a result of evidence showing that the impact of pollution and resource degradation often falls disproportionately on poor or racially distinct neighborhoods or indigenous communities.

It is easy to forget that the environmental resources is essential part of the subsistence for some groups and communities within North America; for many others the environmental degradation is far more than an aesthetic issue or a loss of recreational opportunities. It shows that the public opinion polls indicate that environment quality and environmental protection are considered important issues across the region.

### **Some of the main problem of the North America:**

Some of the Environmental problems of the North America are:

So we see the contradictions between environmental values and economic and social pressures for increased production and consumption of natural resources is one of the challenges facing North America today. North American have the strong influence on both economic trends and environmental policies around the world.

### **Land and Food:**

Productive land draws the new settlers to the region's, as the settlements spread across the continent, forests and grasslands were converted to agricultural uses. The vast natural grasslands of North America's Great Plains were gradually transformed into

agricultural lands to cultivate grain or support livestock. As settlements spread across the continent, forests and grasslands were converted to agricultural land. And also the wetland is converted into the farmland, contributing loss of the biodiversity. Though the wetland converting into the agricultural land is been decline, as now for the urban development for the people is growing the wet land is using. Food is being getting poisoned by the toxic and waste deposits.

### Forests:

A prominent feature of North America is the forest covers 25 percent of the land area.<sup>1</sup> North American forests constitute a rich resource, providing economic and recreational benefits as well as watershed protection, wildlife habitat, and many other ecological services. North America is home to 13 percent of the world's forests. While their area is increasing their quality is still deteriorating. There are some debates about the use of forests for commercial logging, recreation and conservation. A 57percent of North American forest are considered commercially productive.<sup>2</sup>

North America a leading producer and consumer of timber, pulp and newsprint. New forest community is been encouraged in participation in forest management, they are governmental official, industry, labor, environment groups, private woodlot owners, aboriginal people, academia and other in trying to achieve a more holistic approach to forest management that balances the environmental, economic, social and cultural demands placed on forests. Some of the programs developed to established sustainable forestry practices has gained momentum throughout North America resulted in International Model Forest Program, which originated in Canada in 1992. The objectives are to implement the sustainable forest practices; to apply new and innovative approaches, procedures, techniques and concepts in the management of forests; and to

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<sup>1</sup> .FAO 1997b, State of World's Forest, Rome, Italy.

<sup>2</sup> CEC (1999), 'On Track Sustainability and the State of the North American Environment'. Montreal, Canada.

test and demonstrate best sustainable forestry practices using the most advanced technology and forestry practices available.<sup>3</sup>

### Biodiversity:

North America's biodiversity increases along a latitudinal gradient from north to south. North America consist of some 7,807 plants, 233 mammals and 160 birds are unique. (CEC, 1999). Mexico has high unique species, Canada has relatively low endemism and in US it has highest on island, Hawaiian Island.

The species are in danger as there is over-zealous hunting or harvesting and competition from introduced species has led to the decline and extinction of many North American species. Wetland habitats is been threatened in Canada it has contributed in the decline in the population. An encouraging trend is the growing recognition of the need to protect representative areas of all the regions diverse ecosystems. The need to conserve biodiversity requires the development of an analytical framework for monitoring its status and for establishing priorities. One North American example is the Canadian Biodiversity Strategy developed by the Canadian Biodiversity Strategy developed by the Canadian Government.

### Freshwater:

North America has an abundant supply of freshwater resources but it is unequally distributed across the region. The US uses much more of its water for agriculture (Irrigation) than Canada. Water use for power generation is high in both countries. With the agriculture the demands is for also recreation, aesthetic enjoyment and wildlife habitat have become increasingly important in the management of North America's water resources. Both commercial and recreational fishing are also important water uses.

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<sup>3</sup> In 1998 there were 14 Model Forests in North America, with 11 in Canada and 3 in the US. One of the successes of the Canadian programme has been building partnerships between aboriginal groups, industrial partners and educational institutions. Building these partnerships, however, proved more difficult than expected, and in some cases took more than two years. Though there has been progress in developing sustainable forest management tools, there is little evidence of practical application. The challenge is thus to translate management decisions to on the ground actions. The US Model Forest Program has focused on international outreach, developing internet material and educational activities. See, International Model Forest Network (1997), Annual Report 1996-97, Ottawa, Canada.

Conflicting demands for water have prompted many to favor the establishment of water management boards, in combination with water conservation measures. The International Joint Commission states that boundary areas are vulnerable to impairment from toxic chemical use: the Great Lakes region, acting as a sink for many persistent, bioaccumulative compounds. In 1995 it showed Great Lakes basin industries released tons of materials.

Though the bills and acts been were passed (Federal Water Pollution Control Act of 1956, as amended by bills such as the Clean Water Act of 1977), still the scope of economic activity widens, new pollutants are introduced to the water supplies.

#### Marine Pollution: Sources and Effects:

The small coastal town of Minamata, Japan, brought worldwide attention to marine pollution in the early 1950s. The sever death of the people due to consumption of contaminated with dimethyl mercury seafood between 1953-1968.

The Gulf of Mexico, one of the North America's most productive marine areas, is heavily affected by coastal development and human activity. Poor water quality arising from human activities is damaging wetland and sea-grass habitat and coral reefs. The Florida Keys Reefs, extending from Miami to the Dry Tortugas, may support more marine fish species than any other coastal region of the mainland United States and are a major tourism attraction, with more than a million divers visiting the area each year. Yet polluted waters from Florida Bay, and anthropogenic sources threaten the health of reefs (UNEP 1998).

Some of the factors affecting the marine are; domestic and international demand for fish and fish products; increased and intensifying human activity will aggravate the environmental problems and lead to suffered by marine and coastal ecosystem; growing oil imports may increase the incidence of accidental oil spill; as the industry expands pollute the surrounding area; Threats to human health from more frequent outbreaks of toxic micro-organisms in coastal waters may also increase.

Scientists are still not sure of the potential impact on human health or of the ability of the oceans to adapt to change. (Bryner, Gary, p. 210).

### Atmosphere:

Since the socio-economic transformation in the North America, the countries witnessed the dramatic changes in the atmosphere, i.e., rise in the air pollution, transboundary problems such as acid precipitation and global impacts such as stratospheric ozone depletion and global climate change. These all have major impact on human and environmental health in North America.

Factor leading to the air pollution are: low fuel costs and the development of a energy-intensive economy have resulted in the burning of large amounts of fossil fuels in North America.

Acid precipitation is a serious transboundary air pollution concern in North America. It results from emission of sodium carbonate and nitrogen oxide largely from the industries and power plants in the US Midwest, carried northward by prevailing winds. Lakes of Canada and US contain the acids. Since the 1970s the problems is been observed.

Smog is another serious transboundary air pollution issues with major environmental and human health effects. US and Canada developed a Joint Plan of Action on Transboundary Air Pollution that will address the major components of smog, ground level ozone (it is secondary pollutant formed by reactions between nitrogen oxide and VOCs during the summer).

Finally the 20th century led to the population increases, immigration, rapid development of rail and road transportation network led to a process of suburbanization, as Canada and US make up one of the wealthiest urban-industrial regions in the world,

mitigating the regions pollution and waste problems. The average North American Produced 620kg of waste per year as compare with the Europe produces 430kg.<sup>4</sup>

### **Policy Responses of North America:**

North America has pioneered environmental policy development, first through command and control measures, and later through voluntary and market-based approaches. The North American Agreement on Environmental Cooperation (1994) dealing with cross-border environmental impacts, the migration of industries seeking cheaper labor and more permissive environmental standards and the sale of products with high environmental risks can serve as important examples for the entire global community. The Canadian program Accelerated Reduction/Elimination of Toxics (ARET) of 2000, its main goal reduce the emission of persistent, bio-accumulative and toxic substances by 90 percent, and the emission of toxic by 50 percent. This shows that the US and Canada have extensive experience with the environmental policies, but Mexico is limited to cross-border issues such as conservation of biodiversity and migratory species, transportation management, watershed management, air pollution

Since 1990s the there is growing need of the cost-effectiveness, voluntary action, flexibility and consensus-building has led to a shift form command-and-control regulation towards a mixed set of policies, with an increasingly important role for market-based mechanisms, public-private partnerships and voluntary initiatives. When combined with essential regulatory measures, these mechanisms are compatible with the overall frame wok of sustainable development.

### **Some of the changes of the environmental policy making in the 1990s:**

- 1) the business community started accepting the environmental protection and policy changes that would make to achieve the goals of the environment;
- 2) to reduce the financial deficits, environmental departments in Canada are experienced budget cuts led to the reducing the capacity of the agencies in fulfilling their responsibilities;

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<sup>4</sup> OECD, 1997, Environmental Data: Compendium, Paris, France.

- 3) the budget cut has highlighted the issue of accountability and cost effectiveness, leading to a search for alternative policy instruments;
- 4) particularly in the US environmental policy instruments are increasingly developed in consultation with the public and the business community;
- 5) seen the participation of the NGOs and community resident resulted into the valuable part of the protection program.

The environmental policy scene is changing according to the changing condition: in Canada most of the emphasis is on regulatory reform, federal/provincial policy harmonization and voluntary initiatives. In US the need of the market based policies to control the environmental effects, by putting the tax incentives to phase out ozone-depleting substances, the use of tradable emissions permits, disclose the releases of the toxic and hazardous pollutants and coordination of voluntary action in the performance reporting. Mexico was mainly concerned of the development of the country rather than the environmental.

### **Global MEAs:**

The US and Canada have been among the most active countries in developing and complying with global MEAs. The goal of the MEAs is to monitoring and reporting to ensure the accountability and effectiveness of MEAs. The requirements of many of the conventions are built into federal, state and provincial legislation. In several cases, awareness of environmental issues, legislation and national and bilateral policies preceded the ratification of particular MEAs.

US and Canada did not dedicated to address the UNFCCC; sufficient legal authority did not exist; they both relied on the voluntary measures which appeared insufficient to the fulfill the UNFCCC goal of stabilizing emissions at 1990 till by the year 2000. (Year Book 2000, p. 296).

As the US and Canada was a leading economic powerhouse witnessed the rapid and extensive loss of the resources as they transformed their ecosystem into an intensive

use of the natural resources. North America was compliance with the MEAs without sacrificing quality of life of the countries, this was the major critics.

NGOs play an important role in monitoring compliance and issue rating on overall performance in some key areas. For example: the WWF, monitor the progress of biodiversity conservation efforts through its Endangered Spaces Programme, by keeping representative samples of Canada's marine and terrestrial eco-regions under protection and assigning grades to provinces based on their performance. (WWF 1998).

In US implementing legislation of MEAs is usually required to cover the obligation, but in other countries MEAs will be like the status of the legislation once it is adopted by the legislature. For example: the Resource Conservation and Recovery Act Regulates Hazardous waste in the US, though the country is not a party to the Basel Convention, but Canada ratified this convention and implemented it through the Export and Import of Hazardous Waste regulations of the Canada Environment Protection Act (CEPA).

The commitments of the CITES<sup>5</sup> are met through the Wild Animal and Plant Protection and Regulation of International and Inter-provincial Trade Act in Canada while this is achieved through several separate regulations dealing with specific flora and fauna in the US. The provision for the enforcement of penalties for non-compliance, in Canada, provision of offences are in CEPA, in US the general principles of enforcement are laid in the Operating Principles for an Integrated EPA Enforcement and Compliance Assurance Program.

MEAs includes strong and mature NGOs community, the media and multi-stakeholder organization, exert pressures to comply with MEAs.

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<sup>5</sup> CITES monitors and controls the international trade of more than thousand of animals and plants. It control of illegal trade is enforce in the US through measures that include interception at border entries, spot-checks of wildlife-related businesses, monitoring of hunting, and prosecution under criminal law. For example, recent cases in the US involved the prosecution of a smuggling ring dealing with neo-tropical parrots, and the fining of a West Coast fishing company for falsifying fishing licences to hide excessive catches. In addition of a US\$100 000 fine, the company was required to make an announcement on television urging others to comply with the law. See, Environment Canada, 1996, Environment Canada News Release, 6 June, [www.ec.gc.ca/cws-scf/es/wappa/presseng.htm](http://www.ec.gc.ca/cws-scf/es/wappa/presseng.htm).



The Commission for Environmental Cooperation (ECE), established in 1994, is an important forum for regional dialogue on compliance. The CEC review measures that Parties to the NAAEC have undertaken to comply with their obligation under the agreement to enforce their domestic laws and regulations. All the conventions signed by the Canada and US have offices that serve as national focal points and are responsible for reporting to the international convention secretariats. In Canada Commissioner of the Environmental and Sustainable Development report on the implementation of international environmental treaties; In US the Bureau of Oceans and International Environmental and Scientific Affairs of the State Department deal with the foreign affairs.

Financing of MEAs for the issues to the extent that it:

- That it affects the capacity of public agencies to help meet commitments;
- Changes are planned to increase flexibility in service delivery;
- Decrease the overall costs of environmental protection; and Promote subsidiary by assigning responsibility for environmental measure to those- usually lower the levels of government believed to be the most effective at implementation.

Some of the Regional MEAs between the Canada and US, are:

The Boundary Water Treaty signed in 1909, which as a mechanism, prevent and resolve disputes, primarily only concerning with the water quantity and quality along the boundary. This treaty created the International Joint Commission (IJC), which impartially deals with monitoring and the implementation of the Treaty.

The Great Lakes Water Quality Agreement (GLWQA) signed in 1972 and reaffirms the commitment of each country to restore and maintain the chemical, physical and biological integrity of the Great Lakes basin ecosystem. GLWQA advises governments on matters related to the quality of the boundary waters of the Great Lakes system. Both these agreement revised in 1978 and amended by the Protocol in 1987.

In 1986 the Canada-USA Agreement on the Transboundary Movement of Hazardous Waste, was signed which assign the party to ensure that with their domestic policies of hazardous waste, it should be enforced and cooperated in monitoring transboundary movements of waste.

Since the 1990s cooperation between US and Mexico on cross-border and other environmental issues has increased and has begun. At first the two government work together primarily on issues concerning the use and quality of water and their shared river basins. (Jerry E Mueller, (1975),p. 43-49). The first major MEAs between the US and Mexico was the Treaty on the Utilization of Water of the Colorado and Tijuana Rivers, and of the Rio Grande, this extended the authority of the International Boundary and Water Commission, which will look into the quality and conservation of boundary water. Though the cooperation is the long history on environmental matters due to joint use of shared resources by two countries. Cooperation started in 1980s with respect to use of natural resources. But recently the expanding the industrial activities the consequent increase in pollution and population, hazardous waste generation and the potential for environmental accidents have resulted in new challenges, especially in the border area.

The multilateral agreement in which both the country's are member are:

- 1) Montreal Protocol on Substances the Deplete the Ozone Layer (1987), 2) the Basel Convention on the Control of transboundary movements of waste and their Disposal (1989), 3) the Convention to Regulate International Trade in Endangered Species of Wild Fauna Flora (CITES), 4) GATT.

This multilateral treaty provides mechanism for cooperative assistance in evidence gathering in civil enforcement in transnational civil cases.

The bilateral agreements are:

- 1) 1983 Border Area Agreement,
- 2) 1989 Agreement relating to Mexico city and

3) **The Integrated Environmental plan for Mexican –US Border Area (The Border Plan).**

There are also additional agreements:

1. Agreement between Social Development Secretariat (SEDSOL)<sup>6</sup> and the US Fish and Wildlife Service and the Canadian Wildlife Service of the Environment of Canada to evaluate the possibilities of Developing Strategies for Conservation of Migratory Birds and their Habitats (1988)
2. Memorandum of Understanding between SEDESOL and the US National Park Service in Cooperation in Management and Protection of National Parks and other protected Natural and Cultural Heritage Sites (1988).

There are also informal cooperation in environmental enforcement are soft law, these agreements which do not bind the countries;

1983 US-Mexico on Cooperation for the Protection and improvement of the Environment in border Area. (Border area Agreement). Under this agreement a frame work is to 1) control source of pollution (air, land and water), within 100 km of each side of international boundary. The history of the plan of the work of the US and Mexico is in 1983 the framework created between the US and Mexico a Joint Contingency Plan regarding pollution along with it international inland boundary by discharge of hazardous waste. In 1985 provided for cooperation on border sanitation problem at Tijuana/San Diego government has to ensure that facilities constructed to address these problems that arise (waste water group with IBWC). 1986 provides for handling transboundary shipments of hazardous waste and substances. Two boundaries must inform regulatory action prohibiting or restricting a pesticide and other chemical. 1987 concerned about the problem of air pollution from the copper smelters along the border. It established limitation on both new and existing copper smelting facilities t limit the emission of sulphur dioxide. Owner should monitor.

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<sup>6</sup> SEDESOL was not established until May 1992 for consistency, SEDUE will be called as SEDESOL

## ***Chapter III***

### ***Formation of NAFTA and negotiation for environmental provisions: Origin of NAAEC***

The North American Free Trade Agreement (NAFTA) is a trade agreement between the US, Canada and Mexico, and to date is the “greenest” trade agreement that linked two hitherto unrelated issues: the environment and foreign trade, and unrelated issues in order to iron out asymmetries, offer attractive alternatives and reach a mutually satisfactory settlement. (Fox, Annette Baker (1995), p.49.)

NAFTA led a diplomatic linkage that the negotiated agreement contain concessions made in one area in exchange for concessions in another, unrelated area. NAFTA made Canada, the US and Mexico interdependent. A policy in one issue may have multiple consequences in other that are perilous to its objectives if ignored. The rapid growth of environmental consciousness, in the US, Canada and more recently in Mexico, led to awareness that freer trade would have an impact on the environment. Furthermore, a tendency in international environment agreement to include trade penalties drew attention to the relationship. The older were established liberal trade specialists were confronted by a challenge from a newly developed environmental movement (Kirton, John & Sarah Richardson (1992), p.235-38).

Since 1980, economists have increasingly recognized the need to respond to and pressure the linkage of trade and environmental issues. (Vernon, Raymond & Debora L. Spar (1989), p.10). However environmentalists, including organizations such as NGOs, principally concerned with wildlife preservation, global ecological danger, conservation of natural resources, industrial pollution, and public health hazards, were suspicious of the standards of trade economist focus.

Combining NAFTA and its supplementary agreement highlighted the contrast in its perspectives, but brought about a convergence, while registering the enhanced influence of the environmental community. Since the 1990s, interactions between the

transnational free trade and environmental quality and protection occupied a central place in international law and policy, which reflected in multilateral and regional factors aimed at setting a new course for future multilateral talks. Interest of environment-related trade disputes had risen before GATT in recent years, partly due to the realization that the Uruguay Round of the GATT did not address environmental concern effectively. (Saunders, J. Owen (1997), p.63). Regionally, in the Canada-US Free Trade Agreement (1989), there were less developed and less environment friendly clauses and the joining of trade and environment was not a major focus.

But due to the joining of Mexico with US and Canada, the Regional Trade Agreement and the formation of NAFTA, environmentalists of these countries found opportunities to redress some of the unresolved concerns flowing out of the FTA, at least as a challenge to prevent further losses.

Trade and environment issues loomed large in the NAFTA debate, as the first Free Trade Agreement to address certain trade related aspects of domestic and international environmental regulation. NAFTA is significant in that it represents an example of concerted, and to some degree, effective action by the environmental community to place environmental issues on the international trade agenda. NAFTA has a potential of wider applicability than merely in the North America context. In the future, we might witness additional parties to the agreement. NAFTA also provides an arrangement that was bargained for on a reciprocal basis, with both the North and South making Concessions. Even developing states seek for bulk of concession. The present research studies in detail from the existence of free trade treaty to the signing of the side agreement to it, NAAEC, which contributed toward the 'greening' international trade law.

### *Pre-NAFTA Negotiation:*

Economically, NAFTA is about the elimination of boundaries between Mexico, Canada and the US. The political borders between these countries remain firmly in place, in other words, NAFTA has little political agenda. This contrasts with the European

Union which very much is engaged in a process of integration that blurs boundaries among its member states politically as well as economically. NAFTA is a simpler agreement with a limited goal. The EU was born out of two wars, and demonstrates a strong feeling for peace. Its model and purpose was to build a community. With a unified currency it is viewed as “social safety net” for Europe’s higher unemployment rates. The EU has a common external tariff, a common market (with free movement of labor and capital) and an economic and monetary union.

NAFTA, on the other hand, is a product of neoliberal economic philosophy and the hegemonic power of the United States and its corporations. NAFTA reduces the trade and investment barriers and establishes a framework for resolving disputes. This treaty is not to create a community of people in North America or to promote the well-being of people. Its philosophy is to liberalize the continental market, regulate the national sectors, while not harming the business of other countries, and, finally, help each state cope with transnational problems (environment and immigration).

### **Merging Economics:**

The US is an industrial society where services comprise the large majority of economic activities and fast foods are just some of wide ranging services for which the US is known. Because of its massive economy, the US is energy dependent, while Canada and Mexico have energy surpluses.

Canada possesses great natural resources and the exportation of these resources has always been a key ingredient of its economy.

Mexico is a developing country struggling to rise from poverty and its export of energy dominates its trade relations. There was absence of intense historic contact between Canadians and Mexicans, because of differences in language and legal regimes and a lack of knowledge about each other’s national regulatory systems for the environment and other subjects, which provided additional barriers. Canada and Mexico initially approached each other, hoping for an alliance against a US trilateral treaty, but

they realized that the US had always been the problem an opportunity for the economy to grow

Canada and Mexico maintained a safe distance from the US, but the 20<sup>th</sup> century has seen both countries erect tariff walls and adopt investment-screening procedures to slow American economic and corporate penetration, with varying degrees of failures. The debate over reciprocity, or free trade with neighbors, was a major electoral issue. The Republican Ronald Reagan declared his candidacy in New York on 13<sup>th</sup> November 1979, by calling for a North American accord with Canada and Mexico on a much broader scale. He said “I would be willing to invite each of our neighbors to send a special representative to our governments to sit in on high level planning sessions with us, as partners mutually concerned about the future of our continent. It is time we stop thinking of our nearest neighbors as foreigners.” (Folsom, Ralph H. (1999) p.3.). On 26<sup>th</sup> February 1980, the US State Governors adopted a resolution calling for a US-Mexico-Canada Council to serve as forum for developing policies for economic cooperation. Since then, the relationship between the neighbors underwent a drastic change.

In Mexico, after the 1982 debt crisis, as liberal economic reformers undertook a series of reforms to liberalize trade, ease restrictions on foreign investment, rationalize public enterprises, liberalize and privatize financial systems and deregulate some economic activities. In Canada, during 1984, Prime Minister Brian Mulroney of Progressive Conservative declared Canada “open for business and adopted an approach to bilateral discussions with US.” (Ibid).

#### Canada –US and US-Mexico Trade Relationships:

In 1986 Canada and the US raised concerns about improving trade relations. This concern arose quickly because the Uruguay Round negotiation seemed endless and loaded with controversy. It appeared that there might not even be a successful conclusion to the Uruguay Round. It was this prospect that pushed negotiations on free trade between Canada and the US. Each nation appreciated that their willingness to agree to free trade would act as a spur to the Uruguay Round negotiations in which they both had

vested interest. The Canada-US Free Trade Agreement (CUSFTA) took effect on January 1st, 1989. NAFTA traces many of its provision from CUSFTA.

US trade relations with Mexico prior to NAFTA were quite different from those with Canada. A history of trade relations with Mexico was instead much more confrontational and protectionist. When Canada and the US agreed to free trade in 1989, Mexico's President Salinas looked at his alternatives and turned towards Europe, but found little interest in an economic partnership across the Atlantic. Mexico found Western European governments focused on incorporating Eastern Europe at the end of the Cold War. When the desire of the US to have a trilateral trade agreement came to light, the Mexican President expressed his desire to negotiate a free trade agreement with US. For Mexico, the Trade pact was to create a more stable policy environment so that they attract greater FDI inflows with its embedded technology and management skill to build and for financial growth.

For Canada, as it was the late comer to NAFTA, it suspected that Mexico would undercut Canada's competitive advantage in the US market possibly by diverting US FDI away from Canada. Their participation was defensive, but over the time Canada realized that NAFTA offered the chance to revisit and take up issues of importance of Canada. By September 1990 Canada was clear that the US and Mexico would go ahead with or without Canada to have a trade pact. So the Canadian government decided that it had more to gain by joining the negotiation than by staying on the sideline. They also believed that involvement would minimize the risk to Canada from US-Mexico free trade and offered an opportunity to extract new commercial concessions from the US. NAFTA is like an insurance policy for both Canada and Mexico. It promises to increase the dependence of Canadian and Mexican economies upon the US.

### *NAFTA Negotiation:*

Negotiation to create a North American Free Trade Area for Canada, Mexico and the US commenced in July of 1991. This notification was a key procedural step in



gaining fast track<sup>1</sup> status for the consideration of trade agreement by Congress. US President Bush obtained fast track authority to negotiate NAFTA, on May 24<sup>th</sup> 1991.

US Congress authorized fast track negotiations to President, as the President promised to keep constantly inform the Congress during the NAFTA negotiations. In the debate of fast track the NGOs kept their message "If NAFTA did not properly address environmental concerns, the environmental degradation of the border area would spread to the rest of the planned free trade zone. President Bush kept his promise to Congress to include environmental specialists in Advisory Committees and crucially 'not to do anything to hurt existing environmental and worker safety laws.'" (Johnson, Pierre Marc & Andre Beaulieu (1996), p.27).

On the other hand, President Bush did not agree to make the signing of NAFTA conditional on the successful treatment of environmental issues, nor did he agree as was requested by most NGOs to form a special group to work on the issues.

In August the broad outline of the agreement was announced, and Bush challenged the Democratic Candidate Clinton for support of the Agreement. On October 4<sup>th</sup> 1992, Clinton gave a major speech on NAFTA. He expressed his general support for the NAFTA, but stated that he would not sign legislation implementing the trade agreement until new supplemental agreement has been negotiated with Mexico and Canada on the environment, labor and in addition an understanding on protective relief from import surges.

Clinton's speech was a response to political pressure. He had to close the door to re-write the NAFTA text because if he reopens the NAFTA, he would have lost business support. Whatever improvement he could negotiate would have to be in parallel agreement. But the side agreement could not ask Mexico to raise its environmental standards, as that would be viewed as threat to NAFTA. Given this political constraint, the only remaining option was to demand that Mexico enforce its own laws.

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<sup>1</sup> Fast track is a rule of the House and Senate that provides for guaranteed consideration of trade agreement a necessary implementing legislation. It authorizes the US President, to make an agreement with the consultation of Congress and within 90 days it is put vote for ratification. This prevents Congressman and Senators from modifying or amending it as they could for ordinary legislation.

On 8<sup>th</sup> September 1992, a comprehensive draft legal text was released. On 7<sup>th</sup> October, the heads of three countries, Bush, Mulroney and Salinas made their version public and witnessed the initiating of the agreement by their trade representatives in San Antonio Texas. A few changes were made to the text and on 17<sup>th</sup> December 1992 it was released, when each head of government signed the agreement in their own capital. NAFTA was then sent to domestic approval.

On 23<sup>rd</sup> June 1993, Canada was the first country to ratify NAFTA but the royal assent was withheld until after the US vote. In US the battle proved difficult but fought on the bases of economic and labor market agreement related to industry dislocation and Mexico's alleged lack of readiness than environmental ones. (Johnson, Pierre Marc & Andre Beaulier, 1996, p.25).

The final vote was held on 17<sup>th</sup> November in the House of Representative was 234 to 200, followed by a 61 to 38 affirmation in the Senate of the NAFTA Implementation Act of 1993. This Act, Public Law No. 103-182 (107 Stat.2057), as accompanied by President Clinton's Statement of Administrative Action provides a useful summary of required changes in US law. The implementation act expressly provides that the NAFTA agreement does not modify US law except as provided for by the Act. (Folsom, Ralph H. (1999), p.69). President Clinton signed it into law on 8<sup>th</sup> December 1993, and it entered into force on 1<sup>st</sup> January 1994, (Robert, Maryse (2000), p.43), with a primary function to create a free trade zone between US, Mexico and the Canada that could capitalize on the North America annual \$6 trillion economy and its 370 million consumers. (Short, Rennie & Lisa M. Benton (1999), p.179). Thus NAFTA emerged as the world's largest trading bloc, with a gross domestic product (GDP) of US\$11.4 trillion, or one third of the world's total GDP.

It made the regional agreement market stretch from the Yukon to the Yucatan.

#### *Factors leading to Signing of NAFTA:*

- The US was major importer from both Mexico and Canada;
- Europeans were reluctant to favor special relations to Mexico for trade relations;

- President Bush was very quick to support the goal of Mexico and Canada;
- GATT was reluctant to link trade and the environment, but interested in expanding and resolving the long standing obstacles of trade; and
- Authorization of 'fast track', negotiation by US Congress;
- The notion of a 'supplemental' agreement on the environment and labor was a peculiar one.

There are other reasons that Prof. Michael Gordon observed; the US's main objective for NAFTA was the containment of what has been referred to as Mexican problems. These were: US hoped that an open and growing Mexican economy will help stem the tide of illegal immigrants to the US; US interest in energy reserves and this agenda found its way to agreement rather the terms of conditions the US preferred; US feared the concentration of power in Mexico, as a single party rule. The concentration of power in Mexico has always provided a ready recipe for violence and revolt. So the US hoped that introducing NAFTA might reduce the risk of instability south of the border. All these were spoken when NAFTA took place.

### **Text of NAFTA:**

The text is extremely broad in scope, and long and detailed, including 295 articles and ninety annexes, plus two parallel agreements concerning labor and environment. A volume of five, it is a fifteen-pound document (7 kg) of 2000 pages consisting of 22 chapters and many indices. Free Trade Commission established to oversee implementation of the agreement make recommendation and provides mechanism for disputes settlement. The commission operating under principle of consensus has no power to adopt legislative measures or promulgate binding commitments on parties.

The heart of the formal relationship between trade and environment is found in the NAFTA text. It begins with the Preamble, where parties agree to 'Promote Sustainable Development', 'Strengthen the Development and Enforcement of Environmental Laws and Regulation', by expanding their economies in a manner 'Consistent with Environmental Protection and Conservation'.

While the Preamble carries no obligation on the part of contracting parties, it reflects increased sensitivity to complex relationship between trade and environment policy domains. The Preamble says; 'Have agreed as follows'.

**Objectives:**

Article 102 addresses NAFTA's binding objectives:

- Eliminate barriers to trade in and facilitate the cross border movement of goods and services between the territories of the parties;
- Promote a condition of fair competition in the free trade area;
- Increase substantially investment opportunities in the territories of the parties;
- Provide adequate and effective protection and enforcement of intellectual property rights in each party's territory;
- Create effective procedures for the implementation and application of this agreement, for its joint administration and for the resolution of disputes and
- Establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefit of this agreement.

**Characteristics of NAFTA:**

- a) These agreement eliminate over the period of 15 years all tariffs amongst Canada, US and Mexico and consequently reduce the cost of thousands of imported products and services;
- b) It contains clearer and more advanced rules of origin an extension of duty drawback clauses and an improved mechanism for consultation and dispute settlement;
- c) Significant attention was devoted to fashionable environmental dimension in the agreement. All three countries confirmed their commitments to sustainable development by undertaking the increased trade and investment envisioned by NAFTA in a manner consistent with environmental protection and conservation and has incorporated the GATT exemption that allows government to protect the environment even when the measures conflict with other provision of the

agreement. NAFTA exempts measures conflicting with other provisions of the agreement. It exempts measures to meet obligations arising under certain international agreement from most of its disciplines, while recognizing government should not establish pollution havens or lower environmental standards to attract investment.<sup>2</sup> Any conflict that raises environmental issues will be adjudicated by panels with access to scientific expertise in environmental matters. In addition, the environmental lobbyists have seen economic growth promoted by NAFTA as likely to improve.

- d) Finally, NAFTA includes provision to broaden its coverage both in terms of issues and in terms of memberships.

There is an area where the impact of the agreement will be impudently felt, i.e., in law. The agreement creates an improved legal framework for the conduct of trilateral trade and resolution and prevention of disputes. (Flouders, Demetrius Andreas & Tasilinidos Panagiotes (1997), p.43).

**Controversy and debate of environmental issues during NAFTA Treaty process promoting environmental provision in the treaty**

NAFTA a major free trade agreement adopted the integration of trade and environment policies. Though it was a difficult task in diverting NAFTA from free trade to environmental conservation but it provides a valuable lesson for future trade agreement and other efforts that which will address trade and environment.

The environmental aspects of the NAFTA resulted in an agreement that breaks a new environmental ground both within the agreement provisions and through the developments on the parallel tracks while many of the NAFTA's environmental efforts are modest, others are truly ambitious each offers insights into the path that future trade agreements are likely to follow on environmental issues.

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<sup>2</sup> Government of Canada (1992), NAFTA: An Overview and Description, Ottawa. P.5

Environmental issues related to the NAFTA were raised first during US Congressional debate over the granting of fast track. (Homer, Man F. and Judith H. Bello (1992), p.183-184).

In gaining of Congressional acceptance for the NAFTA, a noteworthy development had been, the diplomatic linkage was made between trade and environment which was traditionally avoided by Canada and the US in their bilateral deals. The Canada-US FTA concluded in 1988, when the negotiation was on, conflict was on acid rain. But when the NAFTA negotiation started when the US and Canada met with Mexico counterpart the rule against linkage was abandoned; environmental demand became a part of mix of questions to be dealt with in what originally was to be purely a trade agreement.

Previously bilateral environmental agreement proved as ineffective, because of lack of fund, enforcement was lax, too little expert staffing, poorly equipped laboratories, deficient reporting. As these were reasons for the failure to carry out of the law's requirement. Citizens could not bring suit to enforce the law, and administrative procedures and the legal system remained 'opaque'.

Many environmentalists also pointed out the sanitary condition along the border between developed and developing country, where American industries Maquiladora violated Mexican environmental regulation.

So environmentalist expressed two basic fear over NAFTA; one was the unfettered economic development would aggravate a bad situation; other was the weaker environmental regulation of investment and exported products would by unequal price competition endangered advances in protecting the environment already achieved in US and Canada.

Apart from this when GATT ruled against US, in September 1991, as found the unilateral extension of American rule was contrary to GATT obligations.<sup>3</sup>

When US approached Mexico for having the NAFTA, Canada did not want to join the accord, but eventually due to the own privileges they all agreed for wanting the linkage in the agreement. Both Mexico and Canada feared that US could impose its own particular practice for protecting the environment on others jurisdiction. A free trade agreement with circumscribed environmental condition could provide some protection. So they accepted American leadership in framing a trade agreement agenda with environmental issues were concerned, centered on condition in Mexico.

When the trilateral accord started the negotiation environmentalist were well organized they saw as an opportunity both to advance and to confirm their right to participate in the decision making. Their interest found ready advocates in Congress, which in the American System has a vital role in implementing trade agreement. First support to environmentalist secured was that the letter of 1<sup>st</sup> May 1991, from President Bush; it was an action plan. In that considering the Mexican environmental problem, US & Mexico were intended to have extensive cooperation, both the government believed that economic growth and sustainable Development were complementary and were committed to pursue both, through the trade agreement. It also declared;

- US would aid workers and industries that might lose from the agreement.
- Ban the Import of product failing to meet American environmental, health and safety standards;
- Include environmental representatives on the trade advisory committees;
- Prepare an environmental review of the effects of increased US-Mexico trade;
- Work with Mexico to prepare a detailed plan for dealing with environmental problem on border.

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<sup>3</sup> US banned 'Tuna' import from Mexico caught by means outlawed for American fishing boats, because they resulted in excessive death of dolphin. The GATT Panel declared this sanction on the process was an unjustifiable barrier to trade and contrary to GATT Procedure.

Further the administration would work with Mexico to enhance standards and improve enforcement, while maintaining the integrity of the US regulatory process and also US would discuss with Mexico, the method of settling the disputes on technical aspect of environmental issues. The message also said that we intend to include the Environmental issues related to trade in Free Trade Agreement; parallel negotiations would deal with an ambitious program of cooperation.

During the early stage of negotiation the three parties agreed that environmental discussions related to the NAFTA would occur on a parallel track separate from the actual trade negotiation. As the parties wanted to keep the trade negotiation as streamlined and straight forward as possible, so they agreed to the parallel track.

#### *Events Influenced the NAFTA negotiations:*

The significant events that amplified the environmental leverage are role played by the environmental community during fast track, used the political leverage to gain concession from both Bush and Clinton administrations.

There were two political events which invigorated environmental influence on NAFTA, increasing their ability to pressure Congress to pay greater attention to environmental issues in trade and helping to overcome differences of opinion over the direction of trade policy negotiations. Firstly in September 1991 a GATT dispute panel decision found that portions of the US Marine Mammal Protection Act (MMPA) were inconsistent with GATT trade rules; the second event was the release of Uruguay Round GATT Agreement. In December 1991 GATT director, Arthur Dunkel released a final Draft Act, which failed to address any of the concern raised by environmental group during negotiation. Environmental community opposed the US approval. Both the Tuna/Dolphin decision<sup>4</sup> (Lallas, P.L., Esty & Van Hoogstraten (1992), p.282) and the release of the Final Draft act text were important because it gave rise to the;

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<sup>4</sup> This challenge, which was brought by Mexico before the NAFTA began and was decided the negotiation, Mexico did much galvanize US public opinion about environmental implication of trade regime, and also came to the light Mexico's insensitivity to environmental issues.



Firstly the number of environmental organization concerned about trade policy. There was a split during the fast track; each coalition used their political resources to development and implement different political strategies they believed that they would achieve their goal for trade policy negotiations. WWF, NWF, EDF, NRDC and Defenders of Wildlife were the supporting to the trade agreement accommodating environmental provision. Sierra Club, FOE, Public Citizen were against the trade negotiation as it was dissatisfied with the negotiations in including the provision of environment.

Secondly, concerns that was raised and kept pressure on Congress by the spark of media coverage. Congresswoman Marey Kaptur, House Majority Leader Richard Gephardt and Majority Whip Bonior had alliance with anti-NAFTA coalition. Gephardt criticized the agreement; he outlined his concerns in the letter to President Bush on 1<sup>st</sup> March 1991, (Audley, John J. (1997), p.75) by linking the labor and the environment.

Concerns were also raised on the issues of the Maquiladora Programme, especially relaxation of environment and labor standard that give industries in Mexico an unfair cost advantage in the competition for US market share.<sup>5</sup>

These adversarial coalitions tried to change the formal rule that surrounding negotiation, the House Concurrent Resolution 246<sup>6</sup>, and the National Environmental Policy Act (NEPA)<sup>7</sup> lawsuit provide two important samples of their efforts.

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<sup>5</sup> Gephardt visited the Mexico-US border at least five times during the NAFTA debate. Accompanying him on trips there were other Members of Congress, including Karan Shepard, Ron Vyden, Sander Levin and Karan English.

<sup>6</sup> Majority leader Gephardt and Congressman Henry Waxman sponsored a resolution designed to remind President Bush not to submit to Congress any trade agreement that does not preserve existing environmental, health and labor laws. This non-binding Resolution had no direct authority to dictate future behaviors. Its more important role was to mobilize grassroots organization to oppose NAFTA and pressure members of Congress to eventually oppose the agreement, but the resolution was opposed by Bush administration as well as by Democratic elites in Congress

<sup>7</sup> NEPA case filed against the USTR, by Public Citizen argued that a trade agreement constituted a formal act by Federal Government and therefore required the Government to submit a NEPA environmental impact assessment prior to implementation. While the case was decided in favor of government the legal trial acted as a lightning rod, drawing attention to the potential conflict between efforts to liberalize trade and to protect the environment.

Pro-NAFTA policy entrepreneur Congressmen Ron Wyden and Senator Max Baucus (Chairman of Senate Committee on Finance, Subcommittee on Trade and Senate Committee on Environment and Public Work) had facilitated two dialogue meetings especially for accommodating between environmental group and the USTR. First meeting was in May 1992, when USTR ambassador Carla Hills met with representatives of NWF, EDF, NRDC and Defender Wildlife for discussion concerns related to NAFTA text, but did not produced the level of support from environmental groups.

Year later 1993 meeting marked an important moment support of accommodating coalition, to the Clintons' NAFTA Package.

Congressmen Ron Wyden as an entrepreneur for environmental issues supported greater trade and environmental protection to press the Bush administration for greater inclusion of environmental issues in negotiations. Argued the environmental protection deserved the same kind of attention given economic issues such as intellectual property and merited similar enforcement mechanism under consideration for property rights protection. Wyden was supported by Congressmen Bill Richardson and Robert Matsui, a Democratic proponent of NAFTA.

Both Pro and Anti-NAFTA coalition leaders in Congress used environmental issues to gain political leverage during negotiation.

Anti-NAFTA members used the environment to shield them from protectionist attacks by media and others. Pro-NAFTA coalition leaders used the environment to attack a Republican President, and then shifted their position to support Clintons' efforts to complete environmental negotiations within the mold created by President Bush.

The media coverage was on the environmental organization focused on environmental groups. As negotiation progressed its attention increasingly focused on those environmental groups who were critical of agreement while attention on organizations supporting agreement began to drop. Clintons' administration had a tendency of accommodating criticizing groups to avoid negative media coverage, and

also administration enjoyed the support of most members of the environmental community.

Thirdly the Tuna/Dolphin Decision and Uruguay Draft alerted some members of Congress to the potential restrictive impact current trade negotiations might have on their right to make laws in the US.

Members of the adversarial coalition allied themselves with other interest groups in loose coalition to enhance their efforts to defeat NAFTA. Two coalitions the Mobilization on Development, Trade, Labor and the Environment (MODTLE) and Citizen's Trade Watch Campaign (CTWC) were most important.

MODTLE established a trinational dialogue among activist from all three NAFTA countries in the hope of mobilizing opposition to NAFTA's narrow economic agenda. It played a relatively small role in the negotiation, as their agenda calling for creation of negotiation outlined during Fast Track reauthorization and also its membership came from small groups with little political influence in Congress.<sup>8</sup>

CTWC was composed of organization capable of lobbying in US Congress.<sup>9</sup> CTWC coordinated its lobbying emphasis with the Fair Trade Campaign. FTC organized as Anti-NAFTA they devoted attention to converting the complexities of trade policy into political action at the grass roots level. Both CTWC and FTC adopted a political strategy designed to prepare voters to mobilize against NAFTA, pursuing individual interest and avoiding protectionist pressure kept labor and environmental group loosely linked throughout negotiation. One important event was a conference called 'Trade in the 21<sup>st</sup> Century', designed to influence the position of Democratic Presidential Candidate on NAFTA by labor and environmentalist on September 1992.

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<sup>8</sup> Organization included the Development Gap and Institute for policy studies, Friends of Earth, Sierra Club and GreenPeace were members but only GreenPeace devoted its time working with MODTLE member during NAFTA negotiation stage.

<sup>9</sup> CTWC, initially executive committee consisted of representatives from FOE, Amalgamated Clothing and Textile Workers Union, National Farmers Union, National Family Farm Coalition, International Union of Electricians, Sierra Club and Public Citizen. Sierra Club was active in both CTWC and Fair Trade Campaign.

Members of accommodating coalition did not participated as member of coalition outside the environmental community. They concentrated their association on other national environmental organization or with regional environmental groups who provided technical or regional expertise, such as TCP the BEP or Arizona Toxic Information (ATI). The accommodating coalition refused broadens association with labor organization. There was division among themselves.

Both NWF and NRDC seemed formally disassociate avoided themselves from more adversarial environmental organization. Thinking that formal association with clearly anti trade faction who might harm its ability to negotiate commonness makes pro trade policy elite.

**Document Prepared by the Environmental Organization:**

As environmental organization responsible for establishing and maintaining preemptive power during negotiation, members of accommodating environmental coalition were better positioned, took advantage of its political influence to gain political concessions from trade policy elites. Accommodating environmental organization used their own formal and informal resource to define the environmental agenda for negotiation by supporting the increased economic activity necessarily results in higher levels of environmental protection; their policies were more moderate set than of the adversarial organization.

There were many going through the significant documents prepared by the organization to influence the negotiation of trade policy. Majority of these documents were by accommodating groups and adversarial organizations were less in number. The significant documents:-

*Firstly;* defines term of environment policy recommendation, among accommodation organization NWF was very much engaged with industry elites convinced them that dialogue between the business and responsible environmental organization would result in effective change in investment patterns and improve the chance for environmental goals by negotiating standards for new investments that

required the use of pollution prevention technologies and the generation of revenues for environmental remediation and protection by placing a 'green tax' on increased trade. Ambassador Carla Hill rejected both the demand of the NWF but the favored to negotiate the creation of North American Commission on Environment. So NWF remained actively part of negotiation thinking that it is a best chance to influence the negotiators. In some instances the accommodating organization did not inform their efforts but worked directly with administrative official to reach compromise on environmental issues.

*Secondly; May/June 1992 'consensus positions'*, In March 1992 NRDC began an effort to organize environmental demand into a set of policy recommendation for negotiations. On 18<sup>th</sup> March Senior policy analyst Justin Ward, designed a draft, 'to translate some of the environmental community's NAFTA recommendation into a green language'. This document held the optimism for NAFTA success: Groups discussed various policy alternative under five categories;

- Enforcement of environmental law;
- Trade dispute settlement;
- Environmental standard;
- Environmental programme funding ;and
- Energy

In May the list of categories had expanded to include recognition of all international environmental agreement that use trade sanction with specific recommendation of investment criteria.

Energy was replaced by a principle of sustainable development concerns raised over the sanitary and phytosanitary language from Uruguay Round Text into NAFTA which prompted detailed recommendation for food safety. References were made to boarder environmental funding and also to hazardous material treatment and disposal.

NWF and NRDC prepared the two separate documents different in style but each shared a similar set of policy recommendation; these included:

- Direct inclusion of policy Recommendation in the NAFTA, rather than in parallel agreement,
- Creation of Trilateral Environmental Commission, (NRDC paper stressed on the Commission's activities, its power of reporting and investigating. NWF stress on creation of Committee that assist the signatories in implementing environmental provision of the agreement),
- Relationship of International Environmental Agreement, attention given to NAFTA's relationship to Inter-Environmental Associations,
- Protection of the Right to Set National Standard for the Environment, Consumer Health and Safety,
- Public participation in Dispute Proceeding and General Implementation of NAFTA,
- Funding for Environmental Remediation along Mexico-US Border, as well as future environmental regulatory needs by "recapturing" a fraction of the revenue associated with trade.

The consensus document was important because it strengthened environmental community's influence in negotiation. There was more willing to compromise much more under President Clinton than under Bush administration. The information that helped to shape the consensus positions was advocated by accommodating coalition and among adversarial coalition only Sierra Club was involved in the early formation of recommendation.

NWF provided a general set of recommendation to meet the USTR's timeline for negotiation, while NRDC recommendations were more specific to avoid ambiguities. So NRDC's document was more valuable, but the generally worded document gave each organization a political room to argue that administration had met the objectives of the recommendation.

*The Next Document May 1993 'Group of Seven' Letter:* With President Bush's departure the influence of NWF's support weakened and WWF CEO Russell Train

stepped down as the advisor to USTR. WWF President Kathryn Fuller replaced Russell and she was concerned about two important points:

- Mexico's environmental record and also official recognition for effort to protect endangered species and diverse ecosystems.
- Her Organization believed that economic growth was essential for developing countries to protect their own environment.

Moderate and Adversarial organization took the advantage of President Clinton's willingness to consider a border range of environment issues and produced a letter in March '93 detailing their concerns.<sup>10</sup>

The letter called for negotiations to:

- Provide a secure source of funding for infrastructure development for environmental enforcement investigation and cleanup for an NAFTA related environmental programme. Funding for these projects should originate from penalties levied because of non-enforcement of environmental law, phased out tariffs, or the creation of a development bank for environmental projects,
- provide public access and accountability for all activities related to NAFTA implementation and enforcement,
- clarify rights of locals, states and federal government to set independent food, environment and health safety standards,
- provides a means to ensure that industries internalize environmental costs,
- recognize all international environmental agreement that use trade measures as a means of enforcement,

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<sup>10</sup> They were Defender of Wildlife, Centre for International Environmental Law, Sierra Club, FOE, Public Citizen, Humane Society of the US, Humane Society International, Institute for Agriculture and Trade Policy, Center for Rural Affairs, National Family Farm Coalition, Earth Island Institute, Marine Mammal Fund, Animal Protection Institute, Rainforest Action Network, Whale and Dolphin Conservation Society, Performing Animal Welfare Society, Fund for Animal, Environmental Investment Agency, Environmental Solution International Primate Protection League, New York Public Interest Research Group, Community Nutrition Institute, National Toxics Campaign, World Policy Institute, GreenPeace USA. 4<sup>th</sup> March 1993.

- preserve right to restrict exports of energy and energy resources to promote global environmental quality,
- preserve right to employ government incentives to promote sustainable agriculture practices
- allow governments to establish purchasing policies that promote use of green technologies and
- Clarify the meaning of ‘necessary to protect the health and human safety’ and ‘sound science’ in terms of standard setting.

When Mexico and Canada could not finalized the agenda for discussion, this letter’s recommendation made the Clinton’s administration to address the environmental concerns in supplement agreement negotiation.

The accommodating organization was afraid that recommendation will jeopardized the chance for any environmental provision in Agreement. They developed a less aggressive set of policy recommendation for the administration. WWF President Kathryn Fuller, employed Kenneth Berlin, Stimson, Putnam and Robert, “to examine the demands of environmental community player in the policy debate<sup>11</sup> and try to establish a politically feasible position for NAFTA.” Berlin organized meeting among trade staff from NWF, NRDC, EDF and NAS to review the set of environmental demand for the Supplemental Agreement, in early part of April 1993. Participants agreed to

- keep deliberation secret to better control list of recommendation,
- Offer a compromise within reach of negotiator.

The 4<sup>th</sup> May “Group of Seven” letter was organized around seven policy area:-

- organization and structure of the North American Commission,
- enforcement of environmental regulation,

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<sup>11</sup> Mr. Berlin worked as partner of USTR Legal Counsel, worked for the National Audubon Society and also worked in Department of Justice. Berlin was in the employee of the WWF to establish a compromise position within the environmental community that would not be rejected by the Clinton administration. He also sat on the board of Directors of Defenders of Wildlife.



- funding for border and conservation projects,
- clarification of environmental standards,
- disputes settlements procedures,
- public participation and
- International environmental agreement.

With some modification to qualify the legal status of the supplemental Agreement, final letter was endorsed by WWF, NRDC, NWF, EDF, Defenders, TNC and NAS. This letter signaled the end of particular focus on environmental issues in trade negotiations. On this basis the supplemental agreement was negotiated by Ambassador Kantor by creating enough freedom to change their demand to accept the final settlement between Mexico, Canada and the US.

### **Environmental Concerns:**

Environmental consideration played a critical role in the formulation of the North American Free Trade Agreement (NAFTA), and its related agreements and activities. During the course of negotiation the NAFTA package comes to include many environmental components, including environment sensitive provision in NAFTA.

All of the environmental aspects of the NAFTA package are unprecedented, particularly in the context of a trade agreement. Negotiation of NAFTA presented an opportunity to elaborate the increase awareness by the public and policy makers of the importance and complexity of the relationship between environmental protection and international trade.

Below studied some of the significant Environmental Concerns are:

- Concerns raised the 'trade discipline'<sup>12</sup> as a threat to use domestic environmental laws and regulations, for example; to protect the US environment and public health from the Pesticide DDT, it is necessary prohibit DDT's use in the US but

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<sup>12</sup> Trade Discipline prevents the countries from unduly interfering with international efforts because such effort often requires prohibiting trade in banned products.

also to prohibit the import of food stuff containing DDT residues.<sup>13</sup> A trade discipline defines the acceptability of measures taken to implement such provision and thus influence the effective of the agreement.

- Concern about the effect of harmonization also influenced the NAFTA negotiation. Negotiations often attempt to harmonize rules and standards within trade regimes to facilitate trade. The fear was that harmonization of environmental standards of three countries would be downward (toward the least common denominator) and that international rule will over ride the federal state and local government for setting stricter standards.
- Also concerned about low environmental provision standard or weak enforcement to attract and retain the investment and industries would be attracted to these locals.
- With the looking at the past of trade agreement, viewed that dispute settlement mechanism and procedures of trade regimes in general as inherently against the environment. So it was country to defer the environment measures.
- There was also concerned about input in the process of negotiation. Input by environmental agencies and US environmental communities, as public awareness of the impact of trade on the environment and on environmental protection efforts was very little, for example; GATT does not contain a word environment.<sup>14</sup> And also no discussion of environmental issues accompanied the negotiation of Canada-US Free Trade Agreement (1985-87) which deals only briefly with environment.<sup>15</sup>

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<sup>13</sup> Trade disciplines in trade agreement; GATT, through which banned the US unilateral decision in banning the import of tuna from Mexico, and in the international environmental agreement, with respect to related provisions. Several of these including Montreal Protocol on substance that Deplete the Ozone Layer; see in International Legal Material (1987) 26: p. 1550.the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES), see in International Legal Material (1973), 12: p.1088; and also the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and the Disposal, provide for trade restrictions to achieve their fundamental objectives , see in International Legal Material (1989), 28: p.657.

<sup>14</sup> GATT Art. XX refers to necessary to protect human, animal or plant life or health and clause (g) relating to conservation of exhaustible natural resources if such measures are made effective in conjunction with restriction or domestic production and consumption.

<sup>15</sup> CUSFTA only contain the technical standard for more see International Legal Material (1988), 27: P.28.

It was believed that trade would create economic growth and increase investments which have its effects on environment. (Lallas, P. (1993)), This was case in US-Mexico Border, growth of Maquiladora Program under which components may be imported duty free into Mexico for processing or further manufacturing by factories and the export duty free to the US, other economic activity and migration had already caused serious health problems and environmental degradation.<sup>16</sup>

Some commentators believed that rapid growth would move faster than the creation of environmental infrastructure, some were not convinced that it have advantage to exploit its particular advantage in input, and some did not trusted the growth in general.

The positive implication of trade and investment on environment was;

- Increased trade in environmental friendly services and technologies will make pollution prevention and cleanup more efficient,
- Increased contact and information flow between companies will result in better environmental management techniques,
- Increased trade and investment are expected by some to result in increased resources being devoted to environmental protection particularly in Mexico.

With these concerns the NAFTA concluded.

### **Environment and Trade: Impediments:**

Throughout the Negotiation, the NAFTA encountered with several obstacles between trade and environment. Environmentalist and Trade regime had different views;

Environmentalist seemed to view trade regime as arcane, archaic and arbitrary while the trade experts seemed to see environmental protection efforts as naïve mushy and simplistic. So within US there was seminars and education in which interagency groups working on environment and trade issues.

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<sup>16</sup> Ward, J. & G.T.Prickett (1991), Prospects for Green Trade Agreement, Environment, May. P.2.

Both the field had differences on terminologies; these are:

- The word protection: environmentalist strives for it, but traders view it as the embodiment of evil.
- Transparency: to traders it means that once a rule is decided upon it should be clear and made available to the community to those businesses known what they must do to be able to trade. To environmental community, it encompasses the whole process of developing a rule and even thinking about developing a rule, the entire process should be open to public scrutiny and involvement.
- The Concept of Comparative Advantage: for trade regimes it is welfare of all country, allow to exploit its advantage in inputs. For environmentalist do not take into account that there is difference in political boundaries and geography. Environmental paradigm goals theories or relevant to all but its interdependence ecosystem management, PPP and cost internalization will not be widely acceptable.
- Two communities have different culture: Environmentalist advocate public participation in all stages of law making and enforcement, and trade community generally does not encourage such involvement as strongly.
- Each community view differently about how people behave: trade community viewed people and a nation as likely to behave like pirates everything is tradable, anything is possible, and perhaps the best one can hope for is honor among thieves. Environmental communities think of people and nation as like mountain climber, believe every one has common goal, roped together and is going to encounter risk. It is not clear who may have to help who but need help, were imperative of cooperation is more endemic, though there is increasingly interdependence, but the difference are striking.

### *Some Environmental Provision in NAFTA:*

NAFTA addresses the environmental issues in its preamble and in five of its 22 chapters. Other chapters deal with environment indirectly. NAFTA contains several

provision intended to make it more environmentally sensitive.<sup>17</sup> It's believed that NAFTA's provisions are more protective of the environment than equivalent provision in Dunkel Text (GATT).

The objectives the Preamble commits the countries to undertake the increased trade and investment envisioned by NAFTA in "a manner consistent with environmental protection and conservation", further its goal that commit to promotes sustainable development and strengthen the development and enforcement of environmental laws and regulations. Art. 104 of NAFTA accords primacy to environment over trade considerations in some circumstances by declaring that the major multilateral conventions on endangered species, ozone depletion and hazardous waste disposal take precedence over the new trade rights created by NAFTA. The domestic environmental laws are protected in two of the Chapters i.e., Sanitary and Phytosanitary Measures (chapter 7 (b))<sup>18</sup> and Standard Related Measures (chapter 9, Art. 905.3);<sup>19</sup> it is endowed with the mandates to take up additional environmental concerns; it can create bodies to deal with, among other things, uniform chemical hazard classification, criteria for assessing the potential environmental hazards of goods, risk-assessment methodologies, and guidelines for chemical testing (agricultural and industrial).

Both chapters ensure the US has the right to choose its own level of protection in those areas, established committees to strive to enhance level of protection and avoiding downward harmonization and also Domestic law may take precedence over international standards and may exist in the absence of scientific certainty. Both Chapters 7B and 9 set limits on regulatory powers, NAFTA's SPS disciplines are less restrictive than those of GATT. Chapter 11, Article 1114, prohibits a country from lowering environmental standards or their enforcement in order to increase or maintain investment in its territory.

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<sup>17</sup> Charnovitz, S. (1993), NAFTA: An Analysis of its Environmental Provisions, Environmental Law Report, 23: p 100067.

<sup>18</sup> measures are: 1. not arbitrarily discriminate among like goods; 2. be based on 'scientific principles'; 3. be repealed or abandoned when no scientific basis exists for them; 4. be based on a risk assessment, as appropriate to the circumstances; 5. be applied only to the extent necessary to attain the desired level of protection; and 6. not represent a bad-faith disguised restriction on trade.

<sup>19</sup> Deals with technical barriers to trade and standards-related measures. It authorizes parties to choose 'the levels of protection considered appropriate', and to adopt measure deemed necessary to attain the desired level of environmental protection, provided they are nondiscriminatory and do not create unnecessary obstacles to trade.

Chapter 20 provides new mechanisms for the submission of environmental concerns to dispute settlement panels.

The trade related obligations in specified international environmental agreement are protected by Art. 104 (chapter I): it recognized

1. 1987 Montreal Protocol, which limited CFC, Ozone depleting Substances,
2. The 1973 CITES of Wild Fauna and Flora,
3. The 1989 Basel Convention on the control of Transboundary movement Hazardous Wastes and their Disposal,
4. The Canada-US Agreement Concerning Transboundary Movements of Hazardous Waste (Ottawa, 1986),
5. The Mexico-US Agreement on Cooperation for the Protection and Improvements of the environment of the Border Area (Lapaz, 1983).

Chapter II, Article 1114.2, called for parties to recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures.

It is an effort to address 'pollution heavens' in Mexico.

Since the establishment of the NAFTA several new institutions many with environmental responsibilities or relevance, have emerged. Some represent a trinational extension of established Canada-US bodies and deal with long-standing environmental issues related to agriculture. Others, with no antecedents, are concerned with newer environmental issues related to pesticides, energy efficiency and health.

Under Bush administration the Border Plan Committing US and Mexico to strengthen enforcement of environmental law and reduce pollution and improve the condition along the border. US promised to pay \$379 million for this purpose.

There were some green improvements to NAFTA as negotiated by Clinton administration in 1993. Some improvements are:

The NAAEC its Art.14, that say, any individual or nongovernmental group can make a complaint alleging a governmental failure to enforce its national environmental laws, also gives power to commission to fine for failure of effectively enforcement of laws.

Border Plan increased its investment by \$5 billion over five years to ensure environmental cleanup and infrastructure investment. Commission Council comprise cabinet level representatives are required to hold public meeting which gives us Citizens the right to challenge objectionable environmental practice in Mexico and Canada.

Part two Art. 3 of NAAEC that each country have right to establish its own domestic policies and priorities.

The NAFTA environmental provisions represent two developments with regard to trade and environments; one, the provision illustrate the influence of environmental concerns on policy negotiation and secondly, the creation of common ground between trade and environmental interest, evidenced through the process of negotiation, expectation and compromise.

Debate about NAFTA embodied and reflected wider social concerns about the quality of life and definition of progress, sustainable development and growth. It also was a complex and divisive as revolving around issues like the impact of NAFTA on US job lessen or gains, public health and safety issues and implication of environmental quality. The environmental debate became one of the more conspicuous debates as Congress faced the impending vote in 1993.

As EPA Administrator, Carol Browner and her predecessor William Reilly, argued that NAFTA would be good for the environment by providing border cleanup programs a cooperative agency and by improving the environmental status-quo in Mexico through economic growth. However the NGOs like Greenpeace and Sierra Club argued that NAFTA would accelerate environmental degradation and threaten US environmental laws.

Economist Wryly noted that “everyone is wrapping themselves in the green flag’ in NAFTA debate.<sup>20</sup> NAFTA debate highlighted the environment-trade dilemma that frustrated efforts to reconcile expanding trade and environment; on one hand it promoted increased mobility of capital through investment and elimination of tariffs which would give a poorer country, Mexico a greater revenue to invest in cleaner industries, on the other hand, the investment would undermine environmental standard by allowing polluting industries to escape from more rigorous US regulation.

The NAFTA environmental debate found a set of cultural and political differences. The confrontation of two communities (trade and environment) forced each into a dynamic interaction with ideas about economic and the environment, tariffs and subsidies and the possibilities of increased economic growth bringing increased environmental degradation.

This interaction has added to a growing collection of critical inquiries seeking to integrate trade and the environment and to rework humanity-environment relationship.

It is precisely this process of confronting difference and negotiating measures of environmental or trade protection that inched the trade and environmental community beyond the chasm on to common ground.

NAFTA’s inclusion of environmental standards was, according to Vice-President Al Gore, ‘a history making achievements to have the endorsement of environmental standards written into the language of the trade agreement itself’.

Carl Pope, Executive Director of Sierra Club, noted, ‘this debate has changed for all time the way that future trade deals will be made’.

#### *Conclusion of North American Agreement on Environmental Cooperation (NAAEC):*

The environmental provisions of the NAFTA relating to standards are strongly influenced by the negotiation in the Uruguay Round of the GATT. NAFTA does address

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<sup>20</sup> Okes, Bruce S. (1992), The Road From Rio, National Journal, 30<sup>th</sup> May, p. 1286-1287.



some important environmental issues although the response was not enough to satisfy many environmentalists. But its provisions related to environment and investment and relating to the treatment of conflicts between NAFTA and international environmental agreement were very much clear and modesty and go beyond the exciting trade treaties. It was clear during the debate (NAFTA) and also during elections of President Clinton that separate provision would have to be negotiated outside the NAFTA to meet environmental concerns not addressed in the NAFTA itself. Agreement on Environmental Cooperation (ACE), its final draft on 13<sup>th</sup> September 1993, became effective. Although it does not constitute a part of the NAFTA as such it must nevertheless be wanted a of the NAFTA package. If NAFTA is a trade agreement with some environmental provisions, then the North American Agreement on Environment Cooperation (NAAEC) can be characterized as an environmental agreement with some trade implication.

NAAEC, a supplement of NAFTA, commits the NAFTA parties to a series of obligation and institution intended to advance both environmental protection and the environmental sustainability of NAFTA related trade.

The NAAEC states that each country: 'shall ensure that its laws and regulations provide for high level of environmental protection and shall strive to continue to improve those laws and regulation'.

The core obligation in the NAAEC is that 'each party shall effectively enforce its environmental laws and regulations through appropriate governmental action'.

During the NAFTA negotiation large number of NGOs continued to press for essentially environmental concerns. The NWF and WWF urged the candidate not to make NAFTA conditional on NAAEC, as they were in support of growth and environment protection. Their most pressing concern was poverty alleviation in Mexico through trade and growth. While those who were against of treaty are FOE and Sierra Club were who sought for fresh start of trade treaty.

The general perception in wider public was that credible environmental organization supported NAFTA on the condition that the parallel agreement is substantive enough. With NGOs of all three countries, the political leaders of Canada, US and Mexico had agreed that there would be no reopening of the negotiations on the NAFTA Text. The Intergovernmental Environmental Side Agreement would have to stand on its own, and have to 'green' NAFTA from the outside, not from the inside. Environmentalist goal of making trade disciplines more environmentally sensitive was at least intelligible to trade negotiators, before such goal were often greeted with unfriendly.

In general NAAEC is divided in two; a first set of issues is covered in parts one to four, which provides a framework for environmental cooperation that fulfills the environmental pledges of NAFTA, addresses the broad agenda of the environmental community, and literally enumerated the ecological challenges North Americans face today.

Part five the dispute settlement procedure, concerns itself with a second set of issues related to a peculiar kind of environmental dispute; that which occurs when one party alleges that another is not effectively enforcing its environmental law.

#### **Nature of NAAEC and its Relations with NAFTA:**

NAAEC is a simple form of treaty that does not require formal instruments of ratification by the national legislature of Canada, Mexico and the US.<sup>21</sup> (Charnovitz, Steve (1994), p.64). In American legal parlance, NAAEC is an executive agreement. It binds the member countries from January 1994.

NAAEC has institutionalized the environment on to the global agenda, which is very important for the effective governance of environmental issues through enforceable international agreement which include codified cooperation and coercions to ensure their enforcement. One of the most significant parts of NAAEC is that it is an agreement of the

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<sup>21</sup> NAAEC is moral formal than a simple memorandum of understanding, which had binding obligations under international law

parities to provide citizens access to individual and administrative procedures for the enforcement of environmental law. (Folsom, Ralph H. (1999), p. 459-460).

This provision does not guarantee that citizens will have actual standing in domestic courts to secure the enforcement of environmental laws. It does ensure consistent with a party's laws, citizens will have right to petition their government to enforce these laws. It also provides that citizens who have suffered real damage have right as person or legal entity that caused the harm.

NAAEC remains first and foremost an international legal instrument. Among many roles that environmental law plays, two stand out: i.e., the constitutional role and regulatory (or prescriptive) role. (Birnie, P.W. & A.L. Boyle (1992), p.4).

Based on classifying, NAAEC is clearly like many international environmental law instruments, a constitutional document. It provides mechanisms for environmental cooperation, it creates a dispute settlement procedure and imply test a new institution Commission for Environmental Cooperation (CEC). (This we will be studying in the next chapter fully). The agreement contains unique normative an institutional elements primarily because it is the product of an intergovernmental process that, once implemented will provide a new means of international of environmental protection.

Finally its transparency and public participation in the development, adoption, application and enforcement of environmental law and international dispute settlement are significant. Throughout this agreement there are mechanisms for democratization.

Its relationship with NAFTA is through CEC, the Center piece of NAAEC. The Commission is continental environmental cooperation mandates touches upon the ecological impacts of NAFTA.<sup>22</sup>

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<sup>22</sup> Art. 10 (6)(d): of the NAAEC, the CEC has undertaken, in the Spring of 1995, a long term evaluation of NAFTA's environmental impact in its annual report to provide a new insights on the environment and trade relationships and provide a place of record for the evidence that NAFTA should be made more environmentally sensitive.

CEC acts as a point of inquiry and receipts for comments from NGOs and person concerning the environmental goals and objectives of the NAFTA's Art. 10 (6) (a).

Dispute Settlement mechanisms provided by NAAEC, its procedural aspects outlined in are shaped largely by NAFTA. The supporter of all NAFTA parties for NAAEC was important in building support for NAFTA; if members withdraw from NAAEC, there is no legislative formality as withdrawal from NAFTA would need.<sup>23</sup>

Moreover if party's withdrawal from NAAEC would in no way, strict sense, affect its membership in NAFTA, but withdrawal from NAAEC by any party would create a serious political crisis, both domestic and international and put NAFTA itself in jeopardy.<sup>24</sup>

In NAFTA/NAAEC package, latter is always subordinate, on the other hand at the institutional and political level the Council act as a counter weight to this imbalance in the NAAEC text.

CEC has general mandate to consider, environmental effects of NAFTA, to assist the Free Trade Commission (FTC) in environmental related matters<sup>25</sup> as well as to contribute to 'the prevention of environmental related disputes' by making recommendation to FTC.

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<sup>23</sup> NAAEC Art.50 & NAFTA Art.2205, both has a withdrawal clause that any party to leave the agreement after 6 months notice, but the difference, is however that all NAFTA parties have adopted long and detailed implementation statutes that would have to be repealed or otherwise modified by their legislature. In NAAEC a country may withdraw its membership upon 6 month notice, normally without involving its legislature.

<sup>24</sup> A domestic Political debate on the acceptability of a NAFTA amputated (cut off) from side agreements might become a legal and constitutional confrontation if the argument was put forward that the legislators have accepted NAFTA proposal of the Executive branch only because of such supplemental arrangement. On that basis, the authority of the US President or Canadian Prime Minister to withdraw their country from NAAEC only might be challenged politically and legally.

<sup>25</sup> Art. 10(6)(e). of the NAAEC, CEC have limited input into the work of the Free Trade Commission, only have to serve as the official interlocutor of the NGOs seeking to questions the environmental record of NAFTA itself and also NAFTA does not guarantee that experts of CEC for technical advice, to consulted

## **Objectives and Obligation:**

NAAEC has seven parts; its objectives are in part one and obligation in part two. NAAEC would not have existed without NAFTA and the objectives of NAAEC extend well beyond any trade related matters and embrace trilateral cooperation for the improvement of North American environment. NAAEC venture beyond trans-boundary pollutions issues (the traditional subject matter of international environmental law and previous North American arrangement) to cover domestic governmental activities. The objectives can be found in three different places: the preamble of NAAEC, Part one entailed objective and the broad diversified mandate given to the CEC. The preamble of agreement incorporates principles as 'the importance of the conservation, protection and enhancement of the environment', the 'essential role of cooperation' and the achievement of 'sustainable development for the well being of present and future generation'. (Johnson, Pierre Marc & Andre Beaulieu (1996), p. 141).

The essential environmental principles are thus are found in two declaratory sections. NAFTA contains some environmental references that appear to qualify its trade liberalization agenda.

NAAEC's part one features references to free trade, economic efficiency and sovereignty that may be read as restricting the scope of NAAEC's general environmental goals.

Specifically the NAAEC stated goals include;

- Foster the protection and improvement of the environment in the territories of the Parties for the well being of present and future generations;
- Promotion of sustainable development, (Art.1 (b)), based on cooperation and mutually supportive environmental and economic policies;
- increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;
- support for environmental goals and objective of the NAFTA, (Art. 1(d)),

- promotion of transparency and public participation in the development and enhancement of environmental protections, (Art.1 (c), (d),(f)),
- strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
- enhanced compliance with and enforcement of environmental laws and regulations, (Art.19 (f)),
- promotion of pollution prevention policies and practices ,(Art. 1 (j)),
- to avoid creating trade distortions or new trade barriers,(Art. 1 (e)) and
- To promote economically efficient and effective environmental measures, (Art.1 (i)).

**General obligation:**

Obligation begins with ‘general commitment’ the most noteworthy being to ‘assess as appropriate, environmental impacts’. The basic obligations under the NAAEC are of two types one relating to domestic environmental law (Art.2-7), other relating to international cooperation (Art. 20-21). The obligations with respect to domestic environmental law are mainly directed toward relating to primarily to procedure and enforcement.

Obligation includes those of general nature, a broad commitment by each party.

Under Article 2 take certain step regarding environmental law and policy with respect to its territory.

Art.10 (5) (b), to consider implementing as law a recommendation of the Council, ‘consider’ the prohibition of toxic or pesticide exports where the substance prohibited in that party’s own territory.

And the specific commitments directed at the issues of transparency<sup>26</sup> government enforcement action,<sup>27</sup> effective private access to remedies (art.6) and procedural guarantees.<sup>28</sup>

NAAEC principles goes beyond Stockholm Declaration (1972), Art.21 and Principles 2 of the Rio Declaration (1992).<sup>29</sup> Moreover NAAEC strikes a balance between sovereign rights and environmental protection in the context of purely domestic environmental law, in Art.3;(which binds international environmental norms) it will obtain even in the absence of trans-boundary environmental harm, where as for both Rio and Stockholm the implicit assumption is that a duty to the international community is triggered only where there are transboundary effect.

The second obligations with respect to cooperation and provision of information<sup>30</sup> it include general obligation to 'endeavor to agree' on the application of the agreement and cooperate to consult in resolving matters affecting its operation (Art.20 (1)) and also to provide notification to 'any other party with an interest in the matter' of an environmental measures actual or proposed, that might materially affect the operation of the agreement or otherwise substantially affect that other party's interest under the agreement (Art 20(2)). There is also a requirement to provide information when

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<sup>26</sup> Art.4, promotes the publication of laws regulation, procedures and administrative ruling of general application and to the extent possible advance publication of proposed measures and the provision of an opportunity to interested person and parties to comment on them

<sup>27</sup> Art.5, that enforcement effectively the environmental laws and regulation through appropriate government action also address the issue of judicial and quasi-judicial or administrative enforcement proceeding (Art.5(2)) and speaks to the appropriateness of sanctions and remedies Art.5(3).

<sup>28</sup> Art.7, speaks of openness and fairness of hearing the time lines of proceeding, the desirability of written reasons and availability of judicial review of either US or Canadian Laws.

<sup>29</sup> Principle. 2, of Rio Declaration is exactly verbatim restatement of Principle 21 of the Stockholm Declaration 'state have in accordance with the Charter of UN and the Principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction', see in Percival, Robert V. & Dorothy C. Alevizatos (eds) (1997), Law and the Environment, a Multidisciplinary Reader, Philadelphia: Temple University Press. P.378.

<sup>30</sup> The obligation regarding cooperation and information have their genesis in a number of international law document on the principles of cooperation: expert Group on Environmental Law, 1987, Art.14; Rio Declaration, 1992, Principle 7; Stockholm Declaration 1972, Principle.24; and on the principle of consultation, Expert Group, 1987, Art.17; Rio Declaration, 1992, Art.19; on the notification to other states, Expert Group 1987, Art. 16, 19; Rio Declaration, 1992, Principle 18, 19.

requested (Art.20 (3)) and bring to attention of another party possible violation of its law (Art 20(4)). According to the Art.21 there are separate obligations to provide information to Council and Secretariat set up under the agreement, subject to requirement of reasonableness.

The obligation under the NAAEC gives effects to both the principle of state sovereignty, i.e., domestic environmental law, and recognizes the interest of all states in environmental protection.

In announcing the side agreement US Trade Representative Kantor declares that they will help insure that “no nation can lower environmental and labor standards, only raise them.”<sup>31</sup>

### **Harmonization of the Environment in NAFTA:**

Harmonization refers to a much more limited situation, in that it is observable when environmental standards in a particular field are virtually identical. The harmonization of an environmental standard is verifiable and implies a situation which has reached its term. It shows where there is a race to the bottom or to the top in a particular regulatory field.

Where international free trade treaties are involved, the main fear of the environmental groups is their assumption that the increase in international competition will reduce the capacity of countries to impose their own domestic standards. This is the above-mentioned scenario of “the race to the bottom.” On the eve of the signing of NAFTA, the concerns of Canadian NGOs, although present, were less substantial than those of American interest groups, much more powerful and better organized. (Vogel, David (2000), p.86-87) Legally, however, downward harmonization is prohibited under NAFTA, while upward harmonization is encouraged although not mandatory. Article 904 of NAFTA clearly states that the signatory States are free to adopt the domestic standards

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<sup>31</sup> Announcement of NAFTA Supplemental Agreement, August 13<sup>th</sup> 1993, according to Daniel McGraw this provision is ‘known colloquially as the anti-rollback provision.’ In article NAFTA’s Repercussions: is Green Trade Possible?, Environment, 36 (2): March, 1994. p.39.



they consider appropriate. Articles 754.1, 755.3 and 905.3 establish that the countries may adopt environmental standards that are stricter than recognized international standards

In the trade treaty NAFTA, mentions in Article 1106.6 that environmental standards must not be disguised tariff barriers which restrict international trade or investment (Fox, Annette Baker (1995), P. 58) The parties may therefore challenge environmental measures which they consider barriers to trade. But the burden of proof lies with the state contesting the validity of the standard in question. That state must prove that the available scientific data do not justify maintaining an environmental standard that is stricter than internationally prescribed. Laying the burden of proof on the complainant creates a prejudice in favor of the stricter domestic standard. (Hoberg, George (2001), p. 208).

Furthermore, in almost direct response to the leveling-down fears expressed by environmental groups, Article 1114.2 states that "it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures." Articles 755 and 906 take direct approach to the harmonization of environmental standards. But it is an approach that is purely trade-based. Harmonization of standards is the most effective way to ensure that there are no barriers to trade. Since the adoption of regressive environmental legislation is prohibited, the harmonization must clearly be upward. It is very important to note that these measures are taken on a voluntary basis, for the purpose of making national laws more compatible.

The upward harmonization pleases investors and environmentalists. NGOs makes themselves comfortable to work on it but North American companies do not, find it more upsetting.

So the Upward harmonization is indicated as desirable, but it is not mandatory. Downward harmonization, however, is prohibited. What is basically to be drawn from NAFTA is that its mandate is to define not what a country's environmental policy should be, but rather how the objectives of environmental policy should be achieved. (Condon,

Bradly J (1995), p. 283) Quite clearly, they are to be achieved in a way that restricts trade between the partner states as little as possible.

It must also be remembered that, while there is environmental content in NAFTA, this is essentially a trade agreement. Improvement of environmental standards takes place on a voluntary basis and insofar as it poses no undue restriction on trade between the partner countries. Finally, it could well be that the liberalization of trade, that stimulus to economic growth which is so feared by the environmental groups, will in the long run promote protection of the environment. For the higher the per capita income, the more resources the government is able to allocate to environmental monitoring. (Vogel, David (2000), p.95).

The In the long run, it seems that economic growth, once it attains a degree of development that is difficult to define (although necessarily high), contributes to the improvement of environmental standards.

The upward harmonization of protection of the environment in the NAFTA countries remains a lengthy and difficult task; reasons are:

First, the harmonization of environment sought between the developing country and two richest, most environmentally regulated countries in the world. It is most difficult because developing countries often do not have access to the necessary technical and financial resources to participate on an equal footing with richer counties in upward harmonization. Though the policies are implementing their immediate problem poverty, social cohesion, health and unruly demographics over ride the environmental policies or else take into consider with the environmental issues.

Secondly, among the NAFTA country's Mexico had to change many of its norms and practices to align them with often higher American and Canadian standards. This is difficult they still have anit-American and an acute sense of North/South divide. The feeling of unfairness remains palpable in countries of the developing world.

The North American Agreement on Environmental Cooperation and the institution's, agreements and activities that it has made possible is an evolving experiment that has provided a mandate for increased cooperation on a wide range of environmental interests. The role of the CEC, including what it does and how it works, is continuing to evolve. While the focus of the CEC's efforts has often been directed at increasing cooperation between, and within, governments the North American Agreement on Environmental Cooperation and the Commission for Environmental Cooperation clearly have the potential to stimulate cooperation in other sectors as well. Non-governmental and industry groups as well as academic and scientific interests will continue to have opportunities to help define the scope and mechanisms for promoting a climate of cooperation.

### **NAFTA and the Environment:**

The strengths are:

- Increased cooperation between NAFTA governments;
- New trinational and binational environmental institutions;
- Specific projects for environmental improvement
- Incentive for better environmental protection in Mexico;
- Greater interaction between harmonization effect;
- Improved access to environmental information;
- Citizens have access to a complaint mechanism;
- Dispute settlement for persistent non-enforcement;
- Specific initiatives for the US-Mexico border;

The weaknesses are:

- Inadequate support of governments to NAFTA institutions;
- Poor funding and management of institutions;
- Too many initiatives to be effective;

- Increased trade puts pressure on existing infrastructure;
- Inefficiencies discourage NGO use of institutions;
- Investor-State disputes could chill environmental regulation;
- Overload of information and descriptive reports;
- Complaint take too long and do not assure corrective measures;
- Dispute mechanism design makes unlikely its use;
- Insufficient to cope with environmental border problems.<sup>32</sup>

### **Dispute Settlement System:**

The issue of dispute settlement has been seen as increasingly important in bilateral and multilateral trade agreements. It continues to receive attention in the US-Canada Free Trade Agreement (FTA), it is a priority item in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and was high on the agenda of the North American Free Trade Agreement negotiations.

At the meeting of the negotiating teams from Canada, Mexico and the US in Dallas in February 1992, the text of a chapter entitled "Institutional Arrangements and Dispute Settlement Procedures" emerged. This is heavily bracketed negotiating text covered mainly the US-Canadian FTA chapter 18. Cited in Joseph A. 1993, p.175.

The draft deals with fairly non-controversial administrative matters, such as transparency and notification, consultation and the composition of general dispute settlement panels.

The dispute settlement resolution development was provided for because:

Firstly; trade was growing tremendously;

Secondly, due to change in the nature of the issues. In the post World War II years of trade liberalization, the limited number of disputes concerned matters linked to tariffs,

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<sup>32</sup> Hufbauer, Gary Clyde and Diana Orejas, 2001, NAFTA and the Environment: Lessons for Trade policy, speeches at International Policy Forum New York.

quotas or other visible border restrictions. But since the resolution and elimination of many of these border measures, non-tariff barriers imposed for non-trade reasons for example: health, safety or product standards these became the subject of negotiation and dispute. Attention also focused on trade-distorting, or unfair, trade action, including international that may be an integral part of domestic policies and programs; and

Finally, trade friction has increased as a result of the changing composition of international exchanges. Trade in services has grown tremendously. High tech trade has brought the protection of industrial property right patents, trade marks and copy right to the fore. International direct investment has grown and trade related investment measures have become the subject of disputes.

The dispute resolution process is the out come of the international trade law for reconciling trade values with social and environmental values; up to this point trade agreement exclusively focus on economic interest. NAFTA in its political origin and ultimate formulation was stretched and twisted to include more than trade, as a reaction to the intense public scrutiny generated by the media. The relatively brief Side Agreement on Environment and on Labor decided the fate of NAFTA.

The NAFTA more generally contains mechanisms of dispute resolution as a primary features<sup>33</sup> rather than a permanent court as of the European Union. Its ad hoc procedure has avoided the permanent bureaucracy. The experts are hired according to the cases.

The NAFTA dispute resolution build on the 1989 Canada US Free Trade Agreement, NAFTA contains dispute settlement provision in six separate areas; Chapter 11: is designed to resolve investor – State dispute over property rights; Chapter 14: creates special provisions for handling disputes in the financial sector via the chapter 20 dispute settlement process (DPS); Chapter 19 established a review mechanism to

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<sup>33</sup> Art. 1115-38, Financial Services Art. 1415; Antidumping and Countervailing Duties Art. 1901-10; International Commercial Disputes between Private Parties Art. 2022; Referrals of Matters from Judicial and Administrative Proceeding Art. 2020; the Advisory Committee regarding Agricultural Trade Art. 707 and the Advisory Committee on Private Commercial Dispute as Mechanism to aid in the interpretation and administration of the Agriculture Art. 2022 (4)

determine whether final antidumping and countervailing duty decision made in domestic tribunals are consistent with national laws; Chapter 20 provides government-to-government consultation, at the ministerial level, to resolve high level dispute; and finally with these addition, the NAFTA partners created interstate dispute mechanism regarding domestic environmental and labor law under the NAAEC and NAALC respectively.<sup>34</sup>

Between 1994 and 2000, the cases handled by chapter 19 are 76; and the chapter 11 handled 16 cases; and 4 cases handled by chapter 20. (Pastor, Robert A. (2001), p. 74).

Canada was increasingly concerned about the threat of unilateral US antidumping (AD) and counter vailing duties (CUD) provoked by adverse ruling on timber, fish and pork. (Winham, Gilbert R, 1993). Canada wanted an agreement that would curtail overzealous application of trade measures against Canadian exports. While the US wanted to preserve its trade remedies to redress both Canadian public subsidies and private dumping. As Canada wanted harmonization of the substantive trade remedies laws, the US was not interested to change its own unfair trade law. Mexico a country without a clear separation of power between its judicial and executive branches, so it was critical to Mexico to assure its partners that Mexico committed to faithfully implementing NAFTA reforms. Mexico agreed with the basic principle of chapter 19 processes, which are based on common law tenets, as well as the other dispute mechanism. Mexico viewed the NAFTA DSP as a tool for providing institutional legitimacy that would help promote foreign direct investment.

The side agreements on labor and environment of NAFTA contain the norms as well as legal process. It's perceived that as trade liberalization is promised by NAFTA, the side agreement invoked the legal process. The side agreement of NAFTA is wholly new and unique. It was the crux of the ratification fight of NAFTA. The dispute resolution process of the side agreement is approving in extraordinary mixture of values, its process is given clear mandatory character by the provision of monetary and trade

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<sup>34</sup> Hufbauer, Gary Clyde, NAFTA Dispute Settlement System, Internet source.

penalties to deter and correct persistent delinquency in the international enforcement of environmental health and labor regulation.

As we see in the past there was standoff between international trade law and national health labor and environment, NAFTA has confronted with trade and quality of life. GATT the promoter of the international trade, its Secretariat has indicated that environmental consideration should rarely be allowed to restrict trade. (Garvey, Jack I, 1995, p. 441)

NAFTA shows that the US economy is ten times the size of Canada's and twenty-five times of Mexico's, which reflects the disparity, whether it increase or decrease of trade is important to all the three country. The dispute resolution processes for Canada and Mexico were an important political objective, if for on other reason than the power equalization they entailed. The side Agreement aimed at achieving predictability and reliability by encouraging and directing political accommodation within a constructive, organized legal process of dispute resolution.

#### **Dispute Resolution under the Environmental Side Agreement:**

Part V of the NAAEC establishes a comprehensive dispute settlement mechanism. Its process result in the imposition of trade sanctions it's been restricted to the most serious cases of enforcement failure. The institutional structure is built around a trilateral commission. The Commission for Environmental Cooperation (CEC) consist a Council, a Secretariat and a Joint Public Advisory Committee. The Council comprises cabinet level officials of the three countries, meets at least once annually and makes all decisions by consensus. The Council is charged to look into the implementation of the NAAEC and to address disputes between the parties regarding its interpretation or application. The basic process governed by the Commission after filing of the compliant go through four stages:

First, consultation between disputing parties; second, meetings at the ministerial level; third, the convening of an arbitral panel; and fourth, sanctions.

The Environmental Side Agreement contains dispute settlement processes that may be invoked to resolve two general types of controversies: those not involving allegations that a government has failed to enforce its environmental laws (non-enforcement matters) and those wherein a government's failure to enforce its environmental laws is directly at issue (enforcement matters). The provision applicable to non-enforcement matters, Article 13, of NAAEC, envisions that the Environmental Secretariat may investigate a controversy and prepare a report thereon that ultimately may be disclosed to the public. But this Article authorizes the Council to prevent the investigation or decline making the report public. The NAAEC does not provide for any other dispute settlement processes with regard to non-enforcement matters.

The Agreement sets forth two distinct dispute resolution systems for enforcement matters. First contained in Articles 14 and 15; applies when a government fails to effectively enforce its environmental law. The second, contained in Articles 22<sup>35</sup> through 36, may be invoked only if government has engaged in a "persistent pattern"<sup>36</sup> of failure to effectively enforce its environmental law. Articles 22 through 36 are stages set forth for the advance of the dispute settlement.

Article 14, authorizes 'any NGOs or person' may submit a petition to the Environmental Secretariat complaining that a NAFTA country is 'failing to effectively enforce its environmental law'. Assuming the Secretariat 'accepts' and it determines that the complaint is warranted.<sup>37</sup>

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<sup>35</sup> The scope of the Article 22 dispute resolution structure is further limited by the requirement that a NAFTA government's non-enforcement of its environmental laws must related to firms or industries that produce or provide trade-related goods or services

<sup>36</sup> Persistent pattern defined as "sustained or recurring course of action or inaction beginning after the date of entry into force of this Agreement". NAAEC, Art. 45(1), the 'persistent pattern' criteria could give rise over time to more objective standards than the two exceptions on discretion and scarce resources precisely because national idiosyncrasies and differences might already be captured by those exceptions. For more see, Johnson, Pierre Marc & Andre Beaulieu (1996), p.207-209. The purpose of this provision is to protect the discretion that is part of all functioning legal systems, namely, the discretion to determine which offences to pursue and prosecute and the administrative discretion to determine which offences to pursue and prosecute and the administrative discretion to set priorities.

<sup>37</sup> Copez, David (1997), *Dispute Resolution under NAFTA: Lessons from the Early Experience*, vol. 32 (2): p. 185. NAAEC Art. 14 (1) (a)-(f), to acceptable, a submission must be written in an appropriate language (Spanish, French or English), clearly identify the submitter, provide sufficient information to allow the Secretariat to review the submission, be designed to promote enforcement rather than harass industry, reflect that the matter has been communicated in writing to the party complained against, and be filed by a person residing or established in one of the three countries.



The Council with two-third vote instructs the Secretariat to prepare a factual record. Also by 2/3<sup>rd</sup> vote of the Council the factual record and the comments from any NAFTA country may be made public. So the dispute settlement process ends in cases involving a country's mere failure to effectively enforce its environmental laws.

The brief study of the process:

When the party complain, that there is persistent pattern of failure to effectively enforce its environmental law, any party request consultation with the offending party, if there is no satisfactory result within sixty days out of the consultation, any disputant request a special session of the Council. Council shall meet within twenty days of the request and shall endeavor to resolve the dispute promptly; Council may use the technical advisers or experts and make recommendations (Art. 23)

Within sixty days after convening if Council fails to settle, as the request of any consulting party, Council by two-third vote convene an arbitral panel<sup>38</sup>. The task is to examine the matter according to the provision of the Environment side agreement.

To see if there has been a persistent pattern of failure by the party to enforce its environmental law. After the final panel is selected within 180 days the panel presents some findings of the fact, determination and the appropriate recommendations. Generally the recommendations are in form of 'action plan' which the offending party has to adopt and implement. Within the thirty days of the report issuance the written comments are asked from the disputants or the parties, but not the public get the opportunity to comment on the initial report, if any action plan is disapproved by the party complaint filed against can ask within sixty days for the reconvene to reconsider the plan and the Council shall reconvene the panel on delivery of the request to the Secretariat in written. The panel within ninety days imposes the final report i.e., the action plan. The significant of the action plan are; first, it measures the progress of the better enforcement; secondly,

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<sup>38</sup>Panel is chosen from a roster of up to forty-five for this temporary assignment. The panel consists of experts in environmental law, environmental law enforcement, international dispute resolution, or related scientific and technical fields. The panel is not allowed seeking information from outside experts unless the disputing parties agree. Panelists are not permanent judges.

Council shows its bureaucratic and the discretion action through imposing the penalty; thirdly, the action plan embarrasses a government by mending its ways.

The final report of the panel shall be published five days after it is transmitted to the Council. (NAAEC, Art. 32 (3)).

If panel finds that there is a persistent pattern of failure by a disputant to effectively enforce its environmental law, the final role of the environmental dispute resolution process is to implement the panel's final report.

Three situations may arise during the implementation stage.

One, the disputants may agree on the action plan and also proceeds to fully implement. Then there is no controversy and no further oversight is required.

Second situation is that the disputants may agree on plan but the offending party may fail to fully implement it. Then the complaining party may after six months (180 days) after the action plan was established, request the Council to reconvene the panel. If the panel finds that the action plan is not been fully implemented by the offending party, it shall impose a 'monetary enforcement assessment' within 60 days. The penalties is termed as the 'teeth barely bite'. In 1994 the penalty was \$20 million and in 1996 the raised to \$26.8 million. (Copez, David (1997), p. 187).

As it is discretion of the panel to decide the amount of penalty. This amount is paid to the Commission, then according to the Council direction it is spend on 'to improve or enhance the environment or environmental law enforcement in the Party complained against, consistent with its law.' Then also if the party fails to pay the penalty within 180 days, the complaining part may suspend as to the offending party the "NAFTA benefits in an amount no greater than the sufficient to collect the monetary enforcement assessment."

In third situation were the disputants altogether unable to agree on an action plan, then the complaining party not earlier than the 60 days since the final report, request the

panel be reconvened. The Council within 90 days reconvenes the panel, the panel is to establish an action plan of sufficient to remedy. Ultimately, noncompliance with the action plan and /or nonpayment of the monetary enforcement assessment may lead to the suspension of trade benefits. The imposing trade sanction is lengthy and cumbersome one. It would take 755 days from the initiating complain to the remedy. The same procedure under the NAFTA dispute settlement takes only 240 days. (Charnovitz, Steve (1996))

### **Early Dispute Resolution Experience under the Environmental Side Agreement:**

Until July 1995 the Secretariat did not accepted the submissions from any party. There was only two dispute settlement mechanism; one was Art. 13, Disputes Involving Non-Enforcement Matters, under this mechanism one controversy was reviewed it was of the deaths of 40,000 migratory waterfowl at the Silva Reservoir in Mexico in late-1994 and early-1995. The case was filed by two Mexican environmental groups and one US environmental group. Art.13 described the incident as ‘one of the worst birds kills ever. (Ibid p.118)

Interestingly the submitters expressly decided not to accuse Mexico of failing to enforce its environmental laws, instead the three environmental groups urged the CEC to bring international attention to the incident and to use its ‘unique position’ to marshal international resources for a solution to the pollution problems at Turbio and other North American watersheds.<sup>39</sup>

The Secretariat in July 1995 created the International Silva Reservoir Scientific Panel, consisting of nine environmental experts from the three NAFTA countries to identify the causes of the mass bird deaths and make recommendations to prevent a reoccurrence. In September 1995 the panel’s report and finding was out showed that ‘overriding cause’ of the bird deaths was botulism due to elevated levels of chromium, lead, and mercury as well as to untreated sewage flows. It recommended that Mexico develop a national program (‘the Turbio River Basin Initiative’), for wildlife health

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<sup>39</sup> The submitters chose art. 13 because there was no proof that poor enforcement contributed to the birds ‘deaths’ and an Article 14 challenges would have created political tension.

investigations in partnership with the United States and Canada and also encouraged “cooperative initiatives” to address the Silva Reservoir incident.<sup>40</sup> In August 1996 the Council recommended that the NAFTA parties form a group of experts on migratory waterfowl to assist Mexico in dealing with such catastrophes in the future and recommended to Canada and US should support Mexico through some fund to complete the Turbio River Basin Initiative and related environmental projects.

Apart from this, Secretariat has received other requests from private persons or entities to conduct investigations under Art. 13, requests concerning pollution in the Detroit River and Great Lakes and logging on federal lands in the United States. Rather than pursuing any of these matters, the Secretariat, in late-1996 began to undertake a self-initiated Article 13 investigation into the continental pathways of air pollutants that cross the Mexico-United States and US-Canada borders.

Second there were six matters under Art. 14, enforcement matters considered by the Secretariat involved the US Endangered Species Act; logging in the US; a cruise ship pier in Mexico; certain wetland areas in Canada; the Oldman River in Alberta, Canada and the US Military installation at Fort Huachuca, Arizona.

In June 1995 four US Environmental group and one Mexican environmental group filed a submission with the Secretariat, alleging that the United States was failing to enforce the Endangered Species Act. But in September 1995 the Secretariat renounce the request by saying that it did not presented the proper controversy. The Secretariat ruled that Art. 14 and 15 address the ‘administrative breakdowns (failures) resulting from acts omissions of an agency or official charged with implementing environmental laws’, but if the new enactment of the law that alters the scope of environmental protection under pre-existing laws does not constitute ‘a failure to enforce’. In December the case was terminated.

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<sup>40</sup>The Turbio Basin Initiative was established by Mexico in February 1995 and is intended to eliminate industrial and municipal wastewater flows into the Silva Reservoir in through the construction of numerous new treatment facilities for municipal and industrial wastewater.

In January 1996, three Mexican environmental groups filed a submission, alleging that Mexico violated its environmental laws by allowing construction to begin on a cruise ship pier on the Island of Cozumel absent legally-mandated environmental impact studies. In February 1996, the Secretariat asked for the response from the Mexican government. By June 1996 the factual record developed, the Mexican officials were so critical of the Council unanimous decision, which instructed factual record. In March 1996, a resident of Canada filed a submission, alleging that the Canadian government and Alberta had failed to enforce their environmental laws prohibiting pollution of the wetlands of Alberta. The secretariat suspended the case in May, as it was subjected to pending judicial proceeding in Canada.

In November 1996 an environmental organization and an individual filed a submission, alleging that the US was failing to effectively enforce the National Environmental Policy Act. According to the submission the US Army had expanded operations in Fort Huachuca, Arizona despite the lack of an environmental impact analysis, and such an expansion threatened water resources in the region. The secretariat asked for a response from the government. By February 2000 the secretariat has formally reviewed more than twenty matters, some are still pending, and only a few reached the stage of submission of a factual record.

Thus the dispute resolution process is unique in NAFTA/NAAEC package; it is designed to encourage self-enforcement by the offending party by motivating each government to avoid embarrassment at the international level through official public examination. But it has been also criticized that the CEC lacks the ability to enforce compliance. NAAEC is thus at the forefront of an evolving international environmental legal order where increasingly, “the body of international practice, as reflected in the abundant manifestation of treaty law, of resolutions of international organizations, of scholarly institutions, and of occasional arbitral decisions, supports the proposition that procedural norms of information, consultation and joint fact-finding and implementation are increasingly accepted as generally applicable rules of international law.”

## *Chapter IV*

### *Structure, process and role of the Commission for Environmental Cooperation (CEC)*

NAFTA created the largest free trade market in the world in 1994; it included some of the increased economic activity and also raised the fear, that the free trade would lower environmental standards or impede the strengthening of them and that firms would move to other countries to benefit from less stringent environmental standards especially those countries commonly associated with the “pollution heaven.” In order to address the concerns, US, Mexico and the Canada negotiated a side agreement i.e., North American Agreement on Environmental Cooperation (NAAEC), NAAEC was established on 1<sup>st</sup> January 1994, to assist cooperation and the public participation to foster conservation, protection and enhancement of the North American environment in the context of increasing economic integration between Canada, Mexico and the U.S. (hereafter the Parties). It was also designed to promote the effective enforcement of each country's environmental laws. The NAAEC created the Commission for Environmental Cooperation (CEC) as an international organization to facilitate the trilateral cooperation by Canada, US and the Mexico. The Agreement complements the environmental provisions of the NAFTA. The CEC is comprised of three principal components or bodies: a Council, a Secretariat and a Joint Public Advisory Committee (JPAC).

The NAAEC, through the CEC, is one of the very few international agreements bringing together three different countries to work cooperatively on a wide range of regional environmental issues. The NAAEC's broad mandate allows the CEC to address almost any environmental issues anywhere in North America. The issues covered by the CEC include the threats to human health from toxic substances, protecting biodiversity, strengthening environmental enforcement and children's health and the environment. It mainly addressed the issues which surrounded trade and environment. However, in 2004 it was elevated to a priority area for CEC's cooperative work program. To put it in other way, the CEC was formed to help demonstrate that North America is a collection of linked ecosystems and to create a sense of regional environmental consciousness.

Moreover, it is worth noting the unprecedented commitment by the three governments to account internationally for the enforcement of their respective environmental laws.

**Environmental Management in North America in Pre-NAFTA:**

In the Pre-NAFTA system there were several global accords of international cooperation on environment, among them were the 1924 Pan American Sanitary Code and the 1940 Convention on Nature Protection and Wildlife Protection. CEC one of the newest international agencies for environmental management since 1994 for the North America for the range of environmental issues which were increasing, within the hemisphere, the North American region (Canada, US and Mexico) clearly led the institutionalization of environmental management across boundaries. By 1996 a rich array of international agreements could be found across a wide spectrum of environmental issue areas, ranging from conservation of species to pollution prevention, while many of these issues were transboundary in nature.

The corner stones of international environmental diplomacy and management in the North American region were and to a large extent remain two bilateral agencies: the International Joint Commission (IJC) between US and Canada, and the International Boundary and Water Commission (IBWC) between US and Mexico, each coping with environmental problems in its jurisdiction on an ad hoc, non-comprehensive basis.

The IJC created under the Boundary water Treaty of 1909 with a mandate to resolve disputes arising from the boundary waters of each country and other transboundary environmental problems has been the primary institutional arena for the resolution of common environmental disputes. (Mounton, Don & John Kirton, 1994, p.60-63). IJC do not have operational capabilities of its own but depend on the domestic agencies of each country to carry out its functions. Its jurisdiction over the year broaden its area in boundary water by including water quality protection for the Great Lakes within an eco-systemic framework, monitoring water quality in various transboundary rivers. It had less degree in assisting the administration in various environmental agreements.

The US-Mexico border, the IBWC established by authority of the 1944 Water Treaty, to oversee and implement water allocation provisions of that treaty and to resolve such disputes as may arise also include sanitation and sewage problems also the border.

IBWC was like reclamation agency, charged with developing major water projects on the boundary rivers works for flood control, water storage and hydro-power. Its limitations for environmental management became a serious issue in the 80s, so the two countries signed a landmark framework agreement on environmental cooperation, the US-Mexico Border Environment Cooperation Agreement (La Paz Agreement), provided for developing agreements on environmental problems. Two countries signed on smelter pollution, urban air sheds, hazardous contingency and hazardous waste trade and sewage control.

In 1992 the border environment made agenda for the binational policy, when NAFTA debate propelled environmental groups to worry over NAFTA's potentially adverse impacts on the border area and expressed frustration with the La Paz regime. The two Governments signed the Integrated Border Environmental Plan (IBEP).

IBEP because of lack of government commitments for funding programs it recommended and provided policy momentum for the development of new transboundary environmental institutions as part of the NAFTA side accord.

The pre-1994 North American system for environmental management was characterized by fragmented bilateralism, segmented functionalism and disjunctive diplomacy, operating within a social-systemic rather than ecosystem management framework. Its main features were: parallel borders, with relatively independent systems of rules and institutions for managing environmental problems along those borders; agreements specifying management protocols and institutional responses in a substantively separate, non-comprehensive and disco-ordinate fashion; irregular patterns of communication and diplomacy, driven substantially by perceived crisis; and management priorities driven almost exclusively by social rather than ecological concerns.



### *The Structure of the CEC:-*

To review the environmental activities of NAFTA's economic institutions and also to assess the progress in its achievement is through the Commission for Environmental Cooperation itself.<sup>2</sup> CEC work with NAFTA's FTC with the cooperative programs and in a non-duplicative fashion. The CEC and the NAFTA and its institution work separately but have both economic and environmental responsibilities and a fundamental commitment to sustainable development.

NAAEC created important roles for, three main sets of actors. As is the case for virtually all international agreements, considerable power is given to a body that represents the signatory countries. The potential and performance of the CEC is viewed which depends on the commitment of the parties to the organization; adequate funding; quality of ministerial participation; legitimacy of Council recommendations in the view of the mandates of the domestic environmental agencies; independence of the CEC Secretariat and the quality of its personnel, technical experts and analytical (independent verification of information supplied by government); relationship of JPAC to Council; and finally its openness, transparency and activeness of the CEC Structure. Some portray the CEC in weak position it will work its best until its member governments support it. (Munton & Duncan 1996). Some says that it marked a major move toward regional governance by creating a new center of political activity and legitimacy on the continent to which national political authorities will adjust. (Munton and Kirton 1994).

Its organizational structure is known for its uniqueness. The Commission is constituted in three tiers, consisting of a Council, a Secretariat and a Joint Public Advisory Committee. Part II of the NAAEC provides for the Structure of the CEC:

The Council: Article 9 (1), of the NAAEC specifies that the Council comprises cabinet level or equivalent representatives of the Parties, or their designees. Under the terms of the agreement, the environment ministers of Mexico and Canada and the EPA

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<sup>2</sup> The work of the CEC itself may well represent the most direct environmental effect of the NAFTA regime thus far.

Administrator assembled in Council are “the Governing body of the Commission.”<sup>3</sup> It functions as a truly intergovernmental body. The Council oversees the Secretariat and the implementation of the agreement and approves the budget and program of the Commission. As the Council oversees all CEC operations; it meets at least once a year (part of its annual meeting is open to the public).<sup>4</sup> The ministerial Council reduces or cancel the ‘soft’ mandate of the CEC outside dispute settlement, in particular the weak mandate of NAFTA impact monitoring and mitigation. The Council raises the profile of its activities and recommendations. It serves as the ‘political anchor of the CEC, its final authority and its direct link to the parties.’

The Council functions as the Commission’s policy-making body and insofar as it need act by a consensus of the whole to impose sanctions on a non-complying party in certain instances. As the decision-making procedure requires unanimity, unless the agreement provides otherwise. (Art. 9(6) of NAAEC). While CEC and its Council act as small players relative to national environmental ministries, hoping that the rule of consensus would raise the importance of Council recommendations and their legitimacy in the eyes of domestic environmental agencies rather than block their adoption.<sup>5</sup>

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<sup>3</sup> Art.10 (1) of NAAEC, It must be noted however that nowhere in the NAAEC does it say that the ‘cabinet-level’ representatives must be the minister of the environment, let alone the ‘EPA administrator’ of a party

<sup>4</sup> The Secretariat, Sahara Richardson 1997 p.52) (The first meeting of the Council was held in July 1994 in Washington DC; the second in October 1995 in Oaxaca, Mexico; the third 31 July-August 1996 in Toronto; and fourth in June 1997 in Pittsburgh, USA; fifth session held in June 12th 1998 in Merida, Mexico; sixth held in 1999 Baff, Canada\* the seventh held in Dallas, Texas on 2000; the eight held in Gaudarajara, Jalisco, Mexico June 29<sup>th</sup> 2002; the 2003 10<sup>th</sup> session held in June Washington DC USA; the 11<sup>th</sup> meeting of the Council held in June Puebla Mexico; the 12<sup>th</sup> meeting held in Quebec City, Canada; 2006 meeting in USA; the 14<sup>th</sup> meeting held in Michoacan, Mexico 2007; and finally the 2008 meeting held in the Ottawa Canada on June 26<sup>th</sup>.

<sup>5</sup> One convention displayed those characteristics of commitment of political actors and efficacy through compromise is the International Convention for the Regulation of Whaling (1946). As NAAEC this convention places the responsibility of enforcement squarely upon the state parties and makes them the guarantors of private conduct.

Some decisions needs two-third majority vote should increase the likelihood of thorough monitoring and more far reaching Council initiatives, this is exception to the general rule.<sup>6</sup> (Munton, Don & John Kirton 1994, , p. 75)

The Council is empowered to promote and, as appropriate develop recommendations on specified environmental matters and they should be related to economic development and the public access to information concerning the environment that is held by public authorities of each Party, including information on hazardous materials and activities in its communities and opportunity to participate in decision-making process related to such public access. (Art. 10 (5) (a) of NAAEC). The Council with the process for developing recommendations that will lead to greater compatibility among the Parties in the areas of environmental technical regulations, standards and conformity assessment procedures, without reducing levels of environmental protection. Through its work it encourages the effective enforcement of and compliance with environmental law and regulations.

In the attempt to meet the above obligation, the Council further stipulates that it is necessary to develop “comparability of techniques and methodologies for data gathering and analysis, data management and electronic data communications on matters covered by this Agreement.” (Art. 10 (2) (a) of the NAAEC).

The CEC establish standing committees, working groups or expert group to get help in execution of its mandate. The Council rely for substantive support and for also preliminary analysis of the issues confronting the CEC on Secretariat. The Secretariat should submit all the report to the Council; through this the Council has an advantage by taking the control over the undertaking and activities of the Secretariat. Under the NAAEC there are actions of the CEC i.e. the Council ‘may do’ and the Council ‘shall do’. This is because the deliberately planned relevance is given to the broad mandate of the CEC. Council issues instructions on the preparation of the annual report, reviews the

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<sup>6</sup> The qualified majority-voting affirms “the single character of the body, and endowing it with genuine supranational characteristics regarding procedures on several important procedural issues. Bilateral, Trilateral Multilateral.”

drafts and approves the final version. So the Council consists of Minister of Environment (Canada), the EPA Administrator (US) and the Environmental Secretary (Mexico) retains the ultimate control of CEC activities.

In the dispute resolution matter the Council has the role of initiating the inquiries and supervisory prerogatives, as well as power to prevent, allow or prompt the release of information. The Council do not have the power to intervene at the first stage of the submission on the matter of the ineffective enforcement of environmental laws, but if the Secretariat finds that the unsatisfactory response of the party responsible then the Council is asked to give permission to prepare the factual report by the Secretariat, on the information provided by the JPAC. If the Council technically controls how the information gathered, organized and distributed, the environmental community will be watching closely for lapses in openness and transparency. In all the Council plays an important role by its 2/3<sup>rd</sup> majority vote.

Lastly, the Council has a number of very general duties, such to 'strengthen cooperation on the development and continuing improvement of environmental laws and regulations'. NAAEC lists eighteen specific issues for which the Council may consider and develop recommendations. Perhaps most important, the Council must foster the "promotion of public awareness regarding the environment." (Art. 10 (2) (f) of NAAEC).

Some of the Council meeting could be sighted that it encourages the effective enforcement of the environmental laws and regulations. As we can see that in 1996 Council meeting in Toronto there were several signs that forging an equal, integrated trade-environment linkage in the interests of sustainable development was a high CEC priority. Canada's Minister of the Environment, Sergio Marchi, publicly emphasized his personal commitment to the continued linkage of trade liberalization to environmental cooperation. EPA Administrator Carol Browner included trade among her priorities for a more focused CEC agenda. And Mexican Environment Secretary, Julia Carabias noted that the Council could not allow trade problems to place pressures on projects at the expense of the environment. Some Council representatives pointed to the need to develop North American solidarity in the broader multilateral forums dealing with trade-

environment issues. Most important, the ministers agreed in their final communiqué on the specific need to contribute to the trade-environment debate in the WTO in the ministerial meeting in 1996. Also pledged to have a meeting with the NAFTA's trade ministers to discuss the shared concerns. The trade-environment linkage focus continued in the June 1997 Council meeting in Pittsburgh, when Julia Carabias, Mexico's Secretary of Environment, Natural Resources and Fisheries and representative to the CEC Council, emphasized the central importance of the trade-environment linkage in the CEC's work. With announcing several important transboundary environmental initiatives, the Council worked on the NAFTA Environmental Effects project (of trade and investment) and urged to select the terms of reference for the 1998 work program. The Council also agreed to include the public consultation in process of evaluation of the important priorities of the CEC.

It's all show that the trade-environment issues have been a main and important aspect on the agenda of those responsible for managing the CEC.

The Secretariat: Clinton Administration describes it as the "Independent Secretariat". Secretariat is the administrative body for the CEC and is responsible for its annual program and budget management. The Secretariat based in Montreal (with a second liaison office in Mexico City). The Secretariat numbered 50 employees in 1997 provides technical, administrative and operational support to the Council as well as to the committees and the groups established by the Council. The level of investment in furthering North American environmental enhancement and sustainable development remains at the same nominal dollar level as 1994, despite expansion in the work of Secretariat. (Sahara Richardson, 1997, p.55).

The Secretariat has two primary functions: to support the work of the Council and to administer the submissions process on enforcement matters (Article 14 and 15 of the NAAEC). in additions, under Article 13, the Secretariat may prepare reports to the Council on any matter within the scope of the annual work program or, unless the Council objects, on any environmental matter related to the cooperative functions of the NAAEC.

Secretariat is headed by an Executive Director serving a three-year term, can be renewable for the additional term. The position circulates among the member countries. The Executive Director in making the staff appointment should consider the list of the candidates supplied by parties and also suggestion by the JPAC. Under the Secretariat's rules of procedure, two National Directors have been added one for each of the other countries to assist the Executive Director. The Secretariat's staff is explicitly forbidden to receive 'instructions from any government or any other authority external to the Council (Art.11, sec. 4).' It is endowed with authority to prepare reports for the Council 'on any matter within the scope of the annual program' (Art.13, sec.5). As the Council will not be able to micro-manage the various programs it administers so the Executive Director and the staff have freedom to steer the wheel of the CEC. Secretariat acts as the Council's bureaucracy or Support Structure. (Pierre Marc Johnson & Andre Beaulieu, 1996, p.136). Located in Montreal, Canada, it is been seen as potentially more effective in centralized location as an institutional personality in the work of Council.

Its function revolves around to produce the annual reports of the CEC which are subject to council approval; request for advice and also work in collaboration with the JPAC; as a centralized and permanent Secretariat support the work of CEC in considering the environmental issues consistently and seriously in the NAFTA area.

For implementing the work programs of the CEC, Secretariat relies heavily on data and information provided by the parties. It provides technical, administrative and operational support to the Council, Committees and groups established by the Council. The key function is of pouring both the substantive clarifications and detailed procedures into the legal container formed by the provisions of the NAAEC. It considers submissions from non-government organizations or a person asserting a Party is failing to effectively enforce its environmental laws and prepares factual records at the direction of the Council. Staff focuses in health, pollutant, biodiversity, law and policy and trade and environment etc.<sup>5</sup>

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<sup>5</sup> Winfield, Mark (2000), The North American Commission for Environmental Cooperation: A Case Study in International Environmental Governance, [www.iigr.ca/conferences/archive/pdfs/winfield/.pdf](http://www.iigr.ca/conferences/archive/pdfs/winfield/.pdf)

In the area of enforcement, the Secretariat has the authority to receive and investigate 'factual submissions' by any individual or group alleging member government noncompliance with domestic environmental laws.

In 2008 in the Advice to the Council no.08-01: its recognized that the Secretariat has showed its objectivity and competence in before and after the preparation of a factual record. It often rejected and accepted the arguments of the government and environmental groups without any bias.

The Joint Public Advisory Committee (JPAC): Its vision is to promote continental cooperation in ecosystem protection and sustainable economic development and to ensure transparency in the action of the Commission. Its main agenda is to ensure that citizens of the three countries play an active role in the efficient execution of the CEC mandate. Its member is named by their respective government. It advises the Council on any matter within scope of the NAAEC or in its deliberations and also advice to the Secretariat in its planning and activities. Also advises on the annual program and budget and other Secretariat reports as they are submitted in draft by the Secretariat to the JPAC.<sup>6</sup> It can be asked by Council for advice on specific matters, and also provides technical, scientific, or other information to the Secretariat. Since the members are dispersed throughout North America, so JPAC multifaceted in providing the information. Any information provided by the JPAC will be forwarded to the Council but instruction given by the Council will not be shared with the JPAC. As in October 1995, the Council asked JPAC for advice on the following issues: follow-up to the Article 13 report on the Silva Reservoir; the 1996 work program; and the criteria for the selection of projects under the North American Fund for Environmental Cooperation.

JPAC is one of the three pillars on which the CEC rest. It is a body of fifteen members; five from each member nation i.e. the equal number of the members, this board facilitates public input on CEC activities. Before a month of the Council meeting, JPAC Conducts regional public consultations attended by the representatives, they include the

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<sup>6</sup> NAAEC. Art 16 (6), See Appendix III, Section C, in Johnson, Pierre Marc & Andre Beaulieu (1996), The Environment and NAFTA: Understanding and Implementing the New Continental Law, Washington DC: Isand Press. P.343.

environmentalists, representatives from the world of business, academics, aboriginal organization, labor and regional or municipal authorities. They meet three to four times a year with the public. Between 1995-2004, the JPAC met more than 40 times and provided advice to the Council on a wide range of issues. (Hufbauer, Gary Clyde & Jeffrey J. Schott (2005), p.159). JPAC advises the Council on any matter within the scope of the NAAEC and provides relevant information to the Secretariat. The JPAC advisory process may be supplemented by national and governmental advisory committees at the level of member governments. A central role of the JPAC is to ensure inclusiveness, active public participation and transparency in the activities of the CEC. Because of this it is believed that the NAAEC has the 'potential to become a global milestone.' (Beaulieu, Andre, (1996), p.67.)

JPAC creates its own Chair. JPAC's discretion is to create National and Governmental Advisory Committees to advise it on the implementation and further elaboration of the agreement. But nothing is been written in the NAAEC about the relationship of these national committees and JPAC. The rules and procedure of the JPAC is determined by the Council. JPAC will meet during the Council annual session which leads to political mobilization. The political function is that it makes suggestion to the Executive Director of the Secretariat on its staff appointment.

The existence of JPAC is very important; on one hand, as most of the International environmental treaties rarely acknowledge the importance and usefulness of independent advice which are from outside government circles, but JPAC do differently as it gives non-governmental organizations, the private sector and concerned citizens the ability to participate in the decision-making process of the CEC. It's because NAAEC provided or created a formal permanent advisory body inside the institution along with Secretariat to make some comments and recommendation on any matter with in the scope of the NAAEC. On the other hand, it had broadened the relationship between CEC and public or NGOs through JPAC. The JPAC operate against the backdrop of an open CEC structure, increased transparency, and a variety of proactive instruments that will facilitate NGO participation. It offers the public a channel for participation by holding open meetings where the public is able to discuss and debate the direction and priorities



of the CEC. Its information needs are multifaceted, it is multi-disciplinary in providing the information to Secretariat and advice to the Council, and gather information for to develop a factual record and finally it is requested by the CEC in finding information published on any aspect of the environment and trade in North America.

The JPAC could become a critical component of the CEC from the standpoint of public participation in the NAAEC process if certain conditions are met the quality of the contribution of the individuals appointed, the degree of commitment of the parties to the JPAC, and the relationship that develops, over time among the CEC, the Secretariat and the JPAC. There are few precedents in international environmental law for such formalized nongovernmental participation. One particularly open model the JPAC may eventually mimic is the European Environmental Bureau, a forum established in Brussels in which NGO activity is coordinated and which publishes reports and organizes workshops for the purpose of review and criticism of European Union environmental activities.

Brief summary of the consultation of JPAC conducted and report of advice is prepared for the Council in 1996, prior the Council meeting that is: public consultation was held in Montreal, Toronto and San Diego to discuss the environmental ministers. These included: reducing the human health risks of environmental contaminants, conserving North American biodiversity, strengthening environment and economy linkages in North America and defining the public participation activities of the CEC. In 1997 public consultations were held on three specific issues: the long-range transport of air pollutants in North America; voluntary compliance with environmental laws in North America; and environmental networking among North American communities.

Some of the advice of the JPAC to Council is that: in 1995 advised to seven times on issues as the expansion of NAFTA; in 1996 program and budget; and recently JPAC recommended that Mexico to participate in the North American Pollutant Release and Transfer Register to help enforce regulatory measures. Other advice included requiring a national inventory of all polychlorinated biphenyl (PCB) sites in Mexico. In 1999 it supported the Environmental Management System and Compliance Report of the CEC,

which contribute for sustaining of the cooperation among the Parties, NGOs and the Industrial sector. Also advice the Council to have an agreement on Transboundary Environmental Impact Assessment (TEIA) for coordinated regional environmental management. In 2000 it recommended the Council to give the permanent standing to the NAFEC in the CEC work program and also make parties to secure additional funding. Advice on the Draft CEC Planning, Monitoring and Evaluation (PME) Plan.

JPAC work is to provide firm leadership and constructive contributions to build a trilateral model of collaboration, consensus building and consensus based results. JPAC is in effect a model for the future in a process which is without precedent and which presents a great opportunity for cooperative progress. (Vision Statement of JPAC, 26<sup>th</sup> July 1994, Washington DC.)

Currently the members are: from Canada - Jean Guy Depot (Environmentalism), Irene Henriques (Associate Professor of Schulich School of Business), Gordon Lambert (Vice-President of Suncor Energy Company), Merrell Ann Phare (Executive Director and Legal Counsel of the Centre for Indigenous Environmental Resources);

American Members are - Patricia Clarey (Chief Operating Officer, Health Net of California, a traded managed care company), Dinkerrai Desai (Environmental Coordinator in Government and Industry), Jane Gardner (Chair, Senior Counsel, Strategic Advisor to Corporate Environmental Programs in General Electric Company), Ralph B. Marquez (Commissioner, in Texas Natural Commission on Environmental Quality), Patricia McDonald (Consultant, in Jackson Hole); and

Finally the Mexican Members are – Adriana Nelly Correa Sandoval (Professor Investigado in Center for Environmental Quality), Gaston Luken Aguilar (Chairman of the Advisory Board of Mexico's National Water Commission), Eduardo Rincon Mejia (President of the Board of Directors of the National Association of Solar Energy, a Mexican nonprofit association), Carlos Sandoval Olvera (President of Mexican National Council of Industrial Ecologists, it is nongovernmental business organization), Hector

Javier Sepulveda Valle (Director of the La Corona a Soap Factor and President of the Ecology Committee of the National Chamber of the Oils, Soaps and Detergents Industry).

In the 2006 report of the future it showed that during the first decade has seen JPAC grow into a transparent, open and substantive forum for public participation, discussion, and debate in North America. It has sponsored and facilitated a range of public meeting on issues identified by the public as priorities and have fostered on sustained and informed dialogue with Council and their alternate Representatives. At the same time, JPAC has not shied away from controversy or from providing firm advice to Council where opinions or interests diverge. JPAC's persistency for example in promoting transparency and accountability in the citizen's submission process (Art. 14/15), reflects its commitment to protecting and promoting the implementation of what JPAC considers to be one of the CEC's most important features. In fact, in November 2005, JPAC held a public meeting in Montreal in which participants were party to the experiences of individuals who had gone through the submission process (including the publication of a factual record) and learn about other mechanisms that non-government actors can employ to gain access to information about follow-up to factual records and other environmental information. (A Report Prepared by Dannenmaier, Eric (2005), to the JPAC).

As the part of experience learned the importance of open communications and seeking a stronger, less formal dialogue with the Council and the Alternate Representatives as a supplemental means to improve mutual understanding and promote cooperation. JPAC's greatest contributions, both as facilitator of a public process and as an influencer of policy, has been where we remain focused and concentrate on a defined set of issues. Throughout, we will continue a constructive dialogue with Council and build trust by maintaining a high level of transparency in our work.

In June 2005, JPAC announced that it would develop its own strategic plan, by assessing JPAC strengths and weaknesses and the opportunities, objectives and threats in the work. The vision of JPAC it's noted in the TRAC report as JPAC plays a valuable role as advisor to Council and as "NAAEC's conscience."

## **JPAC's vision for five year 2006-2010:-**

### **Transparency:**

Transparency is the fundamentally about empowerment and trust. JPAC also recognizes that transparency is more a process than a product. It is a dialogue about exchanges of appropriate information and fairly to assess that information. JPAC's unique role within the CEC allows us to create a hospitable environment for this dialogue to take place.

JPAC will sponsor and facilitate public meeting on issues identified by the public as priorities including, but not limited to, the citizen submission process and the public release of environmental information.<sup>7</sup> With respect to transparency the five year goal of the JPAC is to work with the government toward ensuring that the public have the access to the factual. Unbiased and meaningful information it requires to make informed decisions about the effects of increased trade on the environment of North America and other environmental issues of concern and that member of Council and other policy makers have access to information and expertise beyond their own agencies.

### **Outreach:-**

It is defined as going outside of its normal scope of operation in provide information, resources and services to those not in its immediate service area. That is the JPAC needs to provide outreach for under-represented populations including indigenous peoples, businesses especially small and medium sized enterprises (SMEs), NGOs as well as low income and other marginalized communities.

Need the broader public diplomacy role as a means to reach out more broadly to the public in North America to achieve the objectives of the NAAEC and build on the new strategic direction set out in the 2004 Puebla Declaration.

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<sup>7</sup>JPAC's five year goal with respect to transparency is to, along with governments, work towards ensuring that the public has access to the factual, unbiased and meaningful information it requires to make informed decisions about the environmental issues of concern and that members of Council and other policy makers have access to information and expertise beyond their own agencies.

To be effective outreach JPAC will have to :

1. define outreach specifically as it relates to JPAC ,
2. identify the strategic target groups or population JPAC needs to reach out to in order to achieve goals and vision,
3. establish partnerships with noted community resources.
4. maintain a presence within the community...providing on-going follow-up
5. adapt outreach methods and messages to respect culture and language and to reach target audiences through means available to them.<sup>8</sup>

### **Engagement:**

Planning to engage more in open communication to understand the issues and concerns and provide information necessary for the public to determine how it wants to engage. It is not simply informing the public of an active process but to get feedback from interested parties or from individual. JPAC make its meetings, conduct workshops and presentations as interactive as possible and will seek to engage local groups and organizations are the means to inform and engage the public. JPAC provide the venue in which the public would want to share their thoughts and insights.

Because of the transparency, outreach and engagement JPAC address difficult and even controversial issues in a meaningful and responsible fashion. Focus on areas which are within the NAAEC scope, identify the priority. JPAC and Council concentrating on issues of environmental concern including but, ecosystem protection, wildlife protection, invasive species, air emissions, air quality, environmental concerns, toxic substances, management of chemicals, energy conservation, renewable energy use and water management.

JPAC is a unique trilateral public advisory mechanism without any direct precedent or peers among international environmental institutions. The fact that JPAC

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<sup>8</sup> [www.cec.org/files /PDF/JPAC/JPAC-StrategicPlan\\_en.pdf](http://www.cec.org/files/PDF/JPAC/JPAC-StrategicPlan_en.pdf). JPAC's five year goal with respect to outreach is to increase JPAC's visibility in North America with the aim of expanding and improving public participation in JPAC's and the CEC's activities.

members act independently of Council and do not seek or receive instruction from any government or the Secretariat, give this institution the legitimacy it needs to act both as an intermediary between the Council and the concerned public, and as a sounding board for ideas. Moreover the dual nature of JPAC is as critic and collaborator, working to strengthen the ability of JPAC, Council and Alternative Representatives to find creative solutions.

The Strategic Plan of the Commission for Environmental Cooperation 2006-2010 was adopted in Quebec City in June 2005 with this vision statement, see how JPAC going to contribute to the aim or core area of the CEC program:-

*Transparency:* JPAC will endeavor to receive and communicate information from its many stakeholders via its public communication channels in a timely fashion to the CEC via a variety of communication channels. *Outreach:* JPAC upheld that the foundation of a good decision-making is good information. This information base need be broad and inclusive. As JPAC broadens its outreach activities, the information collected through western scientific methods should be complemented with information derived from many knowledge systems, making the information more representative of a host of perspectives and assuring that a wider public has a role in establishing the information and knowledge framework. *Engagement:* JPAC will provide the venue within which stakeholders could discuss what information is required to make sound decisions.<sup>9</sup>

#### **JPAC contribution to Capacity Building:**

*Transparency:* it will conduct a mid-term review of how the CEC work program has improved capacity in its targeted areas.

*Outreach:* JPAC will be sponsor a forum in which stakeholders can discuss the role of private and public sector involvement in capacity building with the objective of providing set of recommendations for improving capacity building of government,

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<sup>9</sup> JPAC's five year goal with respect to engagement is to increase level of public involvement and commitment, through our outreach work, so as to increase JPAC's effectiveness in achieving its vision.

industry, NGOs and the public. Such forums include but are not limited to, the development of strategies for local landowners to assist them in protecting and managing their resources, the development of approaches that can improve the capacity of small businesses, and the development of strategies for how local authorities can better handle and solve regional environmental problems.

*Engagement:* by engaging itself JPAC will evaluate the current state of public capacities for sound environmental decision making. JPAC will engage stakeholders in a discussion expanding the capacity building exercise, which is primarily focused on government capacity building, to a discussion on capacity building from the prospective of civil society. JPAC will, with the help of indigenous group leaders, promote discussions on capacity building from the prospective of indigenous peoples.

#### **JPAC contribution to Trade and Environment**

JPAC will provide state of the art information regarding green manufacturing practices and other best practices undertaken by various communities, NGOs and businesses around the world.

*Outreach:* JPAC will sponsor Trade and Environment Workshops:

- a) Indigenous communities alternative ways of protecting the environment while improving the economy;
- b) Small business sector's green efforts what work
- c) Support development of local production for domestic markets which builds from the work already undertaken on shade coffee.

*Engagement:* JPAC will acknowledge the achievement of organizations by providing a venue in which these organizations present their trade and the environment success stories.

### *Evaluating Progress:*

Evaluating the effectiveness of JPAC's activities within its vision to increase accountability, transparency and ensure that JPAC is delivering the intended results. Following the methods used by member of the Canadian Evaluation Society and outlined in the federal government Treasury Board Secretariat's "Guide for the Development of Results-Based Management and Accountability Framework", would adapt an evaluation framework that will undertake a review of activities mid way through the implementation of the Strategic Plan. Given JPAC's unique role as a cooperative mechanism to advise the Council in its deliberations and to provide relevant information to the Secretariat in its planning and activities such an evaluation will only strengthen the role as a transparent, open and substantive forum for public participation, discussion and debate in North America.<sup>10</sup>

CEC represents an extraordinary switch from the pre-1994 approach to regional environmental management. It aims to strengthen the North American system for environmental cooperation by moving toward more integrated regional management with some centralized oversight coordination and by developing a regime for regional environmental protection that is comprehensive or near-comprehensive in its functions and is equipped with enhanced compliance mechanisms to shore up national and sub-national commitments.

Commission Mandate is to promote regional environmental standards; can undertake studies on any environmental issue (Art.13) affecting North America; also provides Secretariat for Citizen Complaint Process under Art.14 and Art.15 of NAAEC; allows for citizens to file complaints and also non-enforcement of environmental law. (Winfield Mark, 2000, p.1)

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<sup>10</sup> Our Future within the CEC: Strategic Plan of the Joint Public Advisory Committee (JPAC) 2006-2010. Quebec City, February 2006.



**The primary objectives of the Commission are to:**

- offer a trilateral forum for open dialogue on pressing environmental issues,
- catalyze North American cooperation where the unilateral efforts of one country would be ineffective without the support of its partners,
- accelerate the implementation of regional and international commitments, such as those made at Rio and other international forums,
- explore and promote innovative economic instruments,
- encourage the exchange and wide dissemination of environmental information,
- promote the effective enforcement of environmental law.<sup>11</sup>

**Priorities**

***Environment, Economy and Trade:***

The goal of the environment, economy and trade program is to encourage mutual compatibility of trade, environmental and economic policies and instruments within North America and between North America and other trade alliances or regions.

- Emerging Trends in North America
- NAFTA Environmental Effects
- Sustainable Use of Primary Natural Resources: Agriculture
- Facilitating Conservation of Biodiversity as it relates to Trade in Wildlife Species
- Sustainable Tourism in Natural Areas

**Conservation of Biodiversity:**

The goal of this program is to promote and conserve ecosystem health and integrity, and foster and encourage the conservation, protection and sustainable use of biodiversity and its components,

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<sup>11</sup> Lichtinger, Victor (1996), Integrating Environment and Trade for a Stronger Future, Speech presented to the Canadian-American Business Council, Royal Bank of Canada Distinguished Speaker Series, Washington DC.

- Strategic Directions for the Conservation of Biodiversity
- Cooperation on the Protection of Marine and Coastal Ecosystems
- Mapping Marine and Estuarine Ecosystems of North America
- North American Marine Protected Areas Network
- North American Biodiversity Conservation Mechanisms
- North American Biodiversity Information Network

***Pollutants and Health:***

The goal of the program on Pollutants and Health is to facilitate cooperative initiatives to reduce pollution risks and minimize pollution impacts.

- Facilitating Trilateral Coordination in Air Quality Management
- Developing Technical and Strategic Tools for Improved Air Quality in North America
- Environmental Cooperation in the NAFTA Transportation Corridors
- Regional Cooperation Toward Improved Understanding and Eventual Implementation of the Clean Development Mechanism and Joint Implementation
- Sound Management of Chemicals
- North American Pollutant Release and Transfer Register
- Shared Approaches to Byproduct Synergy
- Capacity Building for Pollution Prevention

***Law and Policy:***

The goal of the Law and Policy program is to facilitate the development of law, policy and economic instruments; to air the development of alternative approaches to achieving compliance, including effective enforcement; and to promote greater public participation and transparency in decision-making.

- North American Regional Enforcement Forum
- Enforcement and Compliance Capacity Building

- Indicators of Effective Environmental Enforcement

***Public Participation and Capacity Building:***

Public participation and Capacity building is the central to the realization of goals and objective of sustainable development. Sustainable development is the main criteria, which is integrated in the project description, adopting a holistic, crosscutting approach to program development and planning of the CEC.

The NAAEC expresses the commitment and belief that environmental protection and conservation efforts are enhanced and multiplied through strong mechanisms for public participation. CEC always try to maximize the opportunities for public participation and capacity building in its action which are according to its mission and mandate. CEC builds capacity building mechanisms such as training, scientific and technical exchange and education. As well, the North American Fund for Environmental Cooperation (NAFEC) constitutes an important mechanism for increasing the involvement of community groups in the work of the CEC and to enhance their capacity to address environmental concerns.

CEC has set ambitious goals as it aspires to:

- solidify its role as an information hub and policy analysis center for key North American environmental issues;
- demonstrate North American leadership in accelerating the implementation of regional and global initiatives;
- establish a North American network of professionals, academics, NGOs and businesses on selected issues of regional environmental importance;
- prove its value as a forum for avoiding environmentally- related trade disputes;
- contribute significantly to the reduction and elimination of pollutants in North America; and
- enhance the protection of North American ecosystems and biodiversity

### **CEC's Mission and Functions:-**

The Significance of the CEC lies in the moving the North American Environmental Cooperation in direction that strengthen, broaden, provide greater coordination and infuse greater regulatory content into what we have loosely referred to as the North American environmental management system. The Commission for Environmental Cooperation has a unique mandate to look at North America as whole and support all three countries in fulfilling their collective responsibility to protect our shared environment. In the year 2007 the Council Session held in Michoacán, Mexico, it urged everyone i.e., all three countries to step back to look at the picture and looking at it the Council kept the key issues, as the sharp focus: they are the conservation and chemicals management.<sup>12</sup>

Michoacán is the winter habitat for millions of Monarch the butterflies. The Monarch is the symbol of the CEC and for good reason. More than any other species, the Monarch more precisely, its amazing multigenerational, international migration is emblematic of the fact that the North America comprises a vast interlinked chain of shared ecosystems. The Monarch's very survival describes that North America as three countries but one environment. The Monarch represents a shared richness and symbolizes a shared responsibility. As each of the North American countries contains some combination of habitats in which Monarchs breed migrate over winter. No matter where volcanic mountains of central Mexico, the Gulf States or the Great Lakes region, if there is broken link in the chain of habitats threatens the entire migratory phenomenon.

From the outset the CEC, has identified that habitats across North America differs so also conservation strategies in each of three countries differs and also having similar challenges, which both representing an opportunity for environmental cooperation for the NAFTA countries. CEC Executive Director Felipe Adrián Vázquez-Gálvez, while addressing the summer 2007 Council session in Mexico, said that no other species, other

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<sup>12</sup> CEC Executive Director, Felipe Adrián Vázquez-Gálvez (2007), Keeping the Big Picture in Focus, Trio newsletter of NAAEC, Mexico.

then the Monarch in North America can better illustrates the challenges of nature conservation and sustainable development, among and within countries.<sup>13</sup>

CEC's Charter:- its scope and reach;

- it is a multilateral rather than a bilateral agreement
- it may well be described as a comprehensive agreement for the environment, considering that at the level of its objectives, no environmental issues are explicitly excluded from its scope.
- It is linked to the development of the trade regime, particularly in monitoring its environmental effects,
- It aims to amplify the character of international cooperation for environmental protection in the region.
- It aims to support and extend the scope of regulatory activity in the region,
- It aims to legitimate and greater public participation in environmental protection
- It is intended to promote sustainable development and environmental protection, which, while short of adopting an explicitly eco-systemic approach, nevertheless introduces an ecological perspective into the calculus of social concerns.

CEC's uniqueness extends to its organizational structure. The Commission is constituted in three tiers, consisting of a Council, a Secretariat and a Joint Public Advisory Committee.

In the Puebla Declaration of June 2004<sup>14</sup> the three governments agreed to a ten-year vision for the CEC with four attributes:

1. the CEC as a catalyst, encouraging and facilitates action by the Parties and by stakeholders through its work. As a small organization with a broad mandate, one of the CEC's greatest strengths lies in kick-starting programs and projects that can

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<sup>13</sup> Ibid.

<sup>14</sup> The Council held its Eleventh Regular Session on 21-23 June 2004, in Puebla, Mexico. The government of Canada, Mexico and the United States worked to define their vision of the CEC for the next decade.

be taken up, sustained and expanded by various levels of government and stakeholders;

2. the CEC as a forum to facilitate regional action, coordination and cooperation across national borders. Canada, Mexico and the US face many similar environmental issues and, in some cases, the same international commitments. The CEC plays a critical role in bringing stakeholders from all three countries together so as to help coordinate and strengthen their collective actions;
3. the CEC as a provider of scientifically-rigorous information that has greater comparability, compatibility and accessibility at a North American scale. It means that the CEC produces quality information and make them information analysis and also effective decision-making, both nationally and regionally.
4. the CEC produce concrete results. The CEC strive to make measurable progress in the areas in which it works.

To put vision into action Canada, Mexico and the US have determined three broad priorities for the years ahead: These are the three year Operational Plan 2006-2008 about of having program priorities, which in turn make up the Cooperative Work Program and account for half of the annual CEC budget:

1. **Information in Decision-making:** The requirement of the Sound Information at the stages of the decision-making process are critical to the analysis of the policy options and to monitor the effectiveness of policy choices; and the challenge is to increasing the comparability and compatibility of national or sub-regional information. As CEC build to link the national databases and information networks in the areas of pollutant releases which continue to provide and enhance continental perspectives on environmental issues. In short the intent of this program is to support better decision-making by:-

- Increasing the comparability, reliability and compatibility of national and sub-regional information,
- Developing and linking multinational databases and information networks,
- Developing common standards and methodologies to integrate various information-related activities and reporting mechanisms,

- Ensuring high quality science and information products,
- Focusing on trans-border issues identified by the CEC as priority concerns.

The projects within this program area include:-

- a) Monitoring and assessing pollutants (persistent toxic substances) across North America, with a special focus on Mexico;
- b) Tracking pollutant releases and transfers in North America (includes publishing the Taking Stock report);
- c) Enhancing North American air quality management through monitoring and emissions inventories;
- d) Mapping North American environmental issues- publishing the North American Environmental Atlas;
- e) Reporting on the state of the North American environment, including critical environmental indicators;
- f) Managing CEC environmental information-establishing a comprehensive quality-assured information management system through policies and practices.

2. Capacity-building: The CEC made valuable contributions to the gradual strengthening of North American capacities for sound environmental decision-making. Primarily focus is on strengthening of the capacity of the institutions with a special emphasis on Mexico. Here intent of the program is to develop stronger institutions and to share environmental knowledge with a wider range of stakeholders in society by:-

- a) Improving compliance with existing environmental laws;
- b) Emphasizing institutions rather than individuals;
- c) Addressing both environmental conservation and protection issues;
- d) Working with the private sector and communities, as well as with government agencies;

- e) Identifying practical, short-term targets but in the context of a long-term perspective.

The projects within this program area include:-

- a) strengthening wildlife enforcement capacity (including CITES);
- b) improving private and public sector environmental performance (focus in Mexico);
- c) building local capacity for integrated ecosystem management and to conserve critical species and spaces (including both marine and terrestrial);
- d) sound management of chemicals (SMOC) – includes pollution prevention, source reduction and pollution control. North American Regional Action Plans (NARAPs) are being implemented for PCBs, mercury, chlordane and DDT. The CEChas authorized the development of NARAPs for dioxins, furans, hexachlorobenzene and lindane and other HCH isomers.

3. Trade and the Environment: CEC built the synergies among environmental goals and trade objectives. The CEC will also continue to examine environmental concerns associated with some aspects of increased trade, so as to enhance institutional coordination between trade and environmental policies within and among countries. (William V. Kennedy, 2004 -2005).

The intent of this program is to promote a better understanding of trade and environment relationships by:-

- enhancing trade in green products and services;
- increasing the capacity of the three countries to identify and address trade-related environmental concerns;
- broadening understanding of trade and environment linkages;
- improving regional and national coordination.



The projects within this program are including:-

- a) promoting the North American renewable energy market;
- b) encouraging green purchasing
- c) Harnessing market forces (market-based mechanisms) for sustainability;
- d) trade and enforcement of environmental laws expedite and facilitate the movement of legal material across borders while preventing illegal shipments of hazardous other illegal shipments of hazardous waste and materials, ozone-depleting substances, protected species and wildlife and other illegal materials;
- e) guidelines for risk assessment of invasive alien species and their pathways;
- f) ongoing environmental assessment of NAFTA. (Rison, Steve (2006)).

The Commission with the addition to the Puebla Declaration (in June 2005) adopted a five Strategic Plan (2005-2010) and approved a rolling three-year Operational Plan for implementing key initiatives from the Strategic Plan. It is the three-year Operational Plan that is the subject of review for this public meeting of JPAC in Montreal.

The CEC also commissions or sponsors research reports and studies on various issues. In 2003 the CEC published Toxic Chemicals and Children's Health in North America, an examination of the releases of toxic chemicals considered as hazardous to children's health. For several years the CEC has been actively promoting renewable energy through workshops and in June 2003 published the report Fostering Renewable Electricity Markets in North America. Also in June the CEC appointed a 20-member multi-disciplinary advisory group to study the challenges and opportunities for green building in North America. The chair of this group is Jonathan Westeinde of Windmill Development Group, who is also working directly with the RCEN and the Sierra Club on our Earth Embassy initiative. Marlo Reynolds of the Pembina Institute and an active member of the RCEN, is also serving on this advisory group to the CEC.

Two major CEC initiatives were useful to RCEN members are the development of the North America Environmental Atlas, and regular reporting on the state of the North

American environment. Work is progressing quickly on both initiatives. The CEC recently published a print version of the Atlas with a watersheds overlay, including 17 major river basins shown in tonal color variations. The North American west coast is the subject of intensive study for environmental reporting, with a large number of critical marine habitats and species already identified, such as the Leatherback Turtle, the Humpback Whale, and the Pink-Footed Shearwater. Some of this information is available in digital format now, but mostly in Spanish, French and English versions will be available in 2007. (Can access to all of the CEC information through their web site at [www.cec.org](http://www.cec.org)).

**Reporting on the State of the North American Environment:**

The North American Agreement on Environmental Cooperation obliges the Secretariat of the CEC to “periodically address the State of the Environment in the territories of the Parties.” So Secretariat develops a report called ‘*The North American Mosaic: An Overview of Key Environmental Issues*’ to meet the obligation. This report describes the environmental conditions and trends across North America. It includes from the tiny invasive zebra mussels to global greenhouse gases; from the last remaining vaquita porpoises to vast expanses of boreal forests and marine ecosystems; from invisible molecules of toxic chemicals to the all-too-visible smog and haze.\*<sup>15</sup>

This report promote to consider the environmental challenges of the North America; priorities of the Cooperative action among the countries to address the challenge; measure the progress of the CEC and finally create the effective feedback mechanisms to enhance the relevance the trinational cooperation.

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<sup>15</sup> website [www.cec.org/soe](http://www.cec.org/soe)

The key 14 issues the Commission deals with are below:

**1. Air and Atmosphere;**

**a. Climate Change**

Climate Change refers to a change in the state of the climate properties such as the temperature, precipitation or wind, which is caused by the natural internal processes, external forcing or human activities. The North America is the largest source of the GHG emission is because of the energy related activities, which includes the electric power generation, transportation and industrial fuel use etc.

**b. Ground-level Ozone**

Ground-level ozone is produced when nitrogen oxides (NO) and volatile organic compounds (VOCs) react through photochemical processes in sunlight. Power plants, motor vehicle exhaust, industrial facilities, gasoline vapors and chemical solvents are the major sources of these emissions. This emission damages the human health, vegetation and materials.

**c. Particulate Matter**

Particulate matter (PM) made up of solid particles and liquid droplets in the air can be both large enough to appear as dirt as and much smaller than the diameter of a human hair. It causes some serious human health problems, including cardiac and respiratory diseases, and also affects vegetation and building materials and contributes to regional haze and poor visibility. Its chemical carried through the air across the state, national and continental boundaries. The source that direct release to the air from heavy equipment, fires, burning waste and dust from unpaved roads, stone crushing and construction sites. It is also formed from the chemicals emitted by vehicles, power plants and industrial facilities.

d. **Stratospheric Ozone**

The Stratospheric Ozone, protective layer of the earth's surface become thinner allowing penetration of harmful levels of ultraviolet radiation. Countries have sought to control production, consumption and trade of ozone-depleting substances (ODS) through an international agreement.

2. **Biodiversity and Ecosystems;**

a. **Land use**

That means human dominated ecosystems now cover more of earth's land surface than do natural or wild ecosystem. They reduced and disturbed the forested areas, native grasslands and wetlands to allow farming, ranching, resource extraction and human settlements.

b. **Oceans and Coasts**

Oceans and coastal regions are critical to the social and economic well-being of North America. The continent's coastal and offshore marine ecosystems are home to a remarkable diversity of species, including marine mammals, fish, invertebrates and plants. Also Coastal regions also lay claim to some of the continent's highest population densities and rates of population growth. North American oceans and coastal regions provide a wide range of goods and services, such as fisheries, trade routes, recreation and tourism and oil and gas production. The human activities affected the ecosystem and their biodiversity.

c. **Invasive Species**

An Invasive Species is a plant, animal or microscopic pathogen that, once transported out of its native range, has established itself, spread and caused harm to the environment, economy or human health in its new habitat. Since 1990s their is significant increase in the introduction of non-native species into and within North America has been an unintended consequence, that is the movements and transaction brought the social and

economic benefits to many people. It also brought the new challenges i.e., the growing rate and scale of global trade, travel and transport. The invasive species do not respect the political boundaries; species that invade one country have the potential to spread within a region. For example, zebra mussels and quagga mussels, have the negative impact on aquatic environment and local economies. Once they are introduced they will be more challenging for native species and more hospitable to invasive species.

d. Species of Common Conservation Concern

North America's species of common conservation concern are a group of migratory, transboundary and endemic species that Canada, Mexico and the United States are among the continent's great wealth of wild flora and fauna as requiring cooperative attention for their effective conservation.

**3. Pollutants;**

a. Acid Deposition

It degrades the quality of forest, coastal ecosystems, lakes and soils; harms wildlife; and corrodes building material. The sulfur dioxide and nitrogen oxides are emission that contributes to acid deposition. These are mainly emitted by the human activities such as metal smelting and fossil fuel combustion in electricity generation and transportation.

b. Industrial Pollution and Waste

These encompass the full range of materials generated by industrial activities that are unwanted by the producer. Sometime for the improvement of production efficiency they reduce the disposal costs.

c. Persistent Bioaccumulative Toxic Substances

PBTs cause long-term harm to human health and the environment. This gets accumulated in fatty tissues and is slowly metabolized. Its adverse effects are nervous system disorders, reproductive and development problems, cancer and genetic impact.

#### **4. Water**

##### **a. Water Quality**

It is the physical, chemical and biological characteristics of surface and groundwater. The land clearing, industrial sources, sewage and air pollution pose risks for the water quality.

##### **b. Water Quality and Use**

Water quantity and use are directly related to a variety of human and ecological needs: agricultural, industrial, domestic and environmental. Human development and the environment depend on adequate supplies of clean water.

##### **c. Shared Water Resources**

Shared water resources are the rivers and estuarine regions that form borders or flow across borders, the lakes that cross political boundaries, marine areas with multiple jurisdictions, and the groundwater aquifers that lie beneath political boundaries.

In the latest state of the environment report, i.e., of 2008, June 18<sup>th</sup>, released in Montreal, the CEC examines environmental issues facing the NAFTA partners, of the key issues the CEC is dealing with, which are mentioned above.

#### **Role of the CEC:**

The CEC can play a number of roles that can vary depending on the issues being addressed. They include:

##### ***Convener***

The CEC as a regional forum, explore trends, bring together key players to develop solutions and also exchanging views on important issues of environmental protection, conservation and sustainability. As the CEC involves the three North American governments as well as the public, through its Council, advisory committees,

and Joint Public Advisory Committee, this institution is ideally positioned itself to play the role of the “honest broker” to convene stakeholders from the public and private sector, and build bridges of understanding which can facilitate to have environmentally preferred results.

Acting as the Convener, the CEC can also facilitate the coordination of initiatives on a regional scale to enhance the efficient use of scarce human and financial resources. Network building among the scientific, academic and other nongovernmental communities will help to build capacity in North America and remains an important strategy for public participation in the work of the CEC.

### *Catalyst*

The CEC serves as a catalyst for improving domestic law and policy as well as for enhancing environmental enforcement and compliance in North America. The Parties strengthen their cooperation in the development, improvement and dissemination of information about environmental laws, policies, standards and technical requirements through the proper understanding of experiences and required management techniques in the selected sectors. CEC also ensure that the online information of the North American Environmental laws and policies are up-to-date.

### *Research and Policy Analyst*

With its trilateral staff of professionals, the expertise of governments and the growing networking of scientific and academic communities involved in the work of the institution, the CEC brings high quality research and policy analysis to bear on important environmental matters of regional concern. As a regional center for research on policy and the scientific aspects of regional environmental issues, the CEC continues to provide objective, science-based information and guidance to policymakers and the public at large.

## ***Information Hub***

With in the short period, the CEC has established itself an important repository of regional data and information on the North American environment. CEC reports, factual records, and databases empower citizens and governments by providing important regional information on shared environment and the policies which are employ to protect it.

## **Projects**

According to the objectives set in the 3 year plan program CEC planned to undertake the specific projects. Projects are implements through a variety of tools and instruments depending on the goals and objectives sought by the CEC.

New projects begin with a 'scoping' phase, designed to evaluate the most promising avenues for future work in an area of interest and to ensure that any activities will add value and not duplicate the efforts of other. Following scoping, project implementation may involve a variety of actions or strategies. Often pilot phases are used to test or deploy a model or strategy in a particular locale or region. The results of such pilots often provide models for others to replicate, and permit designers to refine and improve strategies before expanding greater resources and energy on larger- scale efforts. Projects may also employ teams of experts, working groups, multi-stake-holder committees or others to meet the objectives of the program area.

## **Project Design Criteria**

Like any institution, the CEC has limited resources and must determine which projects will most effectively achieve the goals of its programs. Accordingly, projects are designed taking the following criteria into account:

### ***1. Within the scope of the NAAEC***

Projects must fall within the formal competence of the NAAEC and draw their authority from the Agreement and its interpretation by Council.



## **2. *Regional Environmental Importance***

Projects should concentrate in areas of especial environmental importance to North America and should contribute to attaining the purposes and objectives of the NAAEC.

## **3. *Value Added***

Projects should avoid duplication of efforts and add value. Often, value added will depend on one or more of the following characteristics:

- The project promotes regional environmental action.
- The project accelerates or contributes to the implementation of multilateral or global initiatives or accords.
- The project develops or applies a model or process that may be replicated or adapted elsewhere in the region and the CEC or its partners are well positioned to broadly disseminate the benefits of the approach.
- The project empowers the public by making available important information.
- The project entails a high degree of stakeholder involvement and/ or capacity building.
- The project fosters environmental cooperation between and among governments, industries, environmental nongovernmental organization (ENGOS), academia or other communities in North America.
- The project links to trade concerns or opportunities.

## **4. *Balance***

Projects should achieve a balance among program themes, giving due consideration to special priorities selected by Council.

## **5. *Concrete Results***

Projects should clearly specify meaningful results in the near to middle terms.

### Other CEC Bodies:

Various committees of the CEC are created to carry out the goals and objectives of the Commissions these bodies are :

National Advisory Committees, Government Advisory Committees and the Ad-hoc Committee of the Working Group. Below explained in little detail:

All three countries have established National Advisory Committees (NAC), which came into force in July 1996, pursuant to the Art. 17 of the NAAEC;<sup>16</sup>. Since then the NAC members has devoted considerable energy to furthering their understanding of the Commission for Environmental Cooperation (CEC) and its workings.

As the Organization and Government required good advice from a range of sources to act effectively, so the NAFTA parties made the provision in the side agreement (NAAEC) for the advisory bodies, which are mentioned above.

The US National Advisory Committee established in September 1995, comprises between 12 and 14 members from diverse geographic, ethnic and professional backgrounds. They represent environmental NGOs, academia and business. These the representatives of the US NAC are appointed by the EPA administrator and approved by the White House. The NAC normally meets twice a year, in April and September. The NAC reports to the EPA administrator through the US alternate representative and member of the General Standing Committee. NAC advises the US Representatives (the Administrator of EPA) to the Commission for Environmental Cooperation on specific US policy issues related to the implementation of the NAAEC. the Committee is responsible for providing recommendation to help, assure that business and industry, academia, and NGOs are represented in the development of US Policy position regarding important of the environmental supplemental agreement to the NAFTA.

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<sup>16</sup> Each party may convene a NAC comprising members of its public, including representatives of nongovernmental organizations and persons, to advise it to the implementation and further elaboration of this Agreement.

Canada's National Advisory Committee members consists of six and representation includes from the environmental nongovernmental and business communities and it report to and appointed by Canadian Governmental Committee.<sup>17</sup> The members appointed for three years and may be reappointed for one more year. The Chair of NAC selected by the members of the Committee for one year. Canadian National Advisory Committee provides advice to the Government Committee on Canada's involvement and participation in the activities of the NAAEC.

The Committee advice on matters which are requested by the Government Committee and which in the context of the agreement:-

- Canada's priorities for cooperative activities;
- Canada's positions on matters related to Canada's commitment to effective enforcement of environmental laws, including matters related to the resolution of disputes;
- Trade and environment issues; and
- Canada's position regarding the accession of new countries to the Agreement.(www.cec.org.in)

The Canada NAC also act as channel between various sectors and interest groups and the Governmental Committee; communicate about the views on the implementation and further elaboration of the agreement, exist the link with advisory groups such as the JPAC, the US and Mexican NAC and the other Advisory Bodies such as the Working Group on Trade and Environment of the International Trade Advisory Committee, which advises the Minister of International Trade.

This committee make its recommendations by consensus. If there is no consensus, the Committee shall put forward its varying points of view. Advice to the Ministers from the NAC is provided in written form. The American Branch at Environmental Canada act as the Secretariat for the Committee, maintain records of decisions, arrange for the translation of documents, distribution of documents and provide the interpretation services for meeting if required.

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<sup>17</sup> Federal Minister of the environment and the Provincial Ministers of the environment from those provinces that have accepted to be bound by the terms of NAAEC through the Canadian Intergovernmental Agreement on NAAEC.

Mexico's NAC function as the National Consultative Committee for Sustainable Development. The Mexican NAC is headed by the Federal Minister of the Environment; this body comprises five regional councils, each comprising fifty members. Each regional council has six senior council to whom the each member of the council report. These 30 individuals representing the environmental nongovernmental community, academia and industrial sector.

NAAEC is been viewed by the NAC as the innovative agreement which deal with overall environmental protection efforts of three countries in coordinate manner. As this is an age of the environmental problems increasingly cross-border in nature and corporations and goods move freely across national borders, so the institution is much needed CEC as provided by the NAAEC. CEC has created a forum to look at environmental issues in a North American context. As wildlife, air and water move freely across national borders. So the protection of these resources needs the cross border action for which CEC provide the forum. NAC commented that the CEC help to foster an 'ecosystem approach' that transcends political borders. Also helps to build the improved working relationship with the NGOs in all the three countries.

The second committee is Government Advisory Committees (GAC), these committees entitled to advise their respective countries on implementation and further elaboration of the NAAEC. Canada and the US have each established such a group. In accordance with Art. 18 of NAAEC, GAC consist of representative of federal and state or provincial governments. The US GAC comprises 10 members. This group meets in conjunction with meeting of the US NAC. The US GAC, formally titled the "Governmental Advisory Committee to the US Representative to the North American Commission for Environmental Cooperation,"

The Canadian government has established an interdepartmental committee to deal with matters relating to the agreement. 20 representatives of the federal government departments meet on an ad hoc basis as necessary and are consulted before major meeting of the Council or of the Council's alternate representatives when decisions are expected on important items such as approving the annual work program and budget.

The final group the Ad Hoc Committees and Working Groups, CEC establish and give responsibilities to several types of groups or committees to assist the CEC, they are ad hoc committees, (address a specific issue within a specific time frame for the Council); standing committees (carry out an ongoing function of the Council); working groups (undertake specific activities related to a specific program area or function of the Council); and expert groups (and finally this groups provide advice to the Council on any specific policy and operational aspect of any matter related to NAAEC or the work program).

The Council has established several groups; the North American Working Group on the Sound Management of Chemicals has task forces, established by the working group to address PCBs, DDT and Chlordane, Mercury and criteria.<sup>18</sup>

The North American Working Group on Environment and Compliance is composed of senior-level environmental enforcement officials from the three countries. Its adjunct group, the North American Working Group on Wildlife Enforcement (NAWEG)<sup>19</sup> also cooperates with the Trilateral Committee for Conservation and Management of Wildlife and Ecosystems. Another example of the cross-fertilization among experts occurring within the CEC is the participation of the enforcement working group in the development of a compliance strategy for the sound management of chemical regional action plans.

### **CEC-NAFTA Institutions Relationship:**

After studying all about the committee and subcommittee of CEC we could state that CEC is positioned to create the flexible process and way to required to mount a

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<sup>18</sup> The North American Working Group on the Sound Management of Chemicals was created by a resolution of the Council in 1995 and directed to prepare North American regional action plans for the control and management of PCBs, DDT, Chlordane and Mercury. The Council directed that two senior officials from each government working on toxic substances collaborate with the CEC and provided for substantial stakeholder review. As of early October 1997 the North American Regional Action Plans for PCBs, DDT, and Chlordane had been approved and that for mercury, along with the criteria document for selecting additional substances, was submitted for approval.

<sup>19</sup> The CEC work with NAWEG in the design and delivery of a series of joint training programs delivered in Mexico and Canada for improved enforcement of the Convention on International Trade in Endangered Species (CITES) in the North America by Wildlife and customs officials.

trade-environment dialogue with NAFTA's economic committee able to contribute usefully to these CEC bodies and to the CEC work plan.

The model of the informal linkage between the NAFTA Technical Working Group on Pesticides and the CEC's Working Group on the Sound Management of Chemicals is significant individuals from each of the three countries serve on both of these committees. Although this does not represent a formal linkage between a CEC group and a NAFTA group, but it does illustrate some degree of cross-fertilization of ideas on the complex issues surrounding chemicals management and sustainable development. One such issue is whether some pesticides should be merely reduced to lower allowable levels or, in what some see as full recognition of the precautionary principle, phased out altogether.

Presently there are some concerns about the potential for overlap in the work plans and in development of diverging set of priorities on pesticides issues. Since the same individuals are involved in both the NAFTA and CEC groups, these concerns thus far have been minimized. More efficient use of resource available in all three countries to make the groups to work cooperatively for the CEC, on the same ground according to their given responsibility towards the concerned issues. One advantage of the inter-governmental bodies is their forthright focus on the particular national priorities and political preoccupation of the three countries. With its broad, built in public representation, the CEC offers the advantage of being able to bring for the view expertise, and resources of many people and organization to the work of the NAFTA committees.

Art.10(6), of the NAAEC provides for the sort of cooperation between FTC and the CEC Council to achieve the environmental goals and objective of NAFTA. To this end the CEC has the mandate:

- To act as a point of inquiry and receipt for comment from NGO and person about those goals and objectives
- To provide assistance in consultation under Art.1114 of NAFTA

- To contribute to the prevention or resolution of environment related trade disputes by seeking to avoid disputes, making recommendation to the FTC about the avoidance of such disputes, and identifying experts able to provide information or technical advice to NAFTA committees. Working groups and other NAFTA bodies
- To consider on an ongoing basis the environmental effects of NAFTA and
- To otherwise assist the FTC in environmental related matters.

Since the existence of the NAFTA both trade and environmental ministers of NAFTA have recognized the joint relevance of their respective concerns and requested reports on each other's activities or called for a joint meeting of the two groups.

But the Secretariat report of 1997, NAFTA's Institutions: The Environmental Potential and Performance of the NAFTA Free Trade Commission and Related Bodies, Quebec, says that the no single trinational Secretariat able to mount a dialogue with the CEC at the Secretariat level, and that within the national government, there is no single NAFTA center able to maintain a comprehensive, detailed overview of the activities of the FTC and other trilateral institutions. Only recently has trade community moved to establish such a center and to open a dialogue with those officials in other departments responsible for the CEC. More generally, there is considerable understanding of the environment enhancing cooperation and national convergence which assist the trade and industrial community by providing a single set of rules that make trade easier and less expensive.

#### **CEC as a Regional Cooperation Body:**

Generally regarded as highly successful, exceeding expectations of many doubted the common in terms of environmental concerns among three NAFTA Countries. Has functioning as a convener and catalyst for the formation of highly effective tri-national policy networks with participants from government, NGOs, industry, and academe all three countries.

Function has been crucial to upwards policy convergence in a number of areas Pollutant Release Inventories and Emergence of Mexican PRTR (RETC); Impacts on Canada as well as Mexico; Has been source of political support for strengthening of domestic environmental institutions and laws, particularly in Mexico.

Council; Secretariat and Constituencies/networks has provided alternative forum for those attempting to advance law and policy reforms, but blocked domestically. Several examples of this, PRTRs being perhaps the most noteworthy. Has provided analyses, data and information not otherwise available and prompted domestic policy debates as a result. Continental pollutant pathways, Taking Stock, Key weakness has been closeness to the Parties. Parties have tended to exercise role as Council to micro-manage secretariat's activities. Secretariat's independence significantly curtailed, but Speaks to quality and skill of staff that have managed to achieve so much. US consistently were a strong source of support for the secretariat's initiatives.

**Some of the highlights of success:**

The successful initiative of the elimination of the persistent organic pollutant DDT, in Mexico brought together the two communities, the health policy community and the environment community both shared similar concerns, they raised their voices but could not come together to address them. (Ferretti, Janine, 2002)

In June 2003, the CEC Council's Strategic Plan for North American Cooperation was in the Conservation of Biodiversity. The plan was of the cooperation among the three countries to protect out shared natural heritage. The Biodiversity Conservation Working Group (BCWG) identified 12 priority areas for action (Mexico City), and the targets to implement the first five-year action plan. The work (planning, implementation and evaluation of various projects) has moved from the North American to continental and regional scale. The BCWG considered the existing past initiatives, such as North American Bird Conservation Initiative (NABCI),<sup>20</sup> Species of Common Conservation

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<sup>20</sup> Launched by the CEC in 1999, a part of the agenda of the NA integrated bird conservation community. Main goal is to initiate the application of NABCI as a vehicle for enhanced environmental planning an understanding and for building local and continental partnerships,



Concern (SCCC, marine and terrestrial),<sup>21</sup> the North American Marine Protected Areas Network<sup>22</sup> and other Program-related work.

In the development and implementation of North American strategies and actions to protect human health and the environment, the CEC's Children's Health and Environment initiative and the North American Bird Conservation Initiative collaborated with the SMOC program toxics initiatives. SMOC promoted the development implementation and effectiveness monitoring of eight North Regional Action Plans (NARAPs) to address toxic substances priorities.

One was on the chlordane NARAP is completed with the successful elimination of further uses and deregistration of chlordane as a licensed pesticide, i.e. stopping of the illegal importation.

Secondly, the mercury NARAP, installation of two mercury deposition sampling sites in Mexico now extends the Mercury Deposition Network to all three countries. North American atmospheric mercury modeling initiatives are being significantly enhanced with the new data. Linked to the UNEP Global Mercury Initiative, invited the SMOC program to UNEP's Subregional Awareness Raising Workshop in Southeast Asia, a significant source of mercury emissions to North America.

Thirdly, the environmental monitoring and assessment (EM&A), Standing Committee provides advice to the NARAP initiatives concerning uniform, quality assured, quality controlled data collection and reporting. It worked on the North American database of human blood contaminant levels.

Fourthly, the lindane NARAP is under development, the Lindane Task Force has successfully completed two public consultation meeting, in Mexico and Alaska. The Lindane Task Force has been equipped with the representatives from indigenous people

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<sup>21</sup> This project developed in 2002, which intended to promote the conservation of the selected group of 17 migratory and transboundary species of birds and mammals and their habitats.

<sup>22</sup> Ensenada workshop held on 23 January 2004, the Strategic Plan of the North American Cooperation in the Conservation of Biodiversity, structured the NAMPAN a project for the promotion of the cooperation for the conservation and maintenance of North American regions of ecological significance.

groups from each the three countries and also experts on children's health and the environment.

Fifthly the draft of the NARAP on dioxins, furans and hexachlorobenzene has been revised by the Task Force based on comments received from the public. The actions taken are development of source inventory for Mexico; completion of a study design for a dioxin ambient air monitoring network in Mexico similar to monitoring efforts in the US and Canada; and the establishment of the dioxin analysis training project between Mexico and Canada. The Task Force currently looking at dioxin blood serum levels in Mexico, Canada and United States.

Sixthly the Lead Decision Document were the Council is asked to consider the recommendations were it is recommended that that the trinational concerns for lead be addressed through incorporation of targeted actions into already existing

Seventhly the Regional Program of Action and Demonstration of Sustainable Alternatives for Malaria Control in Mexico and Central America without the Use of DDT (PAEDDT) are being funded jointly by the GEF and PAHO as the executing agency, the UNEP as the implementation agency and the CEC.

The PCB NARAP actions have been addressed. Close out of the PCB Task Force has encountered some minor setbacks and is currently scheduled for completion by fall 2004, pending a final review of the close out report by PCB Task Force members and the SMOC Working Group.

### **The Information Services of the Commission for Environmental Cooperation:**

The information services of the Commission are:

- it is the first and foremost and one of the first international organizations to create an electronic information and public outreach infrastructure parallel to a traditional one. It understood electronic dissemination of information as being the

most efficient method to inform the North American public of environmental matters while simultaneously engendering greater public participation.

- The CEC must not only disseminate information, but it must receive public information as well. Again interaction with the public via electronic means is viewed as the most cost efficient and equitable way possible.
- Spreading of the information and public outreach occurs in a multi-cultural, trilingual environment. As CEC has to respond throughout North America.
- Finally information spread in equitable manner with little constraints on access and use of the information.

For the above objectives the World Wide Web (WWW) and its primary protocol, hypertext transfer protocol (http) is the technology of choice to meet the above objectives. This allows the interactive communication and also integrates files. As well it allows for the distribute centers the information throughout North America. Mexico is investing scarce resources to develop infrastructure to spread the information even the Mexican NGOs also making access to the information through the WWW. Through this new technology the CEC has home page, which make the access all CEC official publications and also show the sites of NAFTA/environmental information, track the status of any submission made under the NAAEC and communicate with the Secretariat. So as a result the CEC is within the reach of anyone in the World.

### **The Provision of Information Dissemination:**

The Art-14 of the NAAEC; the Secretariat consider a submission from a NGOs or person asserting that a party of the Agreement is failing to enforce its environmental laws. So to keep inform public Secretariat has a registry of information on submission making available to any organization or person can review the status.

For example: information on submission made available by 'Friends of the Old Man River,' where it is alleged that the Government of Canada is failing to apply, comply with and enforce the habitat protection sections of the Fisheries Act and with

Canadian Environmental Assessment Act (CEAA).<sup>23</sup> The unrestricted access to information on the submission process is the uniqueness of the CEC and of the NAAEC which stipulates that public participation be an integral component of the CEC. Traditionally international institution had not been open to public participation and influence. As Beaulieu states -- 'in the case of the old GATT, most international financial institution and the usual trade dispute settlement procedures are all often serious shortcoming in terms of transparency access to information and public participation.' (Beaulieu, Andre 1996, p. 67) But the CEC has offered the unparalleled potential opportunities for public input and influence either through the JPAC or indirectly through open meetings.

The ability to influence depends in large part on access to information on the submission process or related matters. The Summary of Environmental Law in North America is a CEC project reflects the open and equitable access to environmental information. It's created to assist any person or organization concerned with environmental legislation in North America, the Summary is a database of legal instruments for each party to the Agreement. It consist statutes, regulation, laws and norms etc. of the each country in English, French and Spanish language. The database was developed with participation of the Quebec Environmental Law Centre (NGO) from Canada, Centro Mexicano de Derecho Ambiental of Mexico and the US Center for International Environmental Law. Their access is unrestricted and free to review and compare the existing legal infrastructure in North America countries to reproduce the database.

The North America State of the Environment Report and the North America Integrated Information System, these two projects illustrates the CEC's philosophy toward information distribution and public outreach, another North America Regional Geographic Information System all these three are out come of the CEC's mandate to disseminate data and information.

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<sup>23</sup> [www.cec.org/english/citizen/index.html](http://www.cec.org/english/citizen/index.html).

The State of Environment Report Project is to provide accurate and timely information on environmental condition and trends in North America. It attempts to;

- identify the linkages between environmental problems and social, economic, and culture Processes;
- determine how growth patterns interact positively and negatively with the environment;
- provide insights regarding the inter-connection between environmental and socio-economic policies which may be of use to decision makers and public interest groups.
- establish a basis for evaluating future changes in the states of the environment in North America.<sup>24</sup>

#### **The CEC and Nongovernmental Organizations:**

The relationship among the Council, the Secretariat, and the prominent and diverse North American environmental NGO community will be crucial to the credibility and the relevance of the CEC's work. NGOs submission process, it could very well become the most dynamic and innovative element of the fact-finding and information management mandate of the Secretariat.

The Secretariat will consider a submission from NGO or from any organization which asserting that a party is failing to effectively enforce its environmental law, thus failing to meet its obligation under NAAEC. But such consideration done by a special procedure distinct from that employed for NGO submissions on the matter.<sup>25</sup>

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<sup>24</sup> Commission for Environmental Cooperation, (1996), State of the Environment Report for North America: Draft Proposal, Montreal, Quebec: CEC. 2.

<sup>25</sup> Unlike Part Five Dispute Settlement provisions, the section on public submissions makes no reference to a "persistent pattern." This point to a different burden of proving the duration or the pervasiveness of the failure to enforce. It may indicate that the evidentiary threshold for an NGO seeking Council action on an enforcement matter is lower than that of a party trying to convince a dispute settlement panel to determine that another is violating the Agreements enforcement provisions.

NGOs may present submissions regarding matters that relate to the ineffective enforcement of environmental laws: in this Council does not have power to accept the submission and request the response of the party involved, but only Secretariat decide such matters.

Council may prepare a factual record without further consultations with the NGO or person that initially submitted the complaint. The decision to recommend such preparation is not subject to any guidelines in the NAAEC. But if the Council with two-third vote recommends the Secretariat to prepare a factual record, Secretariat will consider NGOs and the JPAC provided relevant information for the purposes of developing such a factual record.

It is said, the NGO preoccupation with accessible trade and environment institutions remains a pressing concern. But GATT is habitually criticized for the secrecy of its dispute settlement procedures, the unavailability of even basic documentation, and the near impossibility of NGOs making their voices heard in the organization. Even the CUSFTA proved as deaf to the calls for more transparency and access. NAFTA/NAAEC met a high standard of openness.

NAAEC sanctioned NGO activities which focus the attention of the Secretariat, the Council and the Parties themselves on the worst areas of environmental neglect.

The first submission to the CEC Secretariat was on June 1995, by National Audubon Society, Grupo de los Cien International, and Centro Mexicano de Derencho Ambiental filed a petition asking the CEC to investigate a contamination incident at the Silva Reservoir, in a state in Mexico, found that the there is inadequate response to it by Mexican government. NGOs submitted to investigate the report according to Art. 13, says that general investigation and report, which made NGOs, the Commission and the Mexican government to move forward to solution.

NGOs involvement in the CEC procedure is an absolute requirements to demonstrate the regular sessions of the Council, coordinating the policy, developing new

law, supervising the implementation of national party obligations, putting collective pressure on reluctant players and resolving disputes.

### **Fact Finding and Reporting:**

As a multilateral international institution, the CEC's ability to dictate public or private behavior remains minimal. Its capacity to publicize environmental mismanagement, broken promises and governmental failure to act on behalf of the environment is quite significant to the North American environmental efforts. But the success depends on the fulfilling its role in supplying political direction and impetus.

The CEC and its Secretariat have three main instruments for communicating recommendations and findings on environmental matters. These are the annual reports, the ordinary or regular Secretariat reports and the investigation report (factual record).

**The Annual Report:** The Secretariat prepares the annual report and will be reviewed by the Council. It cover program activities, budget and expenses, as well as the actions taken by each Party in connection with its obligations under this Agreement i.e., the data on the Party's environmental enforcement activities and relevant views and information submitted by nongovernmental organizations and persons and any other matter that Council feel appropriate, (Article 12 (2)). NGOs contribution will be summarized in the annual report as it is one among the few channels its contribution is the input in the work of the CEC. CEC will publish its annual report, it provides a focal point to evaluate the progress of the new institution and assess the performance of the parties in meeting their obligations.

By the end of the decade, the CEC, a young organization with an unprecedented role, was coming into its own as an important contributor to the advancement of the North American environmental agenda. By working together through the organization, the three nations continued to make progress in 1999 on a number of issues that none could have achieved individually. Among the highlights was the launch by the CEC's Sound Management of Chemicals program of a North American Regional Action Plan to reduce releases into the environment of dioxins and furans and hexachlorobenzene. The

CEC also published its *Analytical Framework for Assessing the Environmental Effects of NAFTA* and announced plans to convene a symposium exploring the linkages trade and environment. Also the Secretariat released an independent study of transboundary migratory bird habitat on the upper reach of the San Pedro River, which helped launch a major effort to protect the watershed. (JPAC, 1999)

- a. gather the public and workshop to comment on the proposed amendments to the Guidelines for Citizen Submissions on Enforcement Matters under article 14 & 15 was successful. This was to provide JPAC with the information it needed to develop the advice to the Council to maintain the integrity of the process including the public access.
- b. In Mexico City, JPAC focused on Article 14 & 15 and on Environmental Management Systems and Compliance Report. JPAC met with representatives of NAFEC to discuss the production and marketing of green goods and services.
- c. In Anchorage, Alaska, JPAC met with the representatives and members of the SMOC working group, and also involving the indigenous peoples in the program of the task force to develop the NARAP on environmental monitoring and assessment will include a representative for indigenous peoples and comment from Canadian First Nation Groups.
- d. In Banff, JPAC had detailed and direct involvement with Council. JPAC was able to provide its views on matters such as the North American Pollutant Release and Transfer Register, strategic directions for biodiversity, sound management of chemicals, environmental management systems and emerging trends and NAFTA environmental effects.
- e. In Montreal, the JPAC provided the suggestion for priority issues for investigation, for the proposed CEC Program Plan for 2000-2002 of the Secretariat.

JPAC prepared the three year program plan to enhance the CEC's ability to plan and execute its work program over a longer timeframe and establishes strategic objectives and a disciplined approach to achieving them. Plan Program was called the Shared



Agenda for Action; it intended to guide the evolution of programs and initiatives in the Work Program of the CEC over the next three year.

Secretariat Reports: To prepare the report the Secretariat will use publicly available information, advice from the JPAC, information of NGO, Governments, hired experts or conferences and public consultations. If Council agrees than after 60 days it will be release to public. This report deal extensively with non-trade-related matters, as the CECs work program extends well beyond the trade and environmental issues. Secretariat can identify significant trends, focus attention on specific environmental priorities, and even create a common factual basis upon which to resolve a dispute.

The Secretariat also worked with Environment Canada to bring together intelligence officers, analysts, and seasoned investigators with limited intelligence awareness, and high-level managers with enforcement supervisory duties, of the three countries in order to discuss the value and accomplishments of an integrated intelligence unit within an enforcement service. Attending were intelligence research specialists from the Office of Law Enforcement of the US Fish and Wildlife Service, wildlife officers and special investigators from the intelligence unit of Environment Canada's Wildlife Enforcement Division, law enforcement specialists from environmental agencies of different provinces in Canada, inspectors and directors from the Wildlife Branch of Profepa and an analyst from the Mexican Federal Police.

The Secretariat also finalized a publication on strategies to combat the illegal trade of ozone depleting substances in North America and has completed a draft report on illegal wildlife trade in North America

The factual record: It is prepared by the Council, or may ask to the Secretariat to prepare it by two-third vote, record about the enforcement of the law. The Council will review the draft prepared by the Secretariat again by two-third vote and make to publicly available and to the JPAC, the third pillar of the CEC. As JPAC provide the information to Secretariat for the purposes of developing the factual record.

If the party complained against is exempted from giving reasons and if the party complained against is exempted from giving a response with regards to the submissions, the Secretariat recommend to the Council the preparation of a factual record without consultation with any NGOs or person in the initial stage. The decision to recommend such preparation is not subject to any guidelines in the NAAEC.<sup>26</sup> (Johnson, Pierre Marc & Andre Beaulieu, 1996, p.155) So when it is granted by the Council vote, then only the Secretariat will prepared the report.

Though the Secretariat is well equipped with adequate research and investigative capabilities, the preparation of the report need the information from the party who submitted the complaint and also may consider the information from publicly, NGO submission, JPAC submission or information “developed by the Secretariat or by independent experts.”

Initially it will ask the response which was complain, by the party complained against. But the NAAEC do not provide the obligation the party complaint against to collaborate with the Secretariat, the parties must oblige the Secretariat’s request for information, including compliance and enforcement data, do have some limitation.<sup>27</sup> If the party complained against refuses to provide the requested information would give in written reason to the Secretariat. NAAEC prescribes that the disclosure of the report heavily relies on the Council and cooperation of the ministers.

Factual records contain the nonenforcement allegations, and according o the Draft Procedures, a factual record will contain:

- a) a summary of the submission that initiated the process;
- b) a summary of the response, if any, provided by the party concerned;
- c) a summary of any other relevant information of a factual nature and

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<sup>26</sup> The Secretariat will provide reasons to the submitter if the submission process is terminated earlier. However, no reasons are included in the other possible notification to the submitter, which indicates that a factual will not be constituted, art.

<sup>27</sup> The phrase ‘in accordance with its laws’ in Article 21 (1)(a) probably refers t access to information, protection of privacy and other sunshine laws. Article 42 also protects matters related to national security, a serious limitation if one considers the well-documented environmental impacts of military establishments and activities, as well as those of the nuclear industry.

- d) the facts presented by the Secretariat with respect to the matters raised in the submission.

The main effect of factual report is to alert public opinion and even to prompt another party to initiate procedures for formal dispute settlement.

**Some of the Cases where Factual records been released and prepared:**

The cases for which the factual records been made are of the 15 cases.\* (Tarahumara, Mexico, filed in 2000, and the record published in 2006; Rio Magdalena, Mexico, file in 1997, record was out in 2003; Pulp and Paper, Canada, filed in 2002, record published in 2007; Ontario Logging, Canada, file in 2002, record was published in 2007; Oldman River II, Canada, filed on 1997 and record published in 2003; Montreal Technoparc, Canada, filed on 2003, record published in 2004; Molymex II, Mexico, filed on 2000, record on 2003; Migratory Birds, United States, filed on 1999, record published in 2003; Metales y Derivados, Mexico, filed on 1998, record published in 2002; Cozumel, Mexico, filed on 1996, record pulished in 1997; BC Mining, Canada, filed on 1998, record published in 2003; BC Logging, Canada, filed on 2000, record published on 2003; BC Hydro, Canada, filed on 1997, and record published in 2000; Aquanova, Mexico, filed on 1998, factual record published on 2003; ALCA-Iztapalapa II, Mexico, filed on 2003, factual record released in 2008 ).

While the studied some of the cases, finding the effectiveness of the CEC and NGOs leading the case to complete them by making the public a factual record. Among many studied few of the cases:

On 14 August 2003, the Waterkeeper Alliance, Lake Ontario Waterkeeper, Societe pour Vaincre la Pollution, Environmental Bureau of Investigation and Upper St. Lawrence Riverkeeper/Save the River they all filed the case asserting that the Canada is failing to effectively enforce section 36(3) of the Fisheries Act in relation to the alleged deposit of polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocrabons (PAHs) and other chemical pollutants into the St. Lawrence River from the Montreal Technoparc, formerly a household and industrial waste disposal site, located in Pointe-Saint-Charles,

now owned by the City of Montreal. Section 36(3) makes it an offense, punishable by fines or prison terms to allow the discharge of a deleterious substance into water frequented by fish.

On 20<sup>th</sup> August 2004, the Council through its Resolution 04-05, instructed the Secretariat to prepare a record of the submission which will provide information on alleged failures to effectively enforce the environmental law in North America that may help the submitters, the Parties to the NAAEC and other interested parties take action, as necessary in relation to the matters raised by the submission.

The Montreal Technoparc:<sup>28</sup> the area of the case is of the bank of the river St. Lawrence in Pointe-Saint-Charles was vast marsh known for the attracting large flocks of geese, railyard was built on the shore of the river, but the south and west of the railyard land was filled with the garbage, construction debris and many more. In 1989 the federal and provincial governments sold part of the area south of the railyard to the City of the Montreal for redevelopment as a hi-tech park. The City accepted the environmental responsibility for the land and promised to the condition of the soil and groundwater there and also promised to deal with the pockets of oil that were known to be floating under the surface and to monitor groundwater quality. When the Technoparc development began in the early 1990s oil was noticed seeping from the shore into the river. Environment Canada had taken action to set up temporary booms and absorbent pads to contain the oil along the shore, for that the City of Montreal agreed to pay operating and maintenance costs for these temporary measures. In 1997 the Montreal stopped maintaining the booms and pumping oil on the shore. So in 1998 Environment Canada enforcement personnel issued a warning against Montreal and also they kept on table the project proposal of a biobarrier to stop the oil and contaminated groundwater migrating from the Technoparc to the St. Lawrence. The barrier was never build. In 1999 Montreal announced it would install a permanent oil recovery system at the southern boundary of its property. The design was ready in March, but in April Environment Canada received a letter from environmental groups, along with results from laboratory analyses of water samples taken

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<sup>28</sup> CEC, Canada, Factual Record Montreal Technoparc Submission (SEM-03-005) prepared in March 2008 p. 144-45.

from the river, alleging that deleterious substances were seeping into the St. Lawrence along the shore opposite Technoparc in violation of section 36(3) of the Fisheries Act, factual record provides information relevant to a determination of whether Canada is failing to effectively enforce its environmental law regarding the matters raised in the submission. On March 2008, the Secretariat submitted a final factual record to the CEC Council and recently on 23<sup>rd</sup> June 2008, the Council unanimously has decided to make the factual record public through Council Resolution 08-04.

Secondly studied about the case of the Coal-fired Power Plants submission:

The case was filed with the Secretariat on 16<sup>th</sup> September 2004, the submitter includes the Sierra Legal Defence Fund (now Ecojustice and Waterkeeper Alliance), Friends of the Earth US, Earthroots, Centre for Environmentally Sustainable Development, Great Lakes United, Pollution Probe, Waterkeeper Alliance and Sierra Club all of the them asserted that the US is failing to effectively enforce the federal Title V of the US Clean Air Act (CAA) and sections 303 and 402 of the Clean Water Act (CWA) with respect to mercury discharges to air and water from coal-fired power plants.<sup>29</sup> It complained that the water discharge into waters already damaged by mercury, and also argued that these permits must account for atmospheric deposition into water bodies of mercury that originated from coal-fired power plants. They also assert that the Environmental Protection Agency (EPA) is failing to meet its responsibilities in approving or adopting total maximum daily loads (TMDLs) – the calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards. The Submitters assert that, in developing TMDLs, the EPA failing to account for and impose limits on nonpoint sources of mercury. The submitters also said that the emissions from coal-fired power utilities in ten US states represent almost 60 percent of mercury emissions from these facilities in that country. So failure to enforce the CAA and the CWA in these ten states is broader problem in the US. So in its response filed on 25 April 2005, the United States contends that the relevant facts and law do not support a conclusion that it is failing to effectively enforce the CWA in connection to

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<sup>29</sup> Secretariat Memorandum, 2005, Response of the United States of America to Submission on Enforcement Matters 04-005 (Coal-Fired Power Plants) [www.cec.org/files/pdf/sem/o4-5-RSP\\_en.pdf](http://www.cec.org/files/pdf/sem/o4-5-RSP_en.pdf).

mercury emissions to air and water from coal-fired power plants and that pending domestic judicial proceedings preclude further Secretariat review of this matter.

The Secretariat notified that the coal-fired power plants discharge permits, allegedly causing non-attainment of water quality standards for mercury in rivers, lakes and other water bodies across the US. The Secretariat also recommended that a factual record be developed to examine actions of the EPA with respect to allegations on neglecting to account for airborne mercury when calculating TMDLs under the CWA.

So the Council directed the Secretariat on 23<sup>rd</sup> June 2008, to develop a factual record for the Coal-fired Power Plants submission

Third submission: the Council instructs the Secretariat to develop a factual record for Lake Chapala II submission.

This submission filed by Instituto de Derecho Ambiental, Fundacion Lerma-Chapala-Santiago-Pacifico, Sociedad Amigos del Lago de Chapala, Comite Pro-Defensa De Arcediano, Amigos de la Barranca, Ciudadanos por el Medio Ambiente, Amcresp, Red Ciudadana and residents of the community of Juanacatlan, Jalisco.

They asserted that the Mexico is failing to effectively enforce its environmental law with respect to management of water in the Lerma-chapala basin, causing environmental degradation of the watershed and the risk that Lake Chapala and its migratory bird habitat could disappear. According to the submitters viewed that the authorities are failing by not conducting systematic, ongoing monitoring of water quality in the Santiago River and by approving the environmental impact statement for the Arcediano dam project before solvin the river's pollution problem. According to the submitters, the National Water Commission (Comision Nacional del Agua - CNA) delegates authority to make far-reaching decisions through administrative appeals. They note that the watershed Councils does not guarantee public participation and that their decisions do not give priority to environmental protection.

In March 2004, Mexico filed a response to the submission in which it stated that it is monitoring the Santiago River through the National Water Quality Monitoring Network (Red Nacional de Monitoreo de la Calidad del Agua) and that it has a comprehensive cleanup program for the entire watershed. Concerning the Arcediano dam project, Mexico asserts that the environmental impact assessment took sustainable water use criteria into account. Mexico states that it is enforcing the water-related laws through the Office of the Federal Attorney for Environmental Protection (Procuraduria Federal de Proteccion al Ambiente - Profepa) and the CAN. Concerning the watershed Councils, Mexico notes that they do not make decisions of a legal nature on behalf of the authorities.

On 18 May 2005, the Secretariat notified the Council that it considers the submission to warrant preparation of a factual record. And on 30 May 2008, the Council instructed the Secretariat to develop a factual record, which should be limit to the area containing the Arcediano dam within the Lerma-Chapala watershed.

Fourth example, the submission is about ALCA- Iztapalapa II, by Angel Lara Garcia; He asserted that his health and family affected by pollution generated by Alca, S.A. de C.V. ("Alca"), which operates a footwear materials factory in the Santa Isabel Industrial neighborhood in the Iztapalapa Delegation of Mexico City, where the submitter lives. According to him, the Alca is failing to comply with Article 150 of the General Law of Ecological Balance and Environmental Protection (Ley General del Equilibrio Ecologico y la Proteccion al Ambiente - LGEEPA) in managing its hazardous waste. This case was also filed before in 1995, but later reported that the official record was lost in a flood at the Profepa archive for closed files, but notes that the complaint did not lead to any criminal investigation. Again in 2000 citizen submission was filed then claims that the case was closed with the issuance of an administrative ruling levying a fine of \$2,421 pesos against Alca, according to the Article 415, first paragraph of the Federal Penal Code, as could not determine whether the crime exists due to irreparable material hindrance, as the proof provided was insufficient to evidence the crime. Then on 17 June 2003, again filed the submission. On June 2005, the Council instructed the Secretariat to prepare a factual record in regard to the matter raised in the submission. The factual

records provided information on alleged failures to effectively enforce the environmental law in North America that may help the submitters, the Parties to the NAAEC.

On 16 November 2007, the Secretariat submitted a final factual record to the CEC Council. On 30 May 2008, in Resolution 08-02, the Council unanimously decided to make the factual record public.

Fifthly the Secretariat recommends development of factual record on the Ex Hacienda El Hospital submissions, to the Council on 12 May 2008. The submission was filed on 17<sup>th</sup> July 2006, by nine residents of the community of Ex Hacienda El Hospital, - represented by Myredd Alexandra Mariscal Villasenor – and Roberto Abe Almada. They all asserted that Mexico is failing to effectively enforce its environmental law with respect to alleged offenses committed during the operation, closing and dismantling of a pigment production plant operated by BASF Mexicana, S.A. de C.V. (BASF), located in the Ex Hacienda El Hospital site in Cuautla, Morelos.

Mexico responded by ordering to evaluate and restore the contaminated soils at the plant operated by BASF, and also fined the company for its noncompliance. Mexico also noted that the recommendations of the environmental audit were followed and also assured that the citizen complaints are duly processed. Mexico did not allow the Secretariat to proceed with the investigation since the matter was pending in proceeding<sup>30</sup> and also did not provided the information because of it confidential nature.

The submission included listing of 17 actions and omissions that failure to effective enforce, various federal laws, including the General Law for Waste Prevention and Comprehensive Management (Ley General para la Prevencion y Gestion Integral de Residuos).

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<sup>30</sup> The party implicated may stop the proceedings by establishing that the matter is the subject of “pending judicial or administrative proceedings.” Article 14 (3) of the NAAEC, “the judicial or administrative proceedings” are defined under NAAEC Article 45 (3), which states: For proposes of Art. 14 (3), ‘judicial or administrative proceeding’ means:

a) a domestic judicial, quasi-judicial or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and b) an international dispute resolution proceeding to which the Party is party.



The submitter also made assertion that the BADF used the federal government's environmental audit program to successfully avoid the enforcement of legislation; that the Federal Attorney General for Environmental Protection (Procuraduria Federal de Proteccion al Ambiente – Profepa) failed to sanction BASF for having permitted, during the facility's closing, contaminated soil and other material to be taken from the site by community inhabitants for their use; that Profepa has not been successful in ensuring a full assessment and clean-up of the contamination caused by the operation and dismantling of the facility.

On September 22, 2006, the Secretariat received submission of Ex Hacienda El Hospital III, and the same assertions. So the Secretariat consolidates both submissions.

**CEC as a Counterweight to adverse impacts of trade liberalization on the Environment:**

In analysis of trade – environment linkage Policy network failure in dealing with adverse impacts of trade liberalization on environment or environmental policy-making Virtually no contact with NAFTA Trade Commission, Trade Panels, trade Ministries of Parties and no mechanism to counter impact of NAFTA Chapter 11. Art 14/15 was in some ways intended to counter Chapter 11 has produced some surprising results, Canada but not in Mexico target most of complaints and the Parties ultimately control the process, Council decides whether to prepare factual records. It's been reluctant to allow the Secretariat to prepare records. It worked behind scenes to alter process to make it harder to file complaints.

The CEC initiated its work on NAFTA's effects on the environment in the wake of NAFTA's entry into force. The CEC first focused on the development of a methodology to analyze the environmental impacts of NAFTA. The analytic framework for assessing the environmental effects of NAFTA was published in 1999.<sup>31</sup> The document acknowledges the impossibility to provide a conclusive and comprehensive assessment of NAFTA's effects on the environment, given the complexity of issues and

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<sup>31</sup> CEC (1999), Assessing Environmental Effects of the North American Free Trade Agreement (NAFTA): An Analytic Framework (Phase II) and Issue Studies, Montreal, CEC.

the lack of data, and “is designed to be applied to issues or sectors that may have strong relationships to NAFTA and that are important to the environmental concerns of its members.”<sup>32</sup>

The CEC framework was based on six core hypotheses:

- NAFTA can reinforce existing patterns of comparative advantage and specialization, concentrating production where it is most efficient;
- NAFTA can intensify competitive pressures throughout the region, which might lead firms to lower input costs, avoid assumed sunk costs like regulatory compliance, or consider moving to areas with lower regulatory requirements;
- NAFTA could lead to economic growth that promotes industrial modernization and reduces environmental stress;
- NAFTA could lead to a greater use of imported, environmentally superior products;
- NAFTA could favor a corporate or government led upward movement in environmental standards and regulations; and
- NAFTA could promote upward regulatory convergence as a result of increased intergovernmental cooperation.

The framework divides the analysis of NAFTA’s effects into four distinct stages, which are summarized below;

The first stage is considered the pre-existing environmental, economic, social and geographic conditions that are relevant to the NAFTA countries.

The second stage is consists in analyzing NAFTA’s connection to these changes: the rule change brought by NAFTA affect trade of the product, its production inputs or its substitutes. This includes reductions in tariffs and other border measures such as quotas, quantitative restrictions and rules of origin. NAFTA is not only a fixed set of rules taking it is a dynamic regime that began to influence economic life in the region from the time it

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<sup>32</sup> Ibid p.3.

first emerged. With this CEC is to analyze its institutions, its trade flows for product and its trans-border investment.

The third stage is to establish linkages to the environment; i.e., analyzing the production, management and technology, this involves analyzing the following five dimensions: the raw materials and other inputs used in the production process; the efficiency, location, scale and profitability of the production process; the physical technology used; the strategic economic and environmental management systems; and other characteristics of the product.

The last analytical stage of the framework is to assess the environmental impacts generated by described changes and try to identify useful environmental indicators to measure NAFTA-induced change. This stage considers infrastructures treatment. The impacts will vary according to the absorptive capacity of the natural environment in a given location, and places particular attention on areas where environmental impacts are concentrate.

Commission has been highly, even surprisingly, effective as an instrument for regional environmental cooperation Construction of policy networks Alternative forum for policy debates Source of information and analysis. Source of political support for domestic policy reform. Key weakness has been limits of independence from the Parties. Although has had some analytical success in investigating trade/environment linkages, has not provided an effective mechanism for dealing with adverse impacts of trade liberalization on environmental quality or environmental policy-making. Commission marginalized in trade policy discussions and impact of NAFTA Chapter 11 vs. NAAEC Art.14/15 on policymaking. Ultimately need to address trade/environment interface more directly within trade agreements themselves.

There are three factors that make the CEC's Public Outreach and information dissemination services indicative of new information needs in the North American context. First, it recognizes that the growing integration of North American social, economic and political systems requires new approaches to information services. These

services must deal with an environment that is dispersed, multi-ethnic and in varying degrees of development. It must also create distributed centers or virtual spaces where the public are able to interact, and locate and disseminate information. And it must function in the three official languages of the region.

Second, issues like sustainable development, environmental management, transboundary pollution issues, etc. require a new cooperative approach to the use and dissemination of information. That is, few information systems incorporate North America as one region. Data and information on the three countries, although abundant, rarely offer regional perspectives. This is particularly worrisome because environmental issues are inherently transnational. Integrating existing data sets or information, therefore, into a greater continental perspective remains one of the primary goals of the project.

Third, because the public is able to play an unprecedented role in the work of the CEC, equitable and open access to data and information becomes imperative. And although electronic means of information dissemination and communication has the potential of reaching millions of people, access is inequitable. This in part explains the support the CEC has given to projects like the North American Center for Environmental Information and Communication (Centro de Información y Comunicación Ambiental de Norte América) in Mexico. Lastly, the CEC is the only international organization with a citizen petition system where individuals and organizations are able to request an investigation of an alleged non-enforcement of environmental laws. The effectiveness of the system, and of the CEC, depends on whether people use it. And arguably, effective use is conditional on timely, open and equitable access to environmental information. As the North American economic, social and political systems increase their harmonization and integration, information services such as those offered by the CEC will become commonplace.

## *Chapter V*

### *NAFTA and the role of ENGOs and Communities*

The emergence of the global environment as a major issue in world politics has coincided with the rise of NGOs as a major force in the politics of the environment. The place of NGOs in international governance seems nowhere more securely established than in the field of the environmental action (Jasanoff, Sheila, 1997.p.579).

The United Nations gave the NGOs, recognition as the essential contributors to environmental protection for well over a decade. The 1987 report of the World Commission on Environment and Development's report 'Our Common Future,' urged governments 'to recognize and extend NGOs' right to know and access to information on the environment and natural resources; and also they are to be consulted and to participate in decision making on activities likely to have significant effect on the environment; finally, their right to legal remedies and redress when their health or environment may be seriously affected. Then in 1992 in the UNCED conference its confirmed that number of the NGOs had taken their place with states and intergovernmental organization (IGOs), as participants in environmental management. In Rio with the opportunities, showed that they (NGO) had developed extensive skills in scientific and technical exchange, policy making and policy implementation, which supplemented their more traditional roles in campaigning, activism and ideological consciousness rising.

The term NGO can be applied to an enormous range of environmental, from tiny, grassroots coalitions of conservationists or pollution victims to mature, well funded, technically expert multinational organizations with the bureaucratic character and finally without political accountability. (Ibid)

UN definition of an NGO is the term is used here to mean a private, nonprofit organization that is not behold either to government or to a profit-making organization.

Under the Article 45 of the NAAEC: the NGOs been defined as any scientific, professional, business, nonprofit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government.

NGO influence on global environmental politics has been based on one or more of three factors:

- NGOs expert knowledge and innovative thinking about global environmental issues, acquired from specializing in issues under negotiation;
- Their dedication to goals that transcend narrow national or sectoral interests; and
- Their representation of substantial constituencies within their own countries that command attention and that sometimes influence policies and even tight electoral contests.

In the industrialized countries, most NGOs that are active in global environmental politics fall into one of three categories: organizations that are affiliated with international NGOs (INGO), which are NGO with branches in many countries, many focused on domestic environmental issues or research institutes, whose influence comes primarily from publishing studies and issuing proposals for action: example; Friends of the Earth International (FOE), Greenpeace, WWF all are organized on specific set of area.

The second categories of NGOs are the big US Environmental organization all of which have international programs. , such as Sierra Club, the National Audubon Society and the National Wildlife Federation , Environmental Defense, Natural Resources Defense conservation etc; which have used legal, economic and regulatory processes to affect national policy and have become very important actors on international atmospheric and climate issues arose in the early 1970s.

Environmental NGOs in developing are concerned only more with the poverty and other development issues as with strictly environmental issues. So they tend to stress issues such as land use, forest management and fishing rights and redistribution of power over natural resources rather than ozone depletion and global warming. (Fisher, Julie (1993), p. 124)

The mainstreaming of the environmentalism into the public consciousness is now an accepted part of policy making in North America (Adams, Chris 2005, 2-3). In fact the environmental movement has been largely responsible for a remarkable growth in public environmental consciousness and acceptance of environmental protection as an essential public policy. Here it show that the linkage between the public, the environment as a policy issue, and policymaking in general. Public participation within the context of interest groups or non-governmental organization (NGOs). So here carried out the context of the environmental NGOs participation in successful policymaking in the CEC as it attempts to get implemented its stated mission. As because of this the NAFTA was considered one of the 'greenest multilateral trade agreements ever concluded because of its heavy emphasis on environmental considerations through the NAAEC and the specific creation of the CEC'(Mol 2001.125-126).

### *NGOs and its Influence:*

The environment organization has raised the environmental awareness in public consciousness and the emergence of a green capitalism.

So here focused some mainstream environmental discourses:

### *Environmental Organization and Green Politics:-*

Number of different organizations, groups and movements motivated by differing objectives. The big ten groups are the Environmental Defense Fund, Environmental Policy Institute, Friends of the Earth, Izaak Walton League of America, National Audubon Society, National Parks and Conservation Association, National Wildlife Federation, natural Resources Defense council, Sierra Club and Wilderness Society. The big ten had a combined membership of 8 million by early 1990s and a combined budget of \$2.50 million. The membership is richer, more affluent, more politically involved and more active in the democratic process.

*The environmental groups have differing aims;*

- a) NGOs influence international regimes in five ways: they may,
- influence the global environmental agenda by defining a new issue or redefining an old one
  - lobby or pressure their own or other governments to accept a more advanced position toward an issue, by advancing new proposals, by carrying out consumer boycotts and educational campaigns, or by bringing lawsuits;
  - propose entire draft texts of conventions in advance of conferences;
  - lobby and participate in international negotiations; and
  - monitor the implementations of conventions and report to the secretariat and /or the parties.

b) NGOs also influence international conferences primarily by providing scientific and technical information or new arguments to delegations that are already sympathetic to their objectives. (Carroll, John E. 1998.p.107-108)

c) NGOs can also provide useful reporting services during these conferences:

ECO has been published by NGO at numerous UN sponsored environmental conference since 1972 and provides a combination of news stories and commentary.

The Earth Negotiations Bulletin, published by International Institute for Sustainable development (IISD) has provided objective reports of UN environment and development negotiations since 1992

d) NGOs most importantly influence by monitoring compliance with an agreement once it goes into effect. Investigation and reporting by NGO can bring pressure on parties that are violating provisions of an agreement. They can demonstrate the need for more effective enforcement mechanism or creation of mechanism or also help build support for the further elaboration or strengthening of the existing regime rules.



### *NGO and International Institutions:-*

Influencing the structure and policies of major international institutions active in global environmental politics poses a different set of challenges to NGOs. These institutions are GEF, WTO and NAFTA are considered here.

These institutions have different characteristics that help to explain the degree of success of NGO efforts to influence the policies and structures of each.

NGO successfully influencing the restructuring of the GEF on which both southern and northern NGOs were in full agreement the NGO were highly critical of GEF administered by the World Bank during its 1991-1993, they supported the developing country position for a Secretariat independent of the World Bank and for project approval by a Council of treaty parties. (Young Zeo, 1999, p. 234-267).

In the late 1980s NGOs campaigning for bank reform began to focus on issues of public participation and accountability. About 150 NGO would wide participate in some fashion in a campaign to spur greater openness and accountability and to encourage debt reduction and development strategies that were more equitable and less destructive to the environment. Today, partly as a result of this high profile pressure, about half of the Bank's lending projects have provisions for NGOs involvement, up from an average of only 6 percent between 1973 and 1988.

Much more difficult still for NGOs is the trade and environmental issues; to which they turned their attention only in 1990. The GATT has one single minded goal, determined half a century ago to reduce tariffs and other trade barriers. The GATT has never had provisions for NGO observers. Environmental activists have been campaigning for increased transparency, participation, and accountability in the WTO, portraying it as a secretive organization lacking in accountability. They argue that NGOs have a crucial role to play in making the world trading system more transparent and accountable. (Esty, Dan 1997)

Environmental NGO in the NAFTA negotiations where, with range of environmental concerns were voiced in the negotiation, the political lobbying and resultant compromises and outcomes. The NGOs influence and inform the policy frame; their voice provided rich alternatives to prevailing ideas and values about trade, development and environmental protection. Also ENGOS made the point clear that the trade, sustainable development and environmental protection cannot be separated from each other in the debate. (Benton & Rennie Short, 1999, p.191)

The North American Free Trade Agreement (NAFTA) was the first free trade agreement between developed countries and a developing country. It is of particular importance in the history of nongovernmental organizations' (NGOs) involvement with trade policy as different groups from entirely different countries found themselves working to change the same free trade agreement (FTA). Given the considerable differences between the United States, the world's richest democracy, and Mexico, a developing country (with a one-party political system at the time), it is not surprising that their further economic integration gave rise to concern from NGOs on both sides of the border. Eventually, they had to learn to adapt and work together, creating some of the first effectively transnational groups of NGOs in the process and laying bare some of the tensions between different NGOs' philosophies when it came to working with the state. As Marcus Noland says "In the aftermath of NAFTA, policymakers can no longer avoid the heated controversies over workers' protection, human rights, and the environment." (Noland, M 1999).

From the time that North American ENGOS first turned their attention to proposals to negotiate a continental free trade agreement in the early 1990s, one of their central concerns was that the trade agreement could have a weakening effect on environmental laws, regulations, and standards. The environmental agreement is not the policy accident. It is the response of the cardinal concern of the environmentalist in the NAFTA debate, as they feared that NAFTA would generally erode environmental standards in the trinational area. (Mumme and Duncan 1996.p. 208). Because of the many border issues they also fear that the NAFTA lower the environmental law and regulations, this was main concern. Mexico was the primary target of Complaints about

enforcement failures, it was also felt that the competitive pressure will arise from NAFTA could encourage Canada and US to weaken the enforcement of their own environmental law. NGOs like NDS, EDF, NWF and NRDC wanted the strong environmental provision in the NAFTA. So in response to their concern, the Parties included the preamble to the agreement and because of their persistency the side agreement been signed. As these ENGOS kept the faith in the new institutional arrangement (CEC) believing that would lead them to put their environmental concern in forefront in the trade regime.

**NGOs' first steps to a consistent fight:**

After it had been announced in 1990 that talks for an FTA between Canada, the US and Mexico were underway, environmental NGOs (ENGOS) from all three countries immediately called for environmental issues to be included in the negotiations. Mexican ENGOS were particularly concerned about the consequences of rapid economic growth in their country as well as about increased free trade between countries of such divergent levels of environmental protection. NGOs proposals could not be ignored easily as they were backed by non-environmental NGOs, most importantly by the US trade unions. (Hogenboom, B 2003) In Mexico, trade unions had no influence because of the ruling party's control over the major trade union federation (the Consejo de Trabajadores Mexicanos). (Macdonala, L and Schwartz, M.A. 2000) On the US side, labor unions and protectionist groups feared competition from Mexican-based industries unhampered by higher environmental standards and able to offer far cheaper labor.

All types of NGOs benefited from the fact that apart from the general public "a considerable number" of members of the US Congress were prepared to listen to their concerns - indeed, this new broad public and political support astounded the governments of the member countries and ensured that Mexico's poor environmental policy became a major issue. Although policies in Mexico had been improving gradually, the government neglected their implementation and enforcement, and there was even a "structural lack" of environmental concern from government agencies. By questioning the relationship

between trade and environmental policy, NGOs also questioned the relationship between the state and civil society and their respective roles in protecting the environment.

### *The impact of NGOs' transnational alliances:*

Moreover, an unprecedented number of NGOs established transnational ties and communicated and advised each other across the borders in a way they had never done before, which led to the Mexican government being put under a new pattern of political pressure even before negotiations for NAFTA had been concluded. But how exactly did their cooperation evolve in the run-up to the agreement, and what was its impact beyond raising awareness of NAFTA's possibly harmful effects to a large audience and helping to change the role of civil society, especially in the face of economic agreements?

In October 1990, nearly 30 Canadian NGOs attended a large meeting in Mexico City. They had already gathered some experience by opposing the Canada-US Free Trade Agreement (CUFTA) which had become effective in 1988. In January 1991, representatives of NGOs from all three countries concerned as well as academics and members of the US Congress met in Washington, D.C. This meeting had a considerable effect on public awareness of the NGOs concerns about NAFTA. More specifically, as a result of the NGOs work, the US Congress made clear that environmental issues needed to be included in the negotiations. This led President George Bush to announce in May 1991 that NAFTA would be negotiated using American environmental laws and regulations as its standards (Hogenboom 2003).

### NGOs' impact on the Bush administration's plans.

After the importance of environmental issues had successfully been established by NGOs the debate about specific arrangements began. The Bush Administration's general strategy was to establish a 'parallel track' of bilateral environmental cooperation and draw up supplemental agreements to NAFTA rather than integrating protective measures directly into the agreement. This strategy increased fears of pollution along the Mexican-US border - already a 'hot topic' - and the possibility of American industry relocating to Mexico. In response, the US and Mexican governments published a joint "Border Plan"

which was immediately criticized as a “plan to plan” by NGOs because it was so vague on the implementation of policies. When hundreds of people came to public hearings of the plan and NGOs submitted written protest letters the “Border Plan” was revised to a considerable extent. Once again, NGOs had managed to be taken seriously and influence government policy because of their capacity to raise awareness and their coherent protest.

However, after President Bush’s declaration of May 1991, underlying tensions between the ways different types of NGOs viewed NAFTA lead to a split within the protest movement. Moderate NGOs were more prepared to work with the state to make environmental safeguards an integral part of NAFTA while more critical NGOs wanted to take NAFTA into a new direction and transform it from a trade agreement into a development agreement. Therefore, they were much less inclined to compromise and work together with the government.

In August 1992 negotiators presented the so-called “greenest trade agreement” which was nevertheless declared too weak in its language as well as in financial and enforcement terms by both moderate and critical NGOs. Equally, proposals to create a “Regional Environmental Commission” were dismissed by ENGOS. These protests were further reinforced by American trade unions’ complaints about NAFTA’s treatment of labor rights and an immanent Presidential Election. These factors lead the US Congress to delay voting. Luckily for the NGOs, opposition candidates had a greater forum for expressing their views on the treaty because the debate about NAFTA coincided with the presidential campaign as well as the primary election campaigns, (Macdonald/Schwartz 2002).

#### How NGOs cooperated with the Clinton administration

After President Clinton’s election in late 1992, the US Government promised the addition of supplemental agreements on environmental and labour issues to NAFTA and sought closer relations with moderate US ENGOS which exacerbated the division between moderate and critical NGOs: while moderate NGOs (such as the Worldwide Fund for Nature (WWF), the National Wildlife Foundation (NWF) and the National

Audubon Society) proved willing to compromise on their position by lowering their demands in exchange for an opportunity to actively influence the agreement by working with the government, more critical NGOs (such as Greenpeace and the Sierra Club) drew up a transnational alternative agreement that focused on sustainable development and trade.

Essentially, the US government advocated a stronger and supranational “Commission for Environmental Co-operation” (CEC) and trade sanctions as punishment for a member country that failed to observe environmental requirements. While many Mexican and also some Canadian organizations were concerned that the US would use these measures for protectionist aims, even some more moderate NGOs such as the WWF and the NWF did not support sanctions. The supplemental environmental agreement therefore only provided limited supranational responsibilities for the CEC and very limited opportunities for sanctions to be imposed - its language was careful and often toothless. Still, moderate NGOs had directly influenced the process of negotiation and design of side-agreements together with a US government that was willing to cooperate. They had therefore won a battle which had taken place against a background of resistance from the private sector organizations’ transnational lobbies, who wanted no CEC and no trade sanctions at all.

### **The CEC and Nongovernmental Organization:**

The traditional way in promoting compliance with international law is through adjudication of claims by one state that another state is violating its legal obligations. But in most of the time the state to state complains did not work did not played the important role in promoting compliance with international environmental law. So even the prominent Environment treaties usually did not provide for compulsory, binding adjudication, and states almost never invoke and the voluntary procedures they do include. So it is argued that states do not bring environmental claims against one another because they are vulnerable to such claims themselves, and do not want to trigger retaliatory actions or establish undesirable precedents. So the private parties such as

environmental groups, avoid such road block go ahead with the complaining of the states before international tribunal.

The prominent and diverse North American environmental NGO community will be crucial to the credibility and the relevance of the CEC work. In the Commission the NGOs relationship and its procedure and submission process in dealing with the environmental issues clearly stands out. NGOs through the JPAC give a way to the most dynamic and innovative element of the fact-finding and information management mandate for the Secretariat. CEC set out a process where any 'NGO or person established or residing in Canada, Mexico or the US may make a submission' asserting the party failure in the enforcement of the environmental laws. (CEC 2002, 11-13).

CEC has defined NGO as a 'scientific, professional, business, non-profit, or public interest organization or association which is neither affiliated with, nor under the direction of a government.' (CEC 2002, 57). While the CEC with its ability is powerless to enforce laws or impose punishment, but it can exercise the power through the citizen submission process to spotlight problems in each country and bring specific environmental issues to the attention of governments, industry and the public at large.

ENGOS their direct participation makes them a influencing the policy. Their participation in environmental policy making is crucial to the development of regulatory regimes, especially when viewed from the perspective of transboundary governance ( Alper and Salazar 2005, 25)

The proliferation of ENGOS over the past several decades has altered the landscape of environmental policymaking, as they have played an essential role in the process of legitimizing multilateral negotiations. Their increase level of participation of ENGOS has led directly to an increased integration of economics and environmental measures at the international level. As we seen in the light of the debate of the NAFTA negotiation. It shows that ENGOS are now 'providing a new international forum to engage domestic government officials and to highlight concerns about domestic governance (Markell 2003.)'

### *Citizen Submission Procedures:*

Before examining the NGOs role in submission on enforcement matters and factual records will study the Citizen Enforcement submission Procedures.

The citizen submission process has been lauded by some as a major innovation in reconciling international trade and was described by one environmentalist as 'a bold, progressive experiment, truly unique in the world.' (Blair, David J. 2003, p.236). Number of NGOs considered this as the most important part of the side agreement, and also is been the model for the trade agreement of future as well as of the existed one in dealing with the environmental issues. This mechanism has strengthened their capacity and ability also given them opportunities to participate and bring greater transparency to the environmental practices of government. With the negotiation under way to expand NAFTA to include other hemispheric partners in the Free Trade Agreement of the Americas (FTAA) initiative and the WTO initiatives, NGOs are actively involved in the new trade agreements thinking they will threaten the ability of governments to maintain and strengthen environmental laws and also undermine the enforcement of laws. There is also bit dilemma because of the new trade negotiation, the citizen submission is coming under more intense scrutiny and is being used as this being the yardstick for many ENGOs assessment any government undertaking to ensure the environmental sustainable of trade agreements. The NGOs effectiveness depends on the performance and active performance depends on the citizen submission mechanism that which to the extent how it (citizen submission process) will influence the trade agreement.

The criteria for submissions are different from the criteria for Part V - as it deals with the dispute resolution process set out in the Agreement, cases in a number of ways. Citizen submissions do not need to demonstrate that enforcement failures have an effect on trade and do not have to demonstrate a persistent failure to enforce environmental laws.

The Articles 14 and 15 deals with the citizen submission procedures and factual record procedure. NAAEC article 14 provides that the Secretariat may consider a



submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law. Submission should not be more than 15 pages.

The citizen submission must : 1) be written in an acceptable language; 2) clearly identify the submitter; 3) provide sufficient information, including any documentary evidence on which the submission is based to allow the Secretariat to review the submission; 4) be aimed at promoting enforcement rather than harassing industry; 5) indicate the matter has been communicated in writing to the relevant authorities of the challenged Party and indicate the response, if any ; and 6) be filed by a person or organization residing or established in the territory of a Party.

When this criteria is met then the Secretariat conduct a second internal review under article 14 (2) to determine whether the submission merits a response from the challenged Party. Secretariat consider 1) whether the submission alleges harm to the submitter; 2) is their a submission alone or there is a combination with other submissions, raises matters whose further study would advance NAAEC goals; 3) whether private remedies available under the Party's domestic laws have been pursued; and 4) whether the submission is drawn exclusively from media reports. If the submission does not satisfy the criteria the Secretariat will notify the submitter and terminate the process. If it satisfies the requirements then the Secretariat will forward a copy of the submission and information to the challenged party for a response. The Party will delivery its response: 1) whether the matter is the subject of a pending judicial or administrative proceeding in which case the Secretariat will terminate the submission and 2) any other information the Party wishes to submit, such as whether the matter was previously the subject of a judicial or administrative proceeding, whether private remedies are available to the submitter, and whether such remedies have been pursued.

Then there is third internal review takes place to determine in light of any response from the Party. Secretariat will warrant whether the development of factual record is required to develop factual record. There is no provision for to made public the response of the Party or nor the submitter is give any opportunities to reply to any

information contained in the response. If the Secretariat decides that not in any way warranting for the development of factual record, then the case is terminated. But if the factual record is made then the party failing have to enforce the law.

Some of the Enforcement Submission Flaws:

1. the submission process imposes no time limits on the Secretariat in talking the time to review of the complaints with article 14 (1) or 14 (2). Or on the preparation of the draft and final factual records.
2. submitter has almost no opportunity to participate in the review process. A submitter is not allowed to see, given a chance of much less reply to, the challenged Party's response. The citizen has no ability to determine the response of the Party is accurate or not. The submitter almost relies only on the Secretariat to pursue the claim.
3. its believed that there is lack of a guaranteed remedy. Submitter file the obstacle course of the articles 14 (1), 14 (2); the Secretariat determines that the Party's response is inadequate; the Council votes to allow the Secretariat to prepare the factual record. But the submitter has no direct ability to force a Party to effectively enforce its environmental laws. Even if the party is failing to effectively enforce its environmental laws, the violation may never be redressed.

With this flaw there are other problems which the mechanism faces: the political constraints of the three countries; despite its modest accomplishment and potential till date, the submission process still have the political challenge which is jeopardizing environmentalists support for the process.

Since the existence of the citizen submission there are fewer submissions because of the lack of awareness about the mechanism as in 1995 there were two submission, in 97-98 there were seven and again in 1999 fell to two (Ibid 304).

Another reason is that, the time it take to develop the factual report, in 2001 out of 21 submission only 2 cases has resulted in the public release of the reports. This is because of the Secretariat did, as the submission does not conclude the adequately

information means not clear indication. So in 1999 the Council decided that Secretariat will provide the clear guidelines for submission so that the NGOs and individual submitters will be clear in providing the information.

Other drawback is that some times the submissions are withdrawn; Council may reject to prepare the factual record. Mainly also the government fail to enforce, which the Quebec failed to enforcement the standards related to the wastes originating from hog farms. In May 2000 council meeting the Canada and Mexico voted in against the submission and US in favors in preparing the factual report. Its argued that the environmental regime at the time of factual record get changed so that will not serve the new regime except the explaining the history.

Sometimes the environmentalist wait for long years that they don't even get the proper explanation for reaching this decision as in Centre Quebecois du Droit de L'Environnement, submitter in the Quebec Hog Farms submission, wrote to the Council expressing its disappointment and dissatisfaction with the action, as it did not consider the part of the side agreement of the NAFTA.(Ibid p.307).

Delay in the cases procedure show the capacity of the Secretariat, since the 1998 the legal officer is been increased and a Submission on Enforcement Matters (SEM) established, which showed significant increase progress in reduction of the time taken of the process. But delay appeared when the party is inaction, e.g. in the case of the Oldman River II submission, as the court case unnecessary involved did not let to develop the factual record; other case on BC hydro submission, Canadian officials did not do meeting with the secretariat to set the record, and also in Metales y Derivados submission delayed because it had not received information from the Mexico.

### **Secretariat Submission and NGO**

While the Secretariat considering a submission from NGOs, business enterprises, individuals, asserting that a Party is failing to effectively to enforce its environmental

law, i.e., failing to meet its obligation under NAAEC,<sup>1</sup> Such consideration is given the special procedure distinction from that submission of the NGO on other matters<sup>2</sup> so CEC is empowered to a limited extent to investigate a party's carefulness in enforcing domestic environment legislation. In some the submission the CEC is empowered within certain limits, to investigate a party's carefulness in enforcing domestic environmental legislation. Set of rules are applied while dealing with the enforcement issues:

1) establishing that the submission is of the right kind; 2) persuading the Secretariat to request an explanation from the party; 3) following the explanation, getting the Secretariat to still recommend the establishment of a 'factual record'; 4) bringing the Council to approve such recommendation with a two-thirds majority; 5) hoping that the Council will allow the publication of the completed 'factual record'.

A study the submission on the enforcement matter in the Secretariat is relevant: the submission must assert that a party is failing to effectively enforce its environmental laws and must not venture into other areas.<sup>3</sup>

The Secretariat will examine whether sufficient information has been provided and whether it appears 'to be aimed at promoting enforcement rather than at harassing industry.'<sup>4</sup> The submissions show the evidence and also try to bring the matter to the attention of the domestic authorities, if the domestic laws are silent on the issue.

Should Secretariat be satisfied with the submission then it require and enquire the response of the Party against whom it is filed; it will assess the complainant using three criteria: a) whether the harm is due to the alleged failure to effectively enforce environmental laws; b) the nature of the harm; and the c) the magnitude of the harm.

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<sup>1</sup> Here submission is documented assertion that a party is failing to effectively enforce its environmental laws, made by a party or organization established in the territory of a party.

<sup>2</sup> Some of the submission makes no reference to a 'persistent pattern', here NGO seeking Council action on an enforcement matter is lower than that of a party trying to convince a dispute settlement panel to determine that another is violating the Agreement's enforcement provisions.

<sup>3</sup> The submitter must identify specific provisions of the applicable environmental law (Article 45 (2) [Article 5.1]. the submission must also contain a 'succinct account of the facts' and include any documentary evidence in which the submission may be based [Article 5.3].

<sup>4</sup> The NAAEC specify that this evaluation will be made in particular through an inquiry into the potential 'economic benefits for the submitters,' a focus on party actions or omissions 'rather than compliance by industry' and the 'vexatious or frivolous' character of the submission. (Art. 5.4).

After considering the response, the Secretariat may then recommend to the Council to be prepared the factual record without consultation with the NGO or person that initially submitted the complaint. When the secretariat gets the permission to prepare the factual report, though it had equipped with adequate research and investigative capabilities it will consider the information provided by third parties including governments, publicly available information, NGOs submission, JPAC submission or information of the independent experts.<sup>5</sup> It is generally agreed and also observed that the Secretariat cannot include an evaluation or judgment, or any recommendations for remedial action and also nor consider that the Council will take any specified action or make recommendations following receipt, or release of the factual record. (Tollefson, Chris, 2000, p.4). Once the NGO submission has activated the preparation of factual record, the NGO initiator has no further role in the process other than providing further substantive information that may be used later by the Secretariat.

When the factual report releases to the public by the 2/3<sup>rd</sup> vote of the Council permission, by that its believed that it will not give rise to damaging pattern of secrecy for CEC inquiries in enforcement matters. The JPAC though contribute information at the drafting stage, but the factual record in draft or final form will not be available to the JPAC until the Council makes it available by 2/3<sup>rd</sup> vote. (Art. 16 (7)).

### NGOs and JPAC:

The NGOs role in the Joint Public Advisory Committee (JPAC), has to evaluated on the basis of citizens of the three North American countries a chance to speak out on key environmental issues. It deals with the environmental issues compliance with the environmental laws in North American, and environmental networking among the communities. The public are invited to attend any of the consultations and even they can submit written comments on the discussion topics if they don't attend the meeting. The greater involvement and effectiveness of the public giving rise to the improvement of the

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<sup>5</sup> In accordance with its laws, in Art. 21 (1) (a) probably refers to access to information, protection of privacy and other sunshine laws. Article 42, also protects matters related to national security, a serious limitation if one considers the well-documented environmental impacts of military establishments and activities, as well as those of the nuclear industry.

environment in North America. JPAC is been more transparent and have proactive instruments which provided and facilitate the NGO participation, of the three different nations. JPAC make them all the join in the commitment to preserve and enhance our common environment and achieve a sustainable society. JPAC invite the public to participate in consultation of the stated purpose:-

- establish a policy or directive;
- assist in the preparation of the program of the CEC;
- obtain views in the context of specific project; and
- address a specific issue or set of issues.

JPAC activities engaged in the collection of information, consultation and participation.

More than 100 individuals, business and environmental organization of the North America make recommendations at public consultation sessions of every year, which will be held by the Commission for Environmental Cooperation in Canada, Mexico and the United States.

In 1995 a session each was held in Ottawa, Mexico City and Washington, D.C. by JPAC, for the recommendations on proposed procedures for submission on enforcement matters under Articles 14 and 15 of the NAAEC. The participants in Canada were Canadian Chemical Producers' Association, the Canadian Labour Congress and the Sierra Club of Canada. In Mexico City, the business group such as the Confederacion de Camaras Industriales, the Consejo Nacional de Industriales Ecologistas (CONIECO) and several NGOs and finally in Washington, DC, the Electronic Industries Association, the National Advisory Committee (NAC), represents both business and environmental organizations, and also the National Wildlife Federation etc..

The variety of groups of all the three countries had a consensus requested that in the procedures of submissions, there should not be restrictive interpretation especially as it relates to the use of the words 'environment' and 'harm.' As Jean Richardson, an Environmental Scientist and American member of JPAC said, 'it's remarkable that there

were many more similarities than differences among the recommendations made by the public in the three countries.’ (Publications and Information Resources, 1995)

### **The interests of pro-free trade NGOs:**

In Canada, most pressure came from the “Canadian Business Council on National Issues”, in the US, from the “American Business Roundtable” and in Mexico from “Coordinadora de Organismos Empresariales de Comercio Exterior”. However, the influence of these business NGOs must not be over emphasized (Macdonald/Schwartz 2002). The Canadian and the US governments were already well accustomed to channeling business’ demands for consultation through elaborate mechanisms that reduced their direct impact and influence on policy, such as the “International Trade Advisory Committee” in Canada, and the “Sectoral Advisory Committee” as well as the “Advisory Council on Trade Negotiations” in the US (Macdonald/Schwartz 2002). In Mexico pro-free trade NGOs were unable to exert influence on the government as there was a “historic lack of relationship” between the public and the private sectors in addition to the considerable dominance of the ruling party (Macdonald/Schwartz 2002) in a state that did not have elections generally accepted as free until 2000.

### **Public Access and NGO Involvement:**

This is the crucial part of the democratic principles. In recent time NGOs its role has been raising and their active involvement in the bringing the light the issues and also raising their voice to be heard in all debate of national or international level. Specially in the environmental areas they are very active in all the country. The North American NGO community are crucial to the credibility and the relevance of CEC’s work as their submission are of most dynamic and innovative element of fact-finding and information management mandate of the Secretariat.

The Rio Declaration on Environment and Development, adopted in 1992, has very important Principle 10 that says ‘each individuals have appropriate access to information concerning the environment that is held by public authorities including

information on hazardous materials and activities in their communities and the opportunity to participate in the decision-making process,'

NGO community believed that open set of institution would be more sensitive to environmental issues with the public input would generally translate into more environmentally conscious decision-making. Public consist of all the organization of trade and environmental NGO some NGOs which are generally grass root organization and some of them are supported by large corporation.

Private corporations are also filing the submission under the Art. 14 and 15 of NAAEC, as their main desire is to prevent foreign competitors from gaining a competitive advantage. So make active the CEC's inquiry into a specific sector of the environmental regulations and enforcement in other member countries. This shows that environment and commercial objectives are covered.

Participation of the NGOs are not same in all the trade agreement, as in GATT is criticized for the secrecy of its dispute settlement procedure the unavailability of even basic documentation and the impossibility of NGO making their voices heard in the organization. Even in Canada-US FTA proved just as deaf to the calls for more transparency and access. While in the debate of NAFTA/NAAEC had to meet a very high standard of openness and also NGOs counted that influence should be unhindered their access to CEC also and its undertaking. But NAFTA in accessibility and transparency, it is unfortunately replica of the previous trade agreement. The NAAEC, it *had* to provide for some degree of transparency and openness, and it represents a modest but encouraging improvement over past exclusionary practices. Nevertheless preamble<sup>6</sup> and the objectives<sup>7</sup> show the transparency and openness. (Johnson, Pierre Marc & Andre Beaulieu, 1996, p. 164).

But still NAAEC fall short in realizing goals, the transparency and openness in some of the specific provisions. Before going to the NAAEC submission restriction, let

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<sup>6</sup> Emphasis, 'the important of public participation in conserving, protecting and enhancing the environment.'

<sup>7</sup> One of the objectives is 'promote transparency and public participation in the development of environmental laws, regulations and policies.'



see the NAFTA's Art 1114,<sup>8</sup> which is the pollution havens investments clause, not been allowed to NGO participation in the relevant consultative role given to the Council. NGOs cannot even be allowed to present evidence establishing that a NAFTA party is lowering environmental norms in an attempt to attract investments. This could have allowed the anti-rollback provision of NAAEC that seeks to achieve the same objective as NAFTA Art. 1114: preventing the competition in trade and investment from putting too much downward pressure on environmental norms. Article-3, say Levels of Protection Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations, each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.

There are also some provisions unduly restrict public access to the submissions procedure; mostly public submissions on enforcement matters have to pass a difficult test of thoroughness and nonharrassment.<sup>9</sup>

Secondly the Secretariat may refuse to request a response from the party involved, even if the submission is acceptable.

Thirdly the Draft Internal Procedure for Handling Article 14 submissions ought to be commended. Due process, administrative fairness and importantly the CEC's

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<sup>8</sup> Art. 1114: Environmental Measures: 1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns. 2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.  
Section B- Settlement of Disputes between a Party and an Investor of Another Party.

<sup>9</sup> As though a submission would be presumed to be aimed at damaging industry rather than protecting the environment) (Art. 14 (1) NAAEC.

credibility required that the CEC to go beyond the minimal requirements of the text and disclose the steps taken in respect of the submissions prepared by NGOs.

But over all the CEC shows more sustained and meaningful relationship with the NGOs, as compared to the Multilateral Organization, such as the Asia Pacific Economic Cooperation Forum (APEC) and its committees, the OECD, and NAFTA. The public registry of submissions and responses will be a key element of a more open scheme presented by the NAAEC.

The public submissions and development of the factual reports is a crucial advancement for the NGOs which make them for the involvement in the North American environment debate. But still in the Mexico the Government is least responsive to public calls for environmental action; it has been argued that even though the CEC provide for the path to access to the Mexican policy process but still unavailable to the Mexican environmental group.

NAAEC provisions enable the CEC with the help of NGOs to cast the spotlight on the public authorities that fail to fulfill their obligations in failing ineffectively enforcement of domestic environment instrument. It also sanctioned NGOs activism to focus the Secretariat and the Council, and the parties themselves on the worst areas of environmental neglect.

Three notable public submission features in respect on the environmental law enforcement are:

- a) the initial stage of the process should be, in principle, invulnerable to an attempt by the Council to stop the Secretariat from considering an NGO submission and requesting an explanation from the impugned party.
- b) as NGOs and the citizens from any part of North America may make a submission regarding any state or province of their own country or any other party in the NAFTA area.

- c) there is neither a trade test nor an expansive “persistent pattern” criterion for public submission.

The first private submission to the CEC Secretariat occurred on 7 June 1995: case filed by the National Audubon Society, Grupo delos Cien Internacional, and Centro Mexicano de Derencho Ambiental all three filed a petition asking the CEC to investigate a contamination incident at the Silva Reservoir, in a heavily populated area of Guanajuato state in central Mexico. NGOs chose to submit to the CEC which can according to the Art. 13, deals with the general investigations and reports and not Art. 14, claim that environmental laws are not enforced. So did not want to get confrontation with the Mexican government. But the end result is that the Commission, the NGOs and the Mexican government appear willing to move forward toward a solution.

Three main reasons support cautious optimism: the permanency of the channels for public submission, the existence of the JPAC, and the fact that NGOs particularly the Canada and American NGOs that played such an important role in the NATA/NAAEC debate, are eagerly lining up to exploit NAAEC mechanisms at their disposal. Whether at UNCED, IUCN or the financial institution like the World Bank, the NGO community has long established that it can provide an essential contribution to international environmental debates.

So the public submission and assessment process ensure the participation the business actor and environmental grouping monitoring and assessing the implementation of NAAEC. CEC is required to refrain from erecting too many walls between itself and the public so that its relationship with NGOs be advisory, observer and make recommendations regarding the implementation of NAAEC.

The distinction activity of the NAAEC are – the procedure of the dispute settlement provision and cooperation, is the main for the consideration because of the principle of ‘green’ trade competitiveness it embodies, may be thought of as new international economic law.

When the NAAEC's public involvement is compared with GATT and CUSFTA then it is leaping forward and also if it is compare to UN institutions dealing with environmental issues, NAAEC is in the favorably in most respects, but when it is looked at current level of access to environmental administration it shows that much the desired is to be achieved.

**A success for moderate NGOs despite their internal tensions:**

Moderate US ENGOs broke the civil and political opposition to NAFTA by working together with all three governments as well as Mexican and American private sector organizations. Hence, the US Congress' ratification in November 2003 of the NAFTA package they helped to design "can be considered a success for the moderate NGOs". The effect of this success: "the politics of trade policy making had changed for good".(Falk A. 2001)

After NGOs had initiated the debate and ensured that it was taken up by politicians where possible they had remained a valuable source of constructive criticism. Despite their institutional differences in size, membership, financial situation and relative freedom to act in the political sphere considering the difference between Mexico and its northern neighbors, NGOs were successful in constructing a valid transnational opposition. The adaptability of NGOs meant that they could create "advocacy networks" that provided them with new channels of access to government negotiators and make resources available across borders. However, the strength and effectiveness of transnational NGOs depends on local groups and campaigns, (Heijden, Van Der; 2002) another indicator of the 'grass roots' change in civil society's attitude achieved during the campaign for changes to NAFTA.

It is significant that the tension between NGOs from different nations was contained within the movement and that the only split among NGOs occurred between moderate NGOs (in other words, those ideologically predisposed to cooperate with existing power structures) and critical NGOs (those seeking to overcome them). Those moderate NGOs benefited from 'losing' their more extreme partners - an effect desired

by the Clinton administration, too. Indeed, moderate groups were able to convince more critical groups to back their ideas because more extreme groups knew they would benefit from the legitimacy offered by working with their politically more acceptable partners.

NGOs had demonstrated that they could no longer be ignored by governments seeking to further economic integration. One may even go so far as to say that, in the globalizing political landscape, they have taken over some of the roles traditionally belonging to political parties. Trade policy is now viewed as a tool for improving developmental factors such as environment and labor in member countries and it has been “politicized to an unprecedented degree.

At the same time, while an important example of transnational activism and cross-border politics, the achievements of the debate about NAFTA should also not be overstated: the supplemental agreement’s provisions have only had a limited effect on Mexico’s environmental policy performance and the “narrow approach” of the agreements on environmental protections, as well as the absence of substantial funding mechanisms let NAFTA fall short of many an NGO’s imagined ideal. It is safe to assume therefore that although NGOs were highly effective towards the beginning of negotiations, let alone by putting the issue in the public eye, their effectiveness diminished toward the end of negotiations when the organs of the state were clearly able to exert control on those groups attempting to influence them.

Pierre Marc Johnson, chair of the body said, while delivering the report of the Ten Years of North American Environmental Cooperation, in Montreal ‘we believe that the governments are probably micro-managing articles 14 and 15 of the NAAEC, which is the citizen submissions process... we’re suggesting to the (environment) minister they should feel comfortable leaving the Secretariat to do its work in this process,’

## *Chapter VI*

### *Role of NAAEC in Greening the NAFTA*

NAFTA has been primarily designed to facilitate commerce, not environmental progress in the economic area yet it claims that NAFTA is the 'most environmental trade agreement ever signed.' (Johnson, Pierre Marc and Andre Beaulieu (1996), p.p117). Moreover, President Bush boasted that the 'NAFTA contains unprecedented provisions to benefit the environment. And Ambassador Hills claimed that the NAFTA is the first such accord to include provisions to protect and improve the environment.'

The important of border issues and other environmental concerns that seeped in the NAFTA debate, for which the NGO were fighting and demanding, further to address continental substantive environmental norms or for systematic trilateral cooperation on the environment which was limited from the NAFTA side. During the debate NAFTA foster a legal and political dynamic that to promise for ongoing dividends for environmental protection, and also for a better consideration of the environmental issues of the North America. As Steve Charnovitz observed: 'the hyping of the NAFTA's environmental accomplishments transformed the trade and environment debate. For the foreseeable future, all US trade agreements are going to be evaluated for their greenness.'<sup>1</sup> Enter the North American Agreement on Environmental Cooperation, NAFTA moves beyond trade and investment to become the NAFTA package, an incomplete yet groundbreaking attempt to integrate the social agenda of trade in and around trade institutions.

NAAEC is divided into two parts: a first set of issues is covered in part one till four, which provide a framework for environmental cooperation that fulfills the environmental pledges of NAFTA, addresses the broad agendas of the environmental community, and literally enumerates the ecological challenges North Americans face

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<sup>1</sup> In the 1994 election for the House of Representatives and the Senate have drastically changed the climate for environmental initiatives in the US Congress. It remains to be seen whether this new context will endure during NAFTA expansion discussions.

today. The second is the dispute settlement procedure, concerns itself with a second set of issues related to a peculiar kind of environmental dispute: that which occurs when one party alleges that another is not effectively enforcing its laws.

NAAEC provides the institutions CEC which act as a point of inquiry and receipts for comments from non-governmental organizations and persons concerning the environmental goals and objectives of the NAFTA. Though CEC has limited input in the work of the FTC, but it has served as the official interlocutor of the NGOs seeking to question the environmental record of NAFTA.

NAFTA did include the specific provisions throughout the Agreement build upon these commitments. They are:

- NAFTA assures that standards for food additives and contaminants are based on the best science available. Article 713.3 of NAFTA states that nothing shall be construed to prevent parties from adopting a sanitary or phytosanitary measure more stringent than the relevant international standard;
- NAFTA affirms each country to maintain high health, safety, and environmental standards also encourage the parties to harmonize their standards on these issues;
- Agreement states that no country shall lower its health and environmental standards for the purpose of attracting investment;
- NAFTA preserves each country's right to enforce international treaty obligations, specifically concerning endangered species, ozone depleting substances and hazardous wastes;
- Agreement includes investment provisions which promote the development of more stringent environmental standards on new investments;
- NAFTA's dispute settlement panels may call on environmental experts to provide advice on factual question related to the environment.

But many of the group in all three countries, expressed dissatisfaction over the stringency of the policy. So in response the parties undertook negotiation of side-agreement NAAEC to make the partners to commit themselves to undertake the

important environmental policies regarding the development, implementation and enforcement of environmental laws. The supplemental agreement helps to insure that;

- That without affecting the rights of the states and provinces standards, the agreement may enact more stringent environmental measures;
- Agreement make assure that parties will not lower the standards and enforcement should be strengthened;
- The agreement impose obligation that countries should report of their environmental and should promote environmental education and scientific research by providing greater transparency of governmental procedures; (Article 4 of NAAEC).
- Cooperative efforts to be provided to accelerate the border clean-up and infrastructure development;
- An institution CEC a comprehensive mechanism created to evaluate and settle the disputes of parties. CEC promote and facilitate cooperation among the parties, it address the disputes and queries that arise between the parties regarding the interpretation or application of the NAFTA.

Commission will:

- Helps in exchange of information on criteria and methodologies of the standards;
- Foster public discussion on environmental concerns;
- Assess transboundary problems and promote integrity approach to deal with the environment;
- Commission acts only on the submitted concerns of the issues and will also deal with the dispute settlement procedure (Art. 5 of NAAEC) if the party is persistently fail to enforce the environmental laws. (Frey, Bertram (2003), p.3)

Commission laid down the sanctions and penalties (Art. 34 and 26, and Annexes 34, 36A, 36B and 41 of NAAEC), for the failure of their environmental laws. For US and Mexico the sanction are in form of punitive trade tariffs or fines; for Canada they would



be in the form of monetary penalties alone. As annex 36A set a separate set of procedures for cases Canada is involved.

With this agenda of cooperation of NAFTA/NAAEC package attempt has been made to examine on the GATT and NAFTA in comparison:

Uruguay Round established WTO in 1995, reduced tariffs on many industrial products, imposed limits on agricultural subsidies, but failed to create specific provisions addressing environmental issues.

At the end of the Uruguay Round, trade ministers adopted the Decision on Trade and the Environment which anchored environment and sustainable development in WTO work (Colyer, Dale, (2004), p.7) With the implementation of the WTO agreement, a Committee on Trade and Environment (CTE) established to consider all aspects of the trade-environmental interface.

Its preamble commits members to protect and preserve the environment in accordance with the objective of sustainable development.

GATT language is more restrictive in determining the levels of environmental and health protection above the international standards, while NAFTA allow the freedom in maintaining.

GATT provision's led to the backsliding in the stringency of environmental standards. Which we saw the case filed by Mexico against US Tuna/Dolphin case were the GATT ruled US as 'unilateral protectionist trade measure violating the international commerce pact'.

With this little brief it's said NAFTA and its side agreement have developed the extensive institutional framework in addressing the environmental issues and also in considering the other several multilateral environmental agreements that have been negotiated and implemented by the international community. GATT/WTO with its lack of coordination has been failing to further the concerning of environment.

The present study focuses NAAEC and its institutions CEC in greening the NAFTA from outside. Study included the role of the transparency, NAFEC and also green building objectives of the NAFTA/NAAEC package.

### *Green building:*

The obvious geographic connection made the three countries of North America to link together, because of thinking that major development in one country can and does have a powerful impact on its neighbors. All the three countries share energy dependency and security concerns and all have governments based on liberal democracies. It is imperative that all three governments should approach the issue of development cooperatively.

Green building defined and supported the networks, interaction that inspires the trust and reciprocity, positive behaviors of the political engagement and volunteering.

North America has a unique opportunity over these next years to create a sustainable built environment for present and future generations. Green residential building in the US has traditionally been a grassroots effort, with origins stemming from the energy crisis of the 1970s<sup>2</sup> and the solar home movement of the 1980s. Green housing support established in early 1991. It's all when global warming has sparked public interest in environmentalism rivaling that of the early conservation movement of the 1072s. So mainstream interest in green building coupled with increased evidence from the scientific profile. To respond to the controversy a solution and opportunities has been the proposed so the diverse group took interest in the recognition of the programs; banks and lenders recognizing a unique marketing tool; designers and architects tapping new

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<sup>2</sup> On the moment of the Earth Day on April 22<sup>nd</sup> 1970s, 'Environmentalism' emerged as a broad term addressing common concerns over crucial issues that affected all forms of life on earth. The Energy Crisis of the 1970s illustrated that environmentalism with concerns over resource scarcity. It was recognized that the consumption in US was the root cause of the energy crisis and also US policy flaws were recognized as a major cause of the crisis and also Arab oil embargo. Policies were introduced are oil price decontrol became a central policy issue; Carter Administration takes a new perspective and emphasizes deregulation of the energy industry ; in 1974 Congress passed the Geothermal Energy Research Development and Demonstration Act as well as the Solar Heating and Cooling Demonstration Act; Solar Energy Research Development and Demonstration Act and Federal Non-Nuclear Research and Development Act, National Energy Act (1978), Department of Energy created in 1977.

and exciting technologies and resources; government agencies enacting green building incentives and mandates; and academia and the research community developing new products and systems.

In order to enact significant environmental change, industry leaders have proposed several targets for green housing market penetration. The American Institute of Architects (AIA) '2030 Challenge.' Proposes to achieve carbon-neutral buildings (commercial and residential) by 2030 through immediate reduction of energy use in new and renovated buildings to 50 percent of the national average, followed by a further 10 percent reduction every five years thereafter. The US Conference of Mayor unanimously adopted the 2030<sup>3</sup> The US took lots of the measure into account in order to achieve the green building goals. But in order to achieve the market transformation necessary to meet targets like the 2030 Challenge, the three governments of North America might undertake the following actions to capitalize on existing market drivers and overcome barriers to green residential building.

Among the NAFTA countries: Canada, Mexico and the US has the common vision to empower green homebuilding in their respective countries; shared information, mutual support, joint communication and other strategies, in order to better understand market drivers, barriers and potential environmental impacts from market transformation. Among the green building strategies, the Documenting and sharing commonalities of the North American countries enhanced the global effort, though each region will naturally approach green building in a unique manner. Mexico may have more multi-family housing and Canada may have more cold-weather construction, but housing in all three countries needs to achieve healthy interiors, water conservation, energy conservation, reduced materials consumption, etc. adopting parallel initiatives in all three countries will help to drive green building practices. The three countries of North America can support the creation and adoption of international criteria and standards for green building as well as for energy performance, with provisions for climate and culture-specific variations but with a common goal for positively impacting the environment.

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<sup>3</sup> Challenge in June 2006. Green Residential Building in North America: A Perspective from the United States, p.18.

Sustainable solution with other countries helps to achieve some of the confident choices and improve to take immediate action for the improvement of the human and environmental health and also to clean coal, carbon misuse, nuclear power and biofuels which are options for solving environmental crisis in North America, as all these technologies carries significant risk as well as benefit. Countries encouraged for immediate action for investing in proven but underutilized solution for green housing, such as resource conservation and renewable energy. Its believed that the green housing building of North America would greatly benefit from pursuing joint research opportunities to leverage expertise and resources in all three countries and to avoid duplication of effort. the collaboration of industry, national laboratories, private research companies and research universities in Canada, Mexico and US represents significant potential to promote and perfect green building materials and methods. Potential research topics include building science, occupancy evaluations/ performance data, materials reduction/reuse/recycling, life-cycle analysis and energy analysis tools, and net zero-energy buildings.

Most related research today is aimed at energy efficiency in building and renewable energy technologies, with very little emphasis on other aspects of green buildings. A report released in March 2007 by the USGBC cited only 0.2 percent of the US federally funded research budget targets green building.<sup>4</sup>

Also encouraged government, industry, educational and advocacy groups to support the dissemination of research and training information to a broad North American audience to further industry professionals' and consumers knowledge of green buildings. Though each country has conducted informative research on advanced solutions for sustainable, but not succeed in transferring findings to the actions. So now countries together took initiatives promoting sustainable and affordable initiative like having the Green Building Council products or equipment, so that the national organization can report to it, as it is subset of the CEC. Such Council can help to facilitate relationships

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<sup>4</sup> USGBC finds research underfunded. 'Environmental Building News', June 2007. (<http://www.buildinggreen.com/articles/IssueTOC.cfm?volume=16&Issue=6>)

between supporters of green building and realtors, appraisers, financial institutions and policy makers in all three countries to accelerate green building.

In the vision of the green building in the North America was the response to the challenge represented by climatic change and its consequences. (Fernando Mayagoitia Witron, paper 4a: p. 1). In Mexico the green building a somewhat complex, though the population was not growing much there the life expectancy was increasing. So the market growing for the building and financing housing in Mexico and in light of the direct relationship of housing and the environment, it taken into account the electricity, water facility and sewage system. In comparison to the US and Canada, Mexico is no. 14 in the world in terms of the total carbon dioxide volume of emission, (US ranking no.6 and Canada in 7). (Ibid, p.4) In Mexico the primary objective is to improve the population's quality of life. To achieve this objective it is necessary to surpass the national economic growth rate registered in recent years (4.2 percent) and also count on energy resources necessary for growth. National energy policy aims to establish a balance between promoting economic growth and protecting the environment. Consequently aimed at guaranteeing the energy needs of both productive and household activities in a context of efficiency and harmony with the environment. As a signatory to the Kyoto Protocol, Mexico is allowed to market emission reduction certificates (ERC) in registered mitigation projects. And also government and private funds created to develop the projects that will be linked to the Clean Development Mechanism (CDM), that allows the issuing the ERCs. Semarnat promoted an agreement with the Secretariat of the Treasury (Secretaria de Hacienda) the creation of the Mexican Carbon Fund (Fondo Mexicano de Carbono - Fomecar), which promoted the projects.

90 percent of energy consumed in Mexico comes from non-renewable energy sources (mainly oil and natural gas). So the important aspects to address are the greenhouse gas emission and the impact on climatic change and diminishing hydrocarbon reserves. (Ibid, p.19)

A recent report by the Canadian Green Building Council describes the purpose of green buildings: Green building strive to balance environmental, economic and social

considerations in design, construction and operation. Energy, water and resource efficiency; occupant comfort and well-being; site development and community context; and the economics of building construction and operation are key considerations. In comparison to conventional buildings, green buildings take advantage of natural processes to generate less waste, less pollution and reduce their overall environmental footprint.<sup>5</sup> Voluntary guidelines are found everywhere than the regulation in Canada, Health Canada's Exposure Guidelines for Residential Indoor Air Quality may advocate practices similar

The North American vision for green residential building could result in the creation of a common set of sustainability principles and planning or design tools for green construction, with each country having region/context – appropriate policies and programs to address differences in building codes, regulatory environments and climate. These tools would be used to enhance quality of life and balance environmental, economic and social considerations and would reduce environmental impacts through construction, operation and retrofit activities which focus on minimizing on a broader, life-cycle basis rather than short-term costs. For this vision realized to reduce consumption, renewable use of resources, internalization of costs by occupants, create environmental tools, continual improvement, define and monitor performance and communicate performance. To realizing the vision the North American countries will require a common vision for green residential building. It must be recognized that the barriers to the proliferation of green residential construction within Canada will be magnified by working across international borders. Both the diversity of the actors involved as well as regulatory and non-regulatory barriers will need to be addressed and overcome.

The trilateral agreement on the objectives of a sustainable residential construction sector. The strategy's are:

- A consistent and comprehensive protocol to promote environmental stewardship

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<sup>5</sup> The Sheltari Group (Innes Hood), 2007, The Benefits of a North American Strategy: A Perspective from Canada, Paper 4c . p.1.

- Tools to support innovation and learning
- Performance metrics and tools to support value over price, and
- Capacity building within the industry to support knowledge based service.

So to promote the vision into action for the green residential building across North America requires the leadership of an organization representing the interests of all three countries. The CEC may provide an instrumental role in driving the process of establishing a North American vision. In realizing the vision of the green building its not only a job of the government but also of the industry and financial sector and finally the consumer demand are the main driving force for green to be desirable.

Green building in Canada, Mexico and United States is the process which makes the way to positively impact global issues such as pollution, dependence on fossil fuels, resources scarcity, lose of natural habitat and species and climate change. It represents the a strategy to reduce the human impact on environment generally defined as high performance, sustainable structure that more efficiently consume and harvest energy, water and material while reducing the negative impacts on human health and the environment through a holistic approach to design, site usage, construction, operation, maintenance and deconstruction at the end of a building useful life.

Two of the challenges today the global population facing is the climate change and social and economic inequality resulting from resource scarcity. So green housing address these challenges by taking into consideration the environmental and human health; protection of ecosystems; preservation of natural resources (including water, agricultural land, timber, minerals, ore, quarry products and fossil fuels); reduction of atmospheric pollutants associated with energy use and materials manufacturing and creation of safe, non-toxic indoor environment.

Significantly the goals of NAFTA are to promote trade and harmonization of environmental regulations across North America. Trade in green building technologies, however, is currently limited, because of the requisite testing and evaluation services and jurisdiction is difficult and costly.

The Canadian standards Association have different performance standards. Their standards are performance based, such as; use of climate appropriate products and technologies minimize the use of eco-inefficient products, enhance standards across North America could keep harmful or inefficient building products manufactured in one country from being dumped and therefore used in the market of another. The harmonization of product certification standards and the inclusion of environmental targets would facilitate and promote better quality and more environmentally friendly construction materials and methods within search country and trade of better products across borders.

### *The European Union experience*

'Thematic Strategy on the Urban Environment' (Commission of the European Communities, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee and Committee of the Regions: Towards a Thematic Strategy on the Urban Environment (Brussels, 2004)). This strategies intended to provide a holistic approach to key environmental issues that are characterized by their complexity, the diversity of actors concerned and the need for innovative an multiple solutions. The Thematic Strategy focuses on four cross-cutting themes, including sustainable urban management, sustainable urban transport, sustainable construction and sustainable urban design. The Commission's vision states: "sustainable construction is a process here all the actors involved (e.g. owner, financier, engineer, architect, builder, material supplier, permitting authority) integrate functional, economic, environmental and quality considerations to produce and renovate buildings and a built environment. (p.15)

The Canadian Green Building Council (CaGBC) administers the LEED rating system in Canada. It was created to promote and accelerate the design and construction of high performance building. The Council comprising design and building industry representatives created a vision for a transformed built environment leading to a sustainable future. Its members work to identify industry-based opportunities to affect market transformation by promoting better environmental building practices through



professional training and awareness. The CaGBC also works collaboratively with local decision-making to design tools for municipal policy-making and programs for green building implementation. Both these professional associations have great potential to move the green building agenda forward in Canada through the promotion of recognized green standards and the provision of training and education to their members, the public, and decision makers. In Canada, standards, policies and funding support for green building initiatives vary across jurisdictions. Although constitutional authority for housing is vested with provinces and territories, responsibility for housing standards and land-use planning is generally delegated to local governments. At the federal level, a number of government departments influence housing policy and technologies.

A recent National Round Table on the Environment and the Economy report even sets out a vision of urban Canada in 2050 that is based on the large-scale implementation of sustainable planning principles and energy-efficient measures.

Green building refers to the use of environmentally preferable practices and materials in the design, location, construction, operation and disposal of buildings. It applies to both renovation and retrofitting of existing buildings and construction of new buildings, whether residential or commercial public or private.<sup>6</sup>The report suggests that NA leaders can significantly improve the well-being of North America. Advanced energy-saving technologies applied in building can result in enormous reductions in demand for fossil fuels and emissions of greenhouse gases (GHG). Better design and building practices can also help address environmental challenges such as natural resource depletion, waste disposal, and air water and soil pollution. Green building can also help achieve gains in human health and prosperity. Though there is transformation, in green building procedure only small percentage of building in North America. By some estimates, green building currently accounts for about two percent of new non-residential building and 0.3 percent of the residential market in US and Canada. Mexico

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<sup>6</sup> Green building in North America: opportunities and challenges... art 13.... Secretariat report, 13/3/08, Canada. [www.cec.org/pubs\\_docs/documents/index.cfm?varlan+english&ID=2242](http://www.cec.org/pubs_docs/documents/index.cfm?varlan+english&ID=2242).

no reliable figures shown. But expected to grow rapidly in all three countries in the future.

Green building refers to design and construction practices that significantly reduce or eliminate the negative impact of buildings on the environment and occupants. Potential positive effects of green building practices includes sustainable use of energy, materials and water along with lower resource and waste disposal costs as well as increased comfort and well-being for occupants. Buildings designed in an environmentally conscious manner represent an important opportunity to accrue environmental benefits for generations.

Despite these environmental and economic benefits, green building represents only a small fraction of the new construction in North America.

In Canada Mexico and US commercial and residential building operations account for about 20, 30 and 40 percent of the primary energy consumption, respectively. They typically also account for 20 to 25 percent landfill waste and 5 to 12 percent of the water consumption. The US Green Building Council estimates that green building on average, currently reduces energy use by 30 percent, carbon emissions by 35 percent, water use by 30 to 50 percent, and generates waste cost saving of 50 to 90 percent.

#### Promoting mutually beneficial cooperation:

North America presents an opportunity for governmental and nongovernmental institutions and industry in the three countries to work to improve the building sector. Effort can help strengthen the economies of North America by spurring new markets and business opportunities for manufacturers, utilities, and other companies. Europe has strong green building programs and segments of Asia and Latin America are beginning to embrace green building. Green building will help ensure North American competitiveness in the global market for products, technologies, and practices essential to North America's future. These include more efficient heating and cooling systems, advanced building materials, water-reclamation systems, and high efficiency appliances, advanced insulation systems, energy-efficient lighting, and many more.

As part of the development of this report, the CEC Secretariat's Green Building Advisory Group issued a Statement and Advice on Recommendations for the Secretariat. The Advice on Recommendations sets forth a specific path for how North America can accelerate the market uptake of green building and make it the standard practice for all new and existing buildings. The CEC Secretariat has adopted the Advisory Group's Advice on Recommendations as its recommendations for this report. These recommendations are designed to support and build on the many ongoing efforts already occurring in North America by the federal, state/provincial and local governments as well as many industry, trade and nongovernmental organizations.

### **Transparency and Public Participation:**

The term 'public' is defined as to accommodate all the persons, organization or groups of people in North America. The public participation is intended to be evolving as parallel with the development of the CEC. CEC facilitates cooperation and public participation to promote conservation, protection and enhancement of the North American environment for the benefit of present and future generation, in the context of increasing economic, trade and social links between Canada, Mexico and the US.

The importance of public participation is emphasized in the NAAEC preamble, thought as a appropriate mechanism for disseminating information, educating and consulting with the public of North America on their activities, and also to meet the challenges of the components of the CEC (Council, Secretariat and JPAC).

In 1998 the Council developed an approach in recognizing the public involvement to ensure open and effective dialogue and engagement among all sectors of the public. Framed the mechanism of public involvement in the work of CEC, for increasing the public understands of the CEC's role, mandate, program and budget. This mechanism expected to be flexible and promote inclusiveness in order to be responsive to the economic, social and cultural differences among and within our three countries. It is not intended to established rigid principles that inhabits restrict or limit public participation,

but aims rather to structure participation such that it contribute to the CEC's consideration of the merits of the issues.

Guidelines for public participation found in other CEC documents, such as the 'Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of NAAEC,' the 'JPAC Public Consultation Guidelines, and the 'North American Fund for Environmental Cooperation Administration and Funding Guidelines.'

In the broadest sense the purposes of the public participation includes providing information and public education and if needed ask for input, not only from stakeholders, but also from any potentially affected public. This involves circulating documents for comments, providing for exchanges via the Internet and offering formal participation through structured public meetings, such as the annual Regular Session of Council and JPAC regular sessions.

Public participation involves the two- way process of communication; one is to communicate to the public and other is to developing the procedures for the public to bring the information and viewpoints to the CEC. For facilitating the two ways process of the public participation the CEC should:

- a) facilitate and gather information to improve the understanding of the public of the CEC's role, working program and activities as well as its identified priorities;
- b) assure wide dissemination of reliable, timely and useful information on the work of the CEC using a variety of mechanisms;
- c) contribute to public understanding, education and empowerment, recognizing that this is essential for resolving environmental problems and participating in environment decision-making;
- d) provide the public with a means to interact constructively with the CEC;
- e) promote opportunities for the participation of the public in all of the three countries; and

- f) enhance the understanding of both the CEC and the public by including and considering also those sectors of the public that are not active participants. (CEC, 22<sup>nd</sup> October 1999)

Transparency and public participation are two aspects of the agreements that are more successful at altering domestic environmental behavior than are coercive enforcement measures. NAAEC has successfully achieved one of its primary goals: to promote a transparent environmental regime that emphasizes public participation. The Citizen Submission process is the great example of the transparency and public participation in this agreement. (Goldschmidt, Mark R., 2001-02. p.1).

The public participation and transparency persuade nations to comply with their international environmental treaty obligations. The idea came into mainstream by the Principle 10 of the Rio Declaration on the Environment and Development.\* (it stated: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities..... and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.) (Ibid). NAAEC article 14 and 15 of citizen submission, gives the public participation to file the case against any countries and also being active till the final record is published.

### **Role of the Transparency and Public Participation:**

The transparency and the participation are active and best in their interest in the international environmental agreement. As the treaty members find it hard to allege the other party who are also member and on top also find difficult in proving the harm done to the environment. So the role of the public is important were it is unrestricted, in its work. Below are role of the public participation..

1. *compliance versus effectiveness:*

In assessing the compliance and effectiveness of the countries the public participation is a main in determining in dealing with environmental enforcement. Compliance refers to sticking to the obligations and to the treaty's preamble or articles.

Effectiveness shows an agreement's impact on the countries. The international environmental agreement changes domestic behavior of the countries in eliminating the problem which are created. Effectiveness also show that its adherence to the treaty procedural obligations, substantive requirements and spirit of the treaty. The research project of the International Institutional for Applied System Analysis indicate that efforts to open public participation in the environmental policy development process have influenced domestic policy decision and enforcement.

2. *Non-Governmental Organizations:*

NGOs plays a crucial role in monitoring the implementation and compliance of the country with the agreement to the treaties, as the getting information is difficult so the NGOs put pressure on government to release the information of the environment. They mobilize the public opinion, set political agendas and communicate with other NGOs throughout the world.

3. *The Role of Public Participation in monitoring the enforcement:*

In some of the international treaty the participation of the public is restricted, as we see in the GATT, there are sanctions to counter the violation but the trade sanctions overrule the environmental sanction. In other treaties compliance relies on the transparency and public participation. Here parties are accountable and try not to depart from the agreed norms.

4. *The Need for the Transparency and public Participation:*

Transparency make the public know about failure of the countries in compliance with the treaty. The word is defined as adequacy, accuracy, availability and accessibility

of knowledge and information about the policies and activities of parties to the treaty and of the norms, rules and procedures established by the treaty. (Chayes, Abram et al., 1998, p.41). The need of the transparency and participation is because to collect the information is compliance of the treaty; show the accurate, reliable and legitimate of the information provided by it; forcing the failure to get analyzed and processed effectively of the treaty; and finally if there is transparency the treaty organization made available to industry, NGOs and public as well as government.

Transparency also allow one party to observe the other party's deviation from treaty, and also whether they following the obligation.

Also noted some other benefits of transparency:

1. the creation of communities of interested parties, especially scientists and specialists in the topic; 2. an increase in the amount, quality and availability of information about issues involved, so that they can be readily understood; 3. the involvement of domestic officials and bureaucracies, so that their personal interests and reputations become issues at stake; and 4. the generation of international momentum toward domestic compliance with environmental laws, which increases the benefits of compliance and the costs and consequences of noncompliance for adhering countries. (Goldschmidt, Mark R., 2001-2002). In combination of the public pressure group and the greater inflow of the scientific and technical information concerning the activities of member countries makes likelihood of compliance with an international agreement.

##### 5. *Changing the Environment:*

The recent years in the international environmental arena giving rise to the coordination for the solution of any problem. The environmental agreement environment i.e., of the set up scheduled is been changing, as we see in the international agreement the fact finding is becoming more frequent and allowing the public to scrutinize the party's record of enforcement of domestic law and compliance to the international environmental agreement. International legal system is shifting from static to the dynamic one were leading the system were the state and non-state actor can play a lead role. Nowadays

citizens and NGOs giving greater recognition, they are influencing not only the international behavior but also the domestic behavior, so the state centric system is changing.

6. Three strategies for Compliance:

To encourage compliance with international agreements three broad strategies are :

- a. sunshine strategy it make the party behavior open to the public and other member scrutiny, i.e., the official or unofficial monitoring is an important which takes place, unofficial monitoring rely on NGOs, expert communities and corporate actors to encourage compliance with the treaty. Agreements such as the World Heritage Convention and the Convention on International Trade in Endangered Species (CITES) use NGOs in their implementation.(Ibid).
- b. positive incentives, it induces the countries to comply with a treaty , in forms of the special funds, technical assistance, training programs and materials, access to technology, and bilateral and multilateral assistance, international organization and the private sector. Eg: World Heritage Convention, the Montreal Protocol and the International Tropical Timber Agreement, provide for funds that assist a party's ability to comply with those treaties.
- c. the coercive measures are through the sanctions, penalties and the withdrawal of membership privileges to a convention. It is the last resort. Eg. GATT.

So considering the role of the Transparency and Public Participation will see the objectives of the NAAEC. The preamble of the NAAEC states that primary goal is to promote a transparent environmental regime that emphasizes public participation, further recognized 'the importance of the public participation in conserving, protecting and enhancing the environment.' Article 1, outlines ten objectives for the treaty, including the promotion of 'transparency an public participation in the development of environmental laws, regulations and policies,' Article 4, creates transparency and encourages public participation by requiring member countries to promptly publish any law, regulations, or procedure covered by the NAAEC and to publicly release information concerning



noncompliance. Parties committed to ensure to include private access to remedies for alleged violation of the agreed environmental laws and regulations. Article 14 & 15 the citizen submission process act as the mechanism of transparency, providing the private access to provide and compile the accurate information available, analyze effectively and try to pursue to get the factual record published.

As we have studied the role of NGOs in the debate of NAFTA over formation of NAAEC, it shows that the transparency was provided; the side agreement was realized because NAFTA provided to phase out of tariffs and also provide the legal instrument to remove unnecessary nontariff barriers to trade.

### **North American Funds for Environmental Cooperation (NAFEC)**

NAFEC is created by the CEC in 1995, but started operating in May 1996, as the means to fund community based projects in Canada, Mexico and US that promote the goals and objectives of the CEC. NAFEC is not a mandated activity of the CEC but its seen as an important compliment to mandate CEC work. NAFEC has shifted the focus of its grant making accordingly to the changing priorities of the CEC, and to ensure that NAFEC objectives are clearly targeted and strategically aligned with the key CEC program areas.

NAFEC in its fifth year of grant making having received 2,014 proposals and awarded 142 grants totaling US \$ 5.4 million, till now 86 projects have been completed and 56 still remains active. In December 1997, an interim evaluation of NAFEC was prepared by SAL consulting to review the administrative and process related strengths and weakness of the program.

NAFEC seeks to support activities or the projects that are: a) community based, b) small and project based, and c) cooperative partnership. And also the projects that: a) enhance the projects of the CEC as presented in its three-year program plan and Budget and link the results of those projects to other components of CEC's work program, b) leverage additional support from other sources, and c) strengthen and build the capacities

of local people and institutions and their participation within CEC processes and within other processes of regional relevance. (Outlined in the 1999/2000 Program Plan).

NAFEC Objectives:

Formal objectives:

- support projects that are community-based, respond to a specific issue or problem and lead to concrete results;
- meet the objectives of the CEC and the NAAEC;
- strengthen and build the capacities of local people, organizations and institutions;
- support cooperative partnerships and regional networking that address issues of North American relevance;
- share environmental information at the North American level;
- support projects that leverage additional support and promote innovative and replicable ideas;
- support public participation;

Informal objectives:

- emphasize projects that link trade and the environment;
- promote holistic models for environmental problem-solving, moving away from categorical, “silo” approach;
- inform the CEC from the grassroots level

Proposals of the NAFEC support are of those which demonstrate:

- a) short and long term desirable are clear and achievable;
- b) administrative costs and overhead are not excessive and are justified; and
- c) the grantee has the institutional and organizational structure necessary to ensure the projects success. (CEC, 2002, Administration and Funding Guidelines NAFEC CEC: Revised version approved by the Council on December 11<sup>th</sup>).

It is expressed that “the CEC was set up as the environmental watchdog, for the North American public. NAFEC plays a key role in keeping this NAFTA promise.” The data of the report indicated that, NAFEC has made a significant contribution to achieving the goals and objectives of the CEC and its programs. 1) NAFEC generally supports capacity building among community groups; 2) NAFEC provides the CEC with a public constituency that informs policy-level programming at the CEC; 3) NAFEC promotes direct and indirect public participation within the CEC by encouraging grantees to take an active role in JPAC and other CEC processes; and 4) NAFEC creates a natural information clearing house to fill a North American-focused information distribution gap.<sup>7</sup>

NAFEC support to the CEC goals and objectives:

The NAFEC supported a number of projects related to CEC programs<sup>8</sup> citizen monitoring and increasing public access to environmental information (linked to both the Pollutants and Health, including the PRTR initiative, and to Enforcement initiatives within the Law and Policy program);

- a. Migratory species and habitat conservation: (with a specific focus on species of interest to CEC, such as migratory birds, and on regions like San Pedro where CEC is particularly involved);
- b. Cross- border management of shared ecosystems: (including CEC priority areas such as the Gulf of Maine and the Bight of the California, and testing approaches such as Marine Protected Areas, which are of interest to CEC); and
- c. linking biodiversity conservation and green goods and services: (with an emphasis on areas of interest of CEC such as shade coffee and sustainable tourism);

The CEC Secretariat and the JPAC sponsored a public symposium and workshop on May 2007 in Seattle, Washington, as part of public consultation for the Secretariat’s independent study concerning green building in North America. The participant are

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<sup>7</sup> Internal Review of the North American Fund for Environmental Cooperation (NAFEC), June 2000.p. i.

<sup>8</sup> Environment, Economy and Trade; Conservation of Biodiversity; Pollutants and Health; and Law and Policy.

architects, planners, policy makers and developers pioneering green building to discuss the opportunities and challenges facing this emerging industry. Public and expert comment on the background papers presented at this event will help inform the study's policy recommendations to the governments of Canada, Mexico and US.<sup>9</sup> NAAEC and CEC were created after a strong public pressure to write environment protection into NAFTA, if it leaves the articles 14 and 15 in freer way which can lead to raise even the delicate issues.

As citizen submission process has been interesting not only in that it can annoy a government and put some sort of shame on them but essentially It sort of forces governments to rethink their implementation policies, After the file of the complaint about lack of enforcement of an environmental law, the secretariat publicly releasing a factual record, which carries no enforcement power but can lead to an internal review and perhaps brig public embarrassment to the party.

As the three country benefited for the NAAEC but Mexico is exceptional as the pesticide control and pollution prevention were improved thanks to the agreement while management of chemicals has improved In all three countries. Also government has been made more accountable to their environmental law. The requirement is that the CEC must respond t the calls from business, indigenous people and academics to engage them more actively in the activities of the CEC while maintaining the active engagement of environmental NGOs. Runnall call this as diplomatic language. (President of the Canada-based International Institute for Sustainable Development (IISD))

But NAFTA's "green guardian" suffered from inflated hopes, according to Runnalls. "The expectations at the beginning were fairly high that this thing would go into the boxing ring and do battle with the bad guys in the free trade commission ... So far as I know, despite lots and lots of efforts by the CEC during the first 10 years, the trade ministers and the environment ministers have never been in the same room at the same time."

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<sup>9</sup> Jamie Bowman, 2007 Experts forecast green building in North America, trio newsletter, [www.cec.org](http://www.cec.org).

## *Conclusion*

In globalization debates, environmental issues are viewed as the dark side of globalization. The environment is a victim in the ongoing neo-liberal globalization, with increasing liberalization of trade and investment, decreasing control by nation-states within the territories and the growing power of trans-national companies all these factors contribute to the destruction of the environment.

Expanding trade and markets opening across borders require unprecedented collaboration to protect the environment, as millions of people share the North American ecosystem. Collaboration is one mechanism which provides a solution to the problems of all citizens, industry and government in protecting our common environment and economic growth. Cooperation is a dynamic character among trade and environment bodies, and may be most suited to take on these issues.

NAFTA, an agreement between the Canada, US and Mexico, met the high tide of the trade and environment debate, where NGOs, government officials, academics, international experts and scientists, along with broader audiences, shared the same platform, and began considering the fact that environmental implications were a central element of trade negotiations. NAFTA consisted of partners in different levels development. Until then, the only environmental agreement specifically designed to complement a trade agreement was NAAEC and its institution CEC. NAFTA looked to do three things: first, to increase substantially the investment opportunities in the territories of the Parties (NAFTA Article 102 (1) (c)); second, be consistent with environmental protection and conservation (NAFTA Preamble); and third, to promote sustainable development. NAFTA created the NAAEC with the aim of promoting sustainable development based on cooperation and mutually supportive environmental and economic policies. NAFTA gives regional coherence across its parties, while presenting the opportunity and challenge of closer ties that are advantageous to all three parties. As NAFTA has succeeded in advancing economic integration in North America, some dimensions such as trade increased much more rapidly than forecast by most economic models. Liberalization in the auto sector has sparked a movement toward

specialization. There have been great productivity improvements in all three countries. Direct investment in Mexico has been robust, and trade disputes have been managed.

For the US, NAFTA was an economic opportunity to take advantage of a growing export market in the south, and a political opportunity to improve relations with Mexico. US officials hoped to have regional talks that encouraged them, due to slow-paced Uruguay Round of multilateral trade negotiations. NAFTA opened the door for US exporters, who once faced tariffs five times greater on average than US tariffs.

For Mexico, NAFTA opened markets and reformed policies, as it was facing low domestic savings, debt crisis during the 1980s and an overvalued peso, and Mexico wanted import and export growth and capital creation.

For Canada, NAFTA's advantage was to minimize risks presented by US-Mexico free trade, while it offered an opportunity to extract new commercial concessions from the US.

Among the trade agreements the NAFTA/NAAEC package represents trade rules with well developed environmental provisions. However, there are still growing concerns: persistent high levels of illegal immigration, slow progress on environmental problems, growing income disparities in Mexico, weak growth in real wages and trafficking of illegal drugs. NAFTA faced a peso crisis when it existed and also the security demand of the post September 11 era may pose greater challenges in the long run.

The debate over NAFTA/NAAEC faced a greater challenge in public forums. Many alleged NAFTA would cause a 'giant sucking sound' -- US capital and jobs would flee to Mexico, and environmental groups charged that Mexico would become the pollution haven of North America. Resources show some the main problems still exist 10 years later. NAFTA was a major election campaign issue in 2004, North Carolina Senator John Edwards blamed NAFTA for sharp falls in US manufacturing employment, and said trade policies are closing mills and killing jobs. Senator John Kerry called for renegotiating environmental obligations and enforcement procedures. Presidential

candidate Ralph Nader and Naomi Klein said workers were exploited by receiving low wages. (Hufbauer and Jeffrey Schott (2005), p.15-16).

The balance of trade and security was disturbed on September 11th, 2001 when terrorists attacked, which was followed by elevated security measures along US borders causing lengthy delays. To reduce delays, the US negotiated two bilateral agreements – Smart Borders and the Border Partnership Action plan with Canada and Mexico.

NAFTA is believed to be more attentive to environment-related concerns than some of the preceding trade agreement, including the Canada-USFTA, the old GATT, the Uruguay Round and the original European trade liberalization texts. Toward the end of the agreement it is realized that it is an unfinished structure on the environmental grounds, as it did not provide continental substantive environmental norms, with this there also broader concerns. These concerns compelled the public and the NGO community to lobby, and helped for the emergence of the green agreement with their different drafts, causing leaders to frame a side agreement on the environment without needing to reopen the NAFTA's main text, in order to make the trade regime more environmentally sensitive. The NAFTA preamble refers to the promotion of 'sustainable development' and Article 102 speaks of establishing a 'framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this agreement.' The text also declares that the parties will work jointly 'to enhance the level of safety and protection of human, animal and plant life and health, the environment.'(Art. 906 (1)) (Johnson, Pierre Marc and Andre Beaulier, (1996), p.124).

NAFTA is commonly referred to as a treaty in the popular press, although NAFTA is not a US treaty; it is an executive agreement entered into under authority from Congress and went into force following subsequent legislation. NAAEC is a simple form of treaty that does not require formal instruments of ratification by the national legislatures of Canada, Mexico or the US. It is more formal than a memorandum of understanding, which could create no binding obligations under international law. In American legal parlance, NAAEC is an executive agreement: it binds the member countries from 1st January 1994 unless they withdraw from NAAEC. (Ibid, p.127).

The NAAEC is in many ways an innovative agreement. It may well be the first international agreement to seek to coordinate the overall environmental protection efforts of several countries. Most other agreements focus on particular environmental issues, such as eliminating ozone depleting substances or protecting biodiversity. In an age when environmental problems are increasingly cross-border in nature, and corporations and goods move freely across national borders, institutions such as the CEC are very much needed.

The CEC is also the first regional environmental agency in North America with innovative tools, almost unlimited jurisdiction, and unprecedented opportunities for participation by civil society at the international level.

The lessons to be drawn from the CEC's experience should be of great value to all those interested in environmental protection and economic integration, regional and global environmental organizations, and participation of civil society in international policy. Surprisingly, however, the CEC has received little scholarly attention to date. Here I intended to fill that gap by providing a comprehensive analysis of how the organization has fulfilled, or failed to fulfill, its mandates.

This package has given the public participation a path in a complex and difficult issue. The environmental effects of trade-related growth, particularly in the border area, have proved to be a lightning rod for NGO criticism. It is because of NGOs that the environmental issues have received as much attention under NAFTA.

The study here focused on the liberal trade order NAFTA, and how it addresses environment protection from 1994 to 2004. I started by reviewing the existence of the sustainable development word in international conferences since the 1987 Brundtland Report, where sustainable development was seen to give rise to the integration of the trade and environmental goals and global interdependence. Then I moved on to the describe the genesis of environmental policies of North American countries, which makes known the formation of the NAFTA/NAAEC package that how well it is included the environmental statutes and regulation. The CEC, without which the goals of the NAAEC



cannot be fulfilled, studied the structure of the institution, and also examines the harmonizing, spreading, and improvements in environment legislation and implementation in the three NAFTA countries. Article 14 and 15 provides ground to NGOs to challenge the NAFTA/NAAEC package for its failure to enforce environmental in the three countries. The conclusion addresses the role of public participation in NAFEC, and the obligation of NAAEC in painting the NAFTA green, and conclude that NAFTA is greener than the GATT. Early in the 1990s the international community produced Agenda 21 and the WTO, each promising to exert influence in shaping public policy for decades to come. But NAFTA became the first international trade pact to envision the need for an international forum where synergies and tensions arising from trade and the environment would be addressed. It is also distinctive as it includes dispute settlement mechanism and side-agreements on labor and environmental issues.

The struggle of NGOs in reconciling trade with environmental goals across the three NAFTA countries brought about the existence of the NAAEC. It is proved in the third chapter in the formation of the NAFTA/NAAEC package that NGOs tried hard to get the side agreement signed by Canada, Mexico and the US. NGOs provided reports to appropriate authorities with their specialized information that government officials use to both monitor and prosecute violations. In this sense, American NGOs took active part in the treaty implementation and enforcement efforts. Canadian NGOs played an active part by demanding that environmental safeguards be included in NAFTA, but were not as effective as of American NGOs. In Mexico, the government did not allow NGOs to participate in the debate. The government of Mexico had a freer hand in negotiating the deal, because public participation was absent. NGOs were active in focusing the Secretariat to prepare a factual report by providing the details of non-enforcement of the laws. However, some of the Secretariat's public consultations have received good marks, such as those conducted for the San Pedro River Ribbon of Life report. It is still not clear how public consultations should or could feed into the work of the CEC, a problem that has plagued the Secretariat in the past. CEC enables NGOs to be in the spotlight, but the authors were constrained in their creativity. After initiating the Secretariat to prepare the

factual record, NGOs have no further role in the process other than providing substantive information.

Secondly, it is assumed that the performance of the CEC was impacted at different levels of economic development between Canada, US and Mexico, which gave rise to different environmental priorities, strategies and capacities to address problems. This external factor affects the functioning of the CEC. Mexico lacks experience with the public participation and transparency in policy-making, creating difficulties at times for the CEC to implement the citizen submission process in Mexico. The Mexican government is not very responsive to public calls for environmental action, but the CEC provides supranational action against it, an extraordinary and unprecedented concession by itself. It provides an avenue of access to the Mexican policy process that has been unavailable to Mexican environmental groups, and provides the distinct advantage of linking domestic policy to an external system of accountability. However, there are cases in which the Mexican government stopped the proceedings of the Secretariat investigation by saying the matter is under jurisdiction of the government.

In Canada, the provisions of the NAAEC bind the country in the same way it does in US and Mexico, but in dispute settlements Canada follows an altogether different set of rules. The two special sections in NAAEC apply. First, Annex 36A exempts Canada from the application of NAAEC provisions on trade sanctions in the case of an unpaid monetary enforcement assessment, but if Canada fails to assess the case, then the CEC and the complaining party can take the case to the court. Neither the proceedings nor the order are subject to domestic review or appeal. If the panel determination were to be unacceptable, it might be tempted to exercise its veto — notwithstanding the inevitable political fallout. Second, Annex 41 addresses the difficult issue of implementing an obligation to enforce environmental laws in a relatively decentralized federation, where the jurisdiction over the environment is shared and contested between the federal and provincial government.

In the US, Executives consult on issues of interest to the NAAEC. It commits the administrator of the Environmental Protection Agency to set up a governmental

committee to provide advice on the implementation and further elaboration of the Agreement. A role of the panel will be on informing states about dispute settlement proceedings or areas of implementation which 'directly relate to, or will potentially have a direct impact on, the states.' (Johnson, Pierre Marc & Andre Beaulieu (1996), p.225). Differing constitutional arrangements and federalist systems also impacted the political and legal commitments the Parties under CEC initiatives.

Thirdly, The Joint Public Advisory Committee (JPAC) has been viewed as a critical link between the public and CEC, but the process used by JPAC for translating and prioritizing the comments, positions and requests presented at public meetings by NGOs for the Council have not been clear, thereby limiting the credibility of the JPAC. JPAC promotes North American Cooperation in dealing with ecosystem protection and sustainable economic development, and ensures active public participation and transparency in the action of the Commission. JPAC acts independently of the Council and does not seek or receive instruction from any government or the Secretariat. JPAC is the most innovative among the three institutions, its role includes 'keeping the Council honest and help the Secretariat's independence.' JPAC is CEC's public face, and through many public meetings plays an important role both as intermediary between the Council and the concerned public, and as a sounding board for ideas. JPAC has been experienced failures and frustrations in terms of engaging the public and affecting the Council's agenda and regional environmental policy, and in maintaining a wide range of NGOs and other stakeholders. It is quite difficult for JPAC to translate and prioritize the comments, positions and requests of public meetings to the Council, and the Council will not always follow the advice of JPAC. One examples is Alt Reps. JPAC protracted advocacy in support of an effective citizens submission process in arguing it damaged its relation with the Council and the Alt Reps. The Council dismissed the case as JPAC was stuck with technical details and procedural concerns. In fulfilling the challenge of being the public's conscience and strategic partner, JPAC has typically taken a confrontational approach with the Council.

Fourthly, although the Secretariat prepares reports for the Council by promoting considerable public participation in its work, consultations have been perceived by some

as not being broad-based or representative enough, with important sectors of civil society being left out entirely from the consultation processes, such as indigenous groups from Mexico. It is true that Secretariat has less discretionary authority — to accept a submission it has to satisfy certain criteria, and as we saw in Chapter IV, NGOs face difficulties in fulfilling such criteria while filing cases. To file a case, the drafter must be residing in that territory (Art. 14 (1)(f)). For example, a Mexican citizen would be unable to file a complaint about inadequate enforcement of environmental standards in Canada, in an industry where the goods produced do not compete with Mexican exports to Canada, and never leave Canada to compete in Mexico. In another example, an NGO based in Vermont filed a submission on forestry management in Washington State. Such private submissions have no bearing. The internal and external borders of NAAEC parties are irrelevant. However, through the public advisory committees, public consultations and citizen submission processes provide a number of avenues to promote transparency and public participation in CEC's work. There are difficulties in maintaining a fight; while addressing environmental issues requires building a strong grassroots constituency, especially in Mexico, top-down and externally financed environmental reforms will not be sufficient to address the impending environmental crisis. The lack of a strong consistency within the CEC may be due to frustration over the perceived futility of public participation mechanisms, which prompts some citizens to withdraw from on-going consultation processes.

Fifthly, continued large asymmetries in the capabilities of Canada, the United States and Mexico require considerable capacity building, including data sharing, and training and exchange of best practices, in order to avoid "environmental cooperation fatigue". Because the countries are not equally developed economically, there are asymmetries. Compared to US and Canada, Mexico is rather weak, and must have an agreement with the other two developed countries to access economic opportunities, first to attract foreign capital, and second, because of the environmental agreement Mexico wanted to move from limited environmental cooperation (largely on US-Mexico border issues) to a broader scheme entailing stronger commitments and actions.

The NAFTA/NAAEC commitments have helped advance Mexico's environmental record. The procedure has improved the Mexico's focus on the pollution-control and natural-resource-management challenges it faces. NAAEC has also encouraged Mexico to invest in data, training and other important prerequisites for enhancing environmental performance. Sharing training and the exchange of best practices are an integral part of many of the CEC initiatives that have been the key for the success of the some cooperative initiatives. One example was the PRTR, as it emphasized the value of PRTRs as tools for sound management of chemicals, and for encouraging improvement in environmental performance, and for providing the public with access to information on pollutants in their communities. Capacity building was one of the goals of the CEC, and those efforts appear to be particularly important for Mexico, due to its limited resources and difficulty in participating fully in some CEC programs due to a lack of institutional capacity.

Over all the CEC is most successful at promoting voluntary environmental cooperation, compiling, analyzing and disseminating information, and convening different parties and stakeholders in a neutral forum to discuss regional environmental issues priorities for all three countries. However, the CEC's work is hindered by a lack of a defined program and differences between Parties.

The assessments of the report (IRC (1998) and TRAC (2004)) are still relevant today:

- The CEC continues to advance North American environmental cooperation especially in the area of information sharing and capacity building;
- Decision-making at the CEC remains challenging; and
- There is an ongoing need to focus work and generate concrete and measurable results.

The CEC's way of conducting business has evolved overtime, particularly in terms of:

- New organization-wide planning efforts;
- An increasing level of Parties oversight in the Secretariat; and
- The desire to improve corporate communications.

Some operational factors create challenges in addressing an evolving context and maintaining an efficient organization. These factors' most notable concern:

- CEC human resources planning;
- The comprehensiveness and clarity of CEC administrative policies and practices, and
- The transparency of budgeting and financial processes.

This voluntary trilateral cooperation on environmental issues constitutes the majority of the CEC's current work. This cooperative work cluster two main themes: enhanced stewardship of shared continental ecosystems and natural resources, and environmental sustainability in open markets.

The successful areas of the CEC are:

- 1) Conservation of biodiversity: the CEC started the North American Bird Information Network (NABIN), whose data-gathering and mapping exercises are essential for developing a sound basis for subsequent conservation actions. Another example, the North American Bird Conservation Initiative (NABCI) has received increasingly strong support from both policy-makers and conservationists in all three countries. The US Fish and Wildlife Service recently adopted the CEC eco-region for its Bird Conservation Regions, which will be used for future integrated bird conservation and management initiatives, by collecting the data and development of frameworks as a part of the conservation of biodiversity, on which the CEC will develop conservation strategies and implementation plans.
- 2) Toxic substances: The CEC developed the PRTR for North America in dissemination of information compiled by these systems. CEC's on-going capacity building for government, industry and non-governmental organization on PRTR system in Mexico, has brought Mexican people to consider the environmental policy as first priority. The Sound Management of Chemicals (SMOC) program has facilitated the elimination of the use of DDT and chlordane

in Mexico as well in US and Canada. SMOC kept its obligation to comply under the international environmental accords.

However, there is some drawback to these institutions:

The NAFEC, the funding agency for North American community based environmental projects, helps build trans-boundary networks and has supported the goals and substantive work of the CEC. Over all it is has been effective in encouraging public participation in environmental matters and addressing specific environmental needs in a decentralized manner. However, CEC's 2000 reports show that a reduction in funding is impacting the efficiency of the program.

Article 10(6) – Coordination with the NAFTA's Free Trade Commission, the weakest point of the NAAEC is the lack of the meaningful coordination between the CEC and FTC.

Article 10 (7) – obligates Parties to develop within the three years recommendations on the environmental assessment of projects with trans-boundary impact. Although parties formalize the recommendation, the agreement could not be concluded because of disagreements between State and Federal governments regarding environmental assessments along the border.

There are factors affecting the implementation of the NAAEC and the operation of the CEC:

Internal factors:

The CEC has the ability to influence such internal factors such as the program planning processes. The CEC made improvements in the setting of environmental priorities and clarifying lines of action within its work program, but remaining ambiguities may forestall effective implementation by the Secretariat, the Parties or the other stakeholders. This is particularly true given the limited budget of the CEC, which is

also frequently cited as a factor that constrains the CEC and the implementation of the NAAEC.

The operation of the CEC has been hampered by wavering political support and conflicts amongst the Parities, and between the Council and the Secretariat. The CEC lacks a high degree of institutional legitimacy and it is generally not very well-known within the three countries. The CEC also lacks a strong broad-based constituency, which may be due to some of the other factors mentioned above, such as limited financial resources to facilitate public participation, low institutional legitimacy, and an overly broad mandate. Although the public participation mechanisms are innovative, they are at times not well integrated into the substantive work of the CEC and need to be strengthened to ensure broad representation and credibility.

External factors:

The disparity in the economic development of the three countries impacts the commitment of the Parties to the agreements.

CEC focuses on hard North American environmental data to facilitate better policymaking and make proper use of its investigatory power under Article 13, 14 and 15 to draw attention to important environmental issues. The CEC has built a reputation as a source for environmental information in the past, it should continue to look for opportunities to perform in the future. The CEC Article 13 Secretariat Reports and Articles 14 and 15 citizen submission process have demonstrated the potential to focus attention on environmental issues and problems and should also be improved upon and employed to the extent possible. Overall the CEC appears to be very tightly controlled politically. It can still be effective for cooperation and spotlighting issues, and should solidify its role as an information hub and policy analysis center. Given its regional scope, the CEC is well-positioned to respond to a growing need to apply a regional lens to understanding and improving environmental policies and practices.



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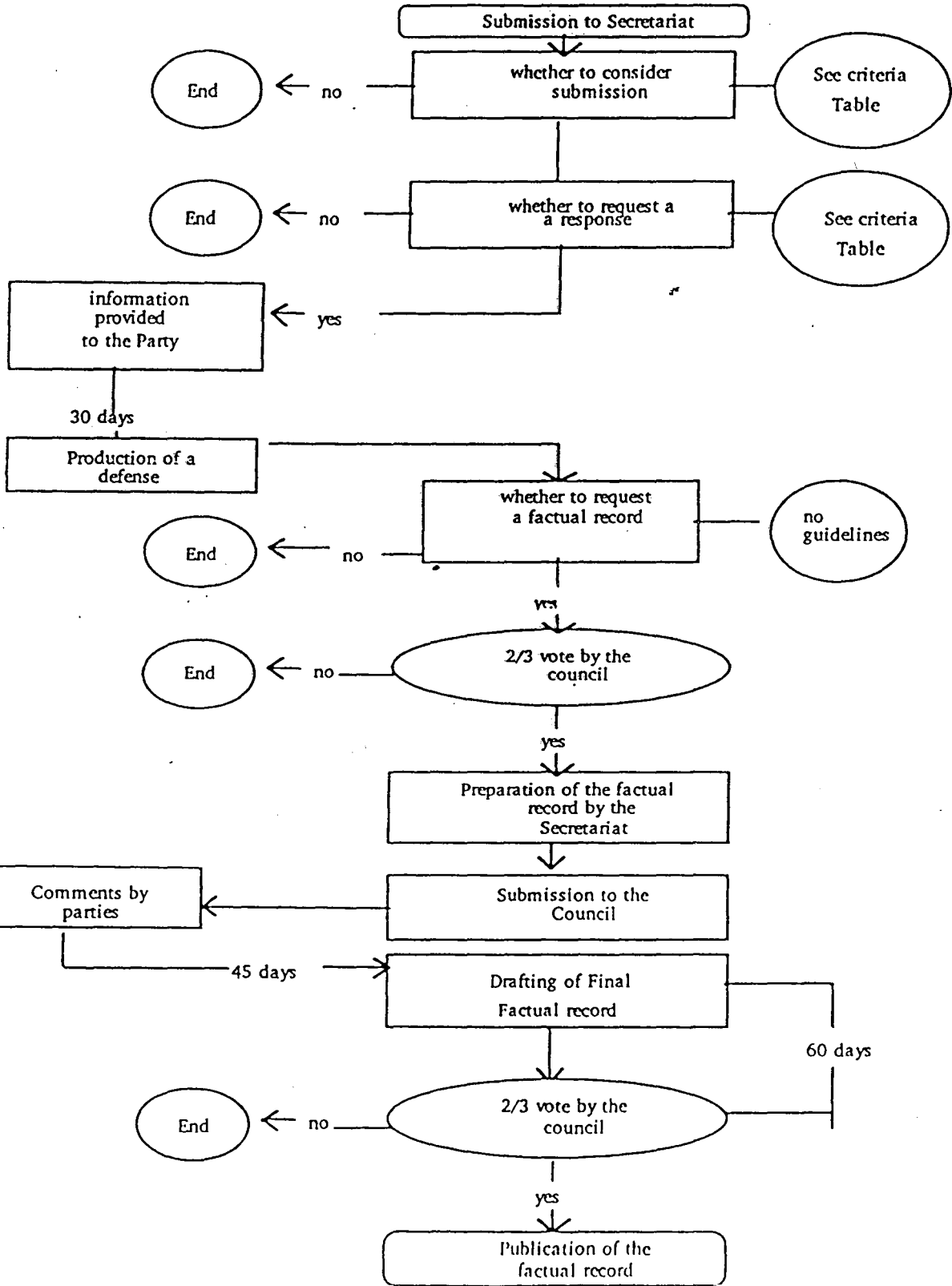
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# Appendix I

- (a) Submissions on Enforcement Matters and Factual Records
- (b) Requirements for Article 14 Private Submissions
- (c) Consultation and Resolution of Disputes—Consultations
- (d) Consultation and Resolution of Disputes—Burden of Proof
- (e) Consultation and Resolution of Disputes—Initiation of Procedures
- (f) Consultation and Resolution of Disputes—Request for an Arbitral Panel
- (g) Consultation and Resolution of Disputes—Implementation of Final Report
- (h) Consultation and Resolution of Disputes—Review of Implementation
- (i) Consultation and Resolution of Disputes—Further Proceeding

# Appendix I(a)

## PRIVATE SUBMISSIONS ON ENFORCEMENT MATTERS AND FACTUAL RECORDS



## Appendix I(b)

**Table 1. Requirements for Private Submissions**

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### Requirements as to form

**1. RESIDENCE (14:1(f))**

Submitter must be a person or an organization residing or established in the territory<sup>1</sup> of any Party.

**2. LANGUAGES (14:1(a))**

Submitter must have notified the Secretariat of the language to be used in the submission.

**3. IDENTIFICATION (14:1(b))**

The submission must "clearly identify" the person or organization making the submission.

### Requirements as to content

**4. COMMUNICATION TO PARTY (14:1(e))**

The submission must contain proof that the matter has been communicated to the relevant authorities of the Party complained against and indicate its response if any.

**5. INFORMATION (14:1(c))**

The submission must provide sufficient information including documentary evidence to "allow the Secretariat to review the submission."

**6. INDUSTRIAL HARASSMENT (14:1(d))**

The submission must appear to be aimed to promote enforcement rather than at harassment of industry.

**7. HARM (14:2(a))**

The Secretariat will consider whether the submitter alleges harm to itself.

**8. PURSUING PRIVATE REMEDIES (14:2(c))**

The Secretariat will consider whether the submitter pursued private remedies available in the Party's domestic forum.

**9. MASS MEDIA REPORT (14:2(d))**

Another factor considered is whether the submission is "drawn exclusively from mass media reports."

### Objectives

**10. ADVANCING THE GOALS OF THE AGREEMENT (14:2(b))**

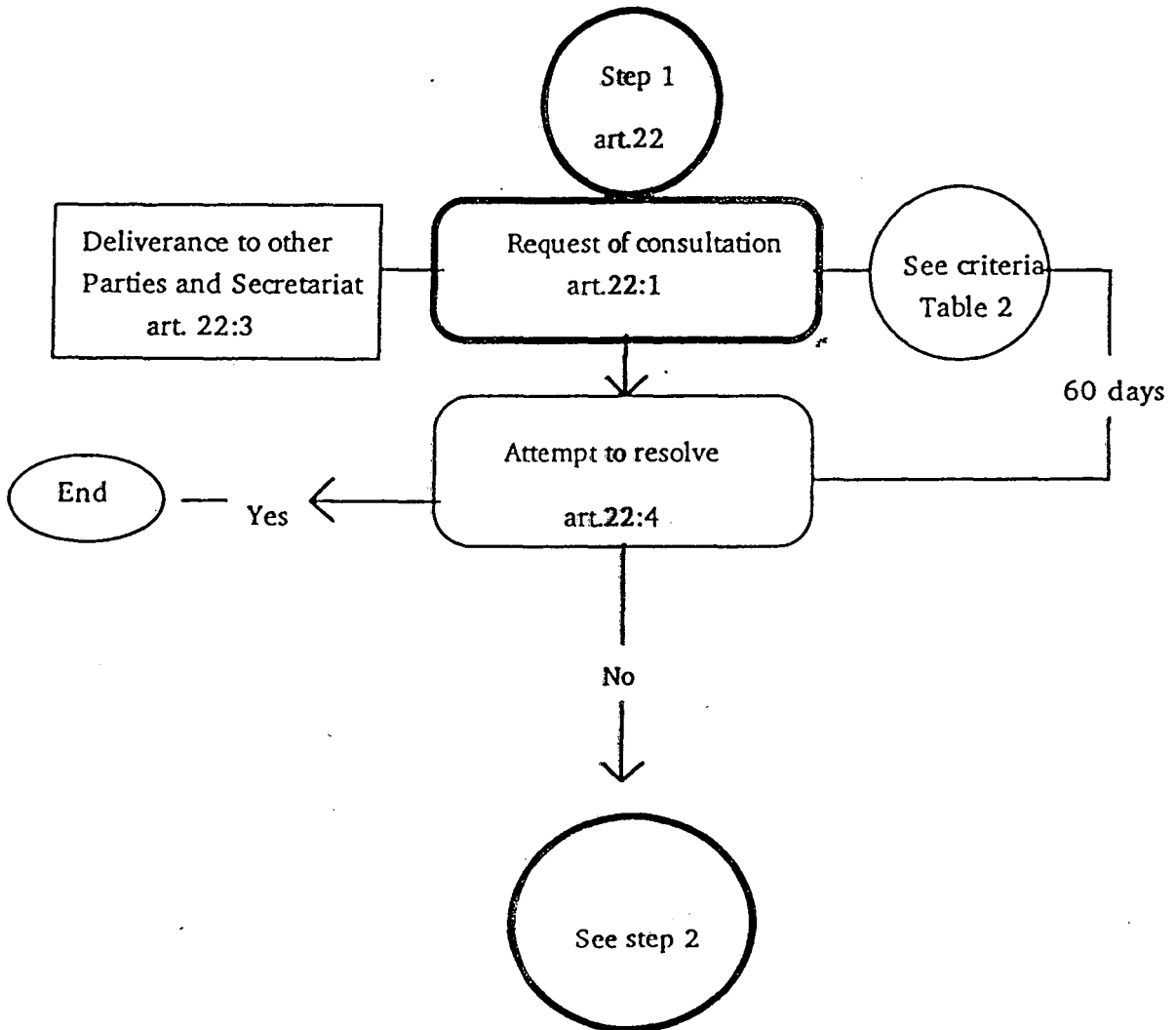
The Secretariat will consider whether the submission alone or combined with other submissions "raises matters whose further study in this process would advance the goals of the Agreement." N.B. The objectives pursued by the Agreement are set out in Article 1(a-j).

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<sup>1</sup>For a definition of territory see Annex 45 of the Agreement regarding country-specific definitions.

# Appendix I(c)

## CONSULTATION AND RESOLUTION OF DISPUTES Consultations



## Appendix I(d)

Table 2. Criteria for Request of Consultation and Resolution of Disputes

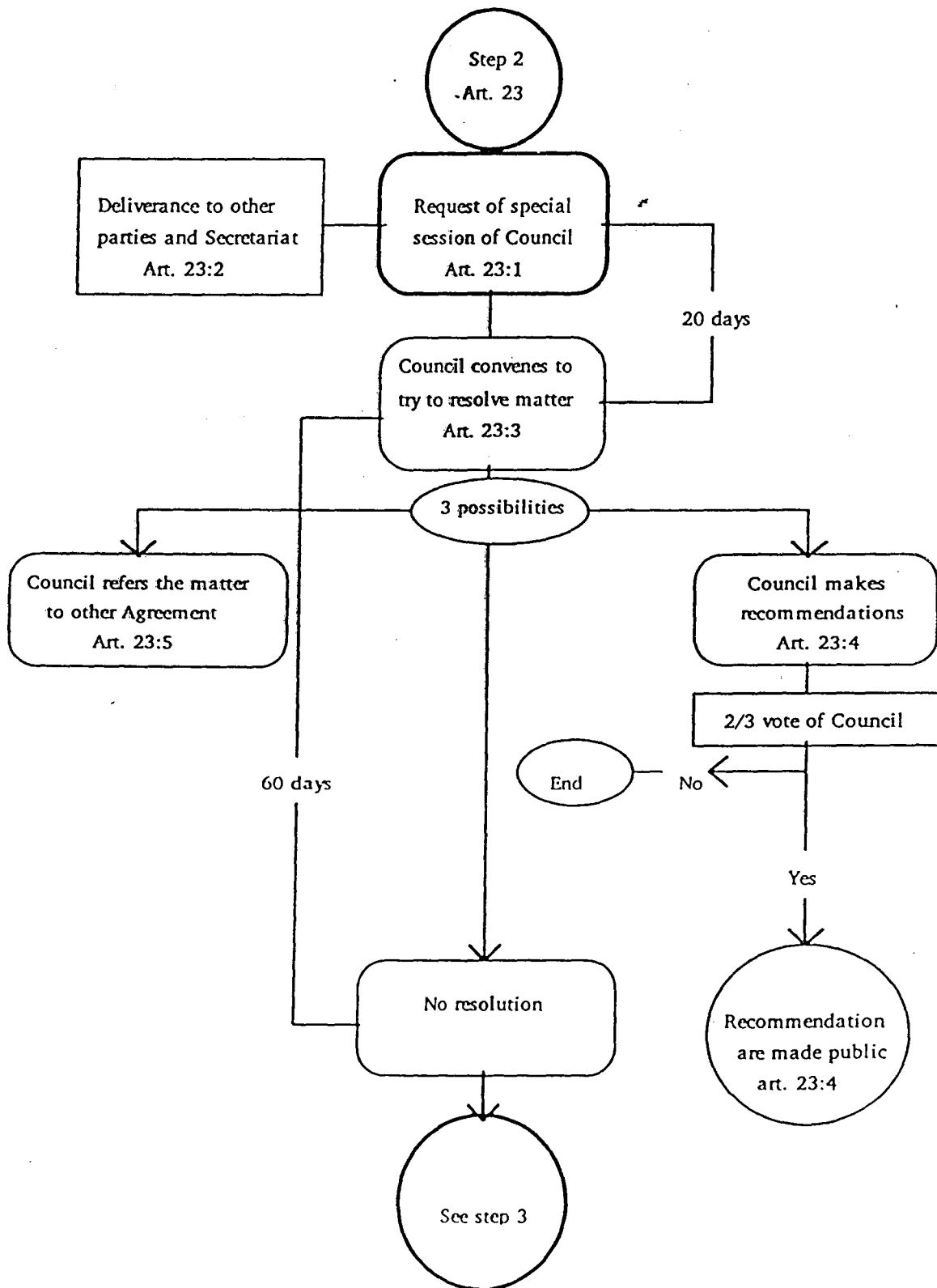
Burden of proof	Means
Persistent pattern of failure  by other Party  to effectively enforce	<p>The complaining Party must establish that the ineffective enforcement began after January 1st, 1994, and that it formed a consistent pattern over a certain period of time.</p> <p>The complaining Party must demonstrate, if the legislation in question allows for discretion as to compliance matters, that such discretion was exercised unreasonably by the public authorities of the Party complained against.</p> <p>If the defense is to the effect that non-enforcement is due to allocation of resources, then the complaining Party must prove that such allocation does not follow from a bona fide decision by the public authorities of the Party complained against.</p>
its environmental laws	<p>The complaining Party must establish that the primary purpose of the law, regulation, or provision is the protection of the environment.</p>



# Appendix I(e)

## CONSULTATION AND RESOLUTION OF DISPUTES

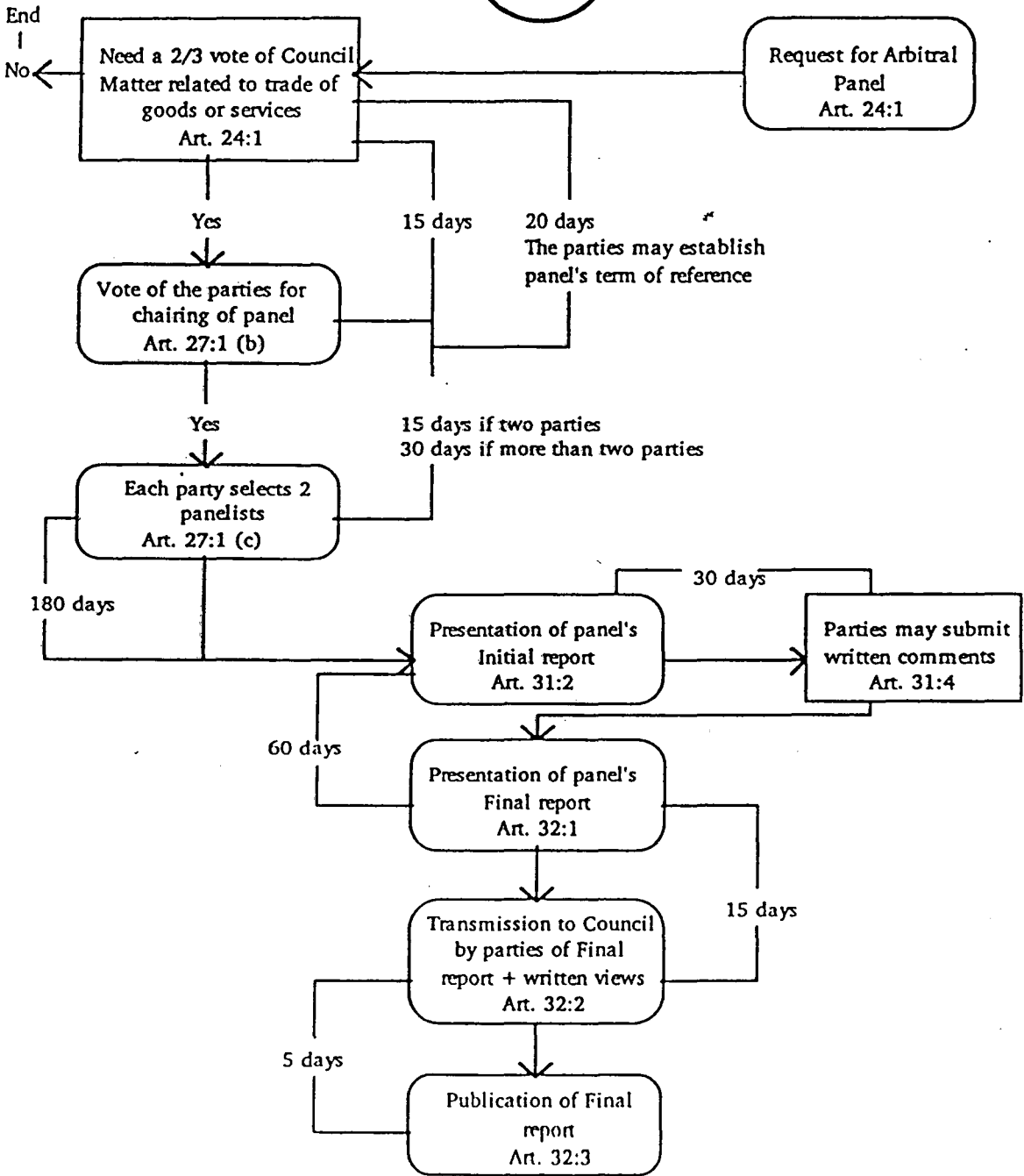
### Initiation of Procedures



# Appendix I(f)

## CONSULTATION AND RESOLUTION OF DISPUTES Request for an Arbitral Panel

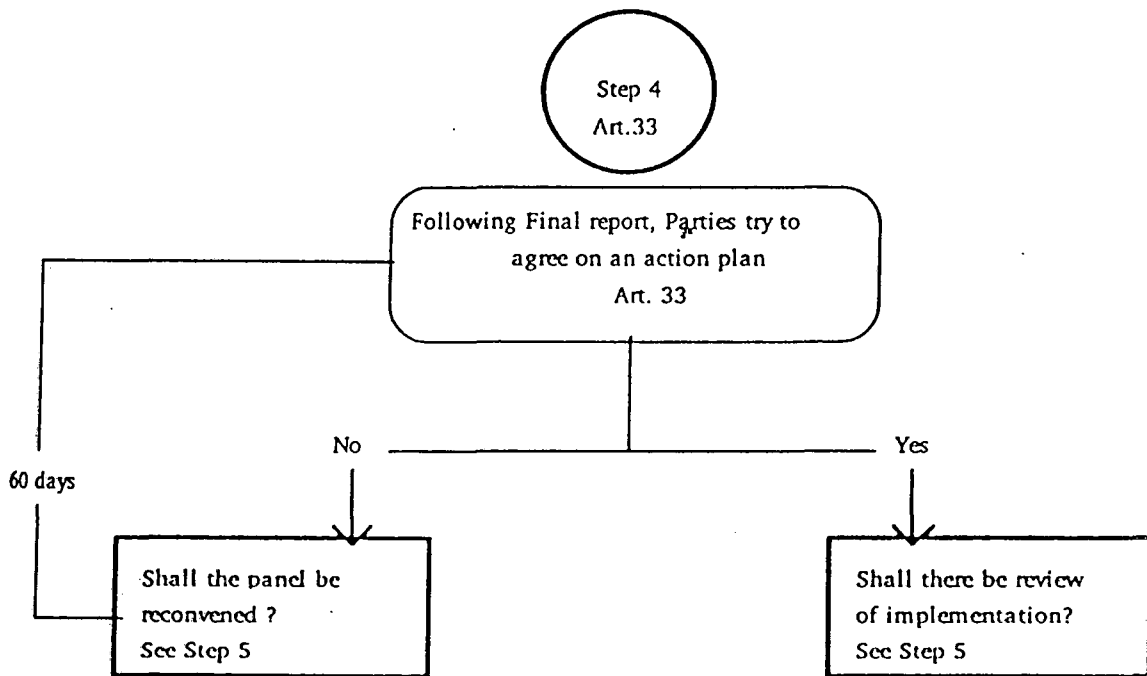
Step 3  
Art. 24



# Appendix I(g)

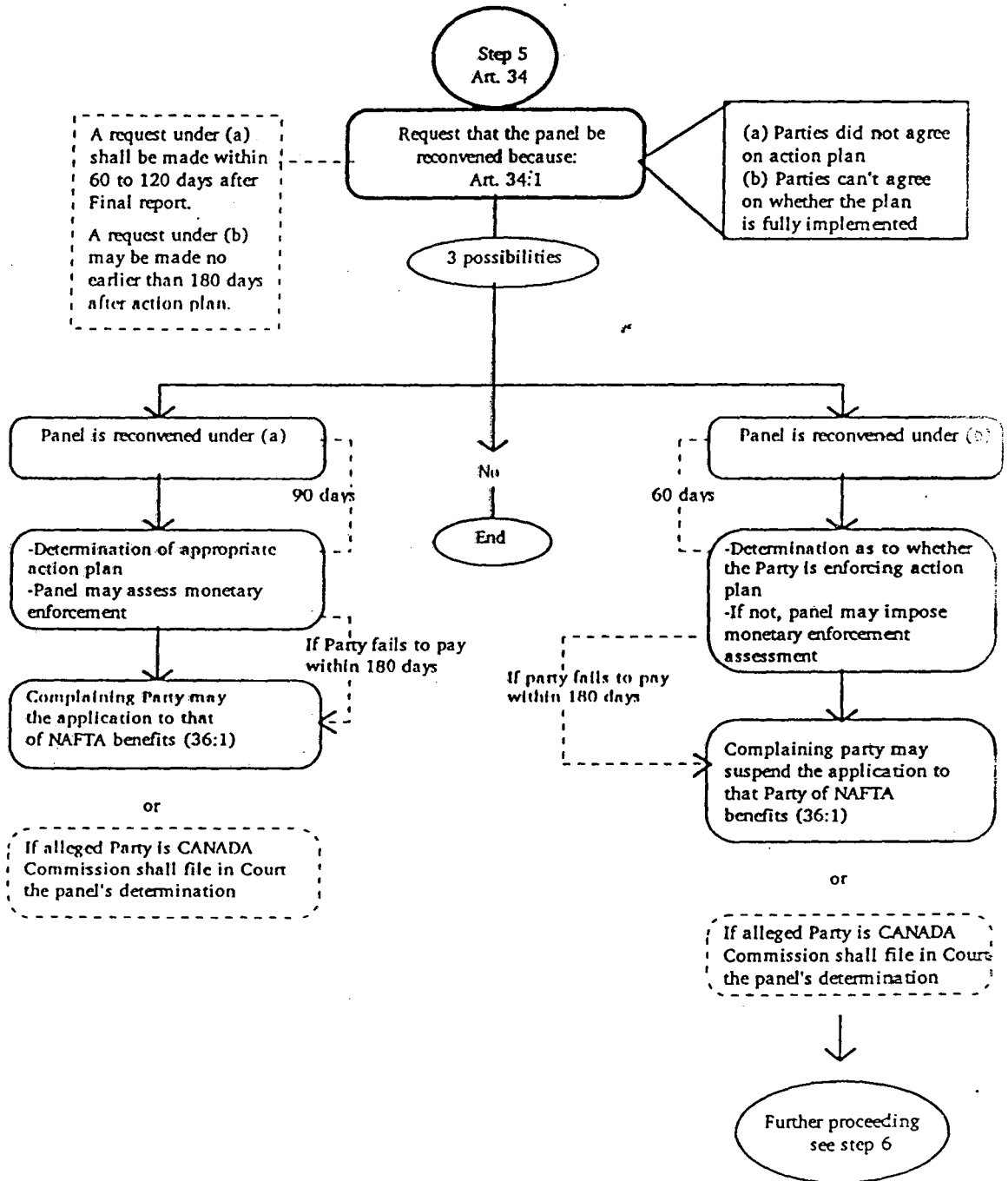
## CONSULTATION AND RESOLUTION OF DISPUTES

### Implementation of Final Report



# Appendix I(h)

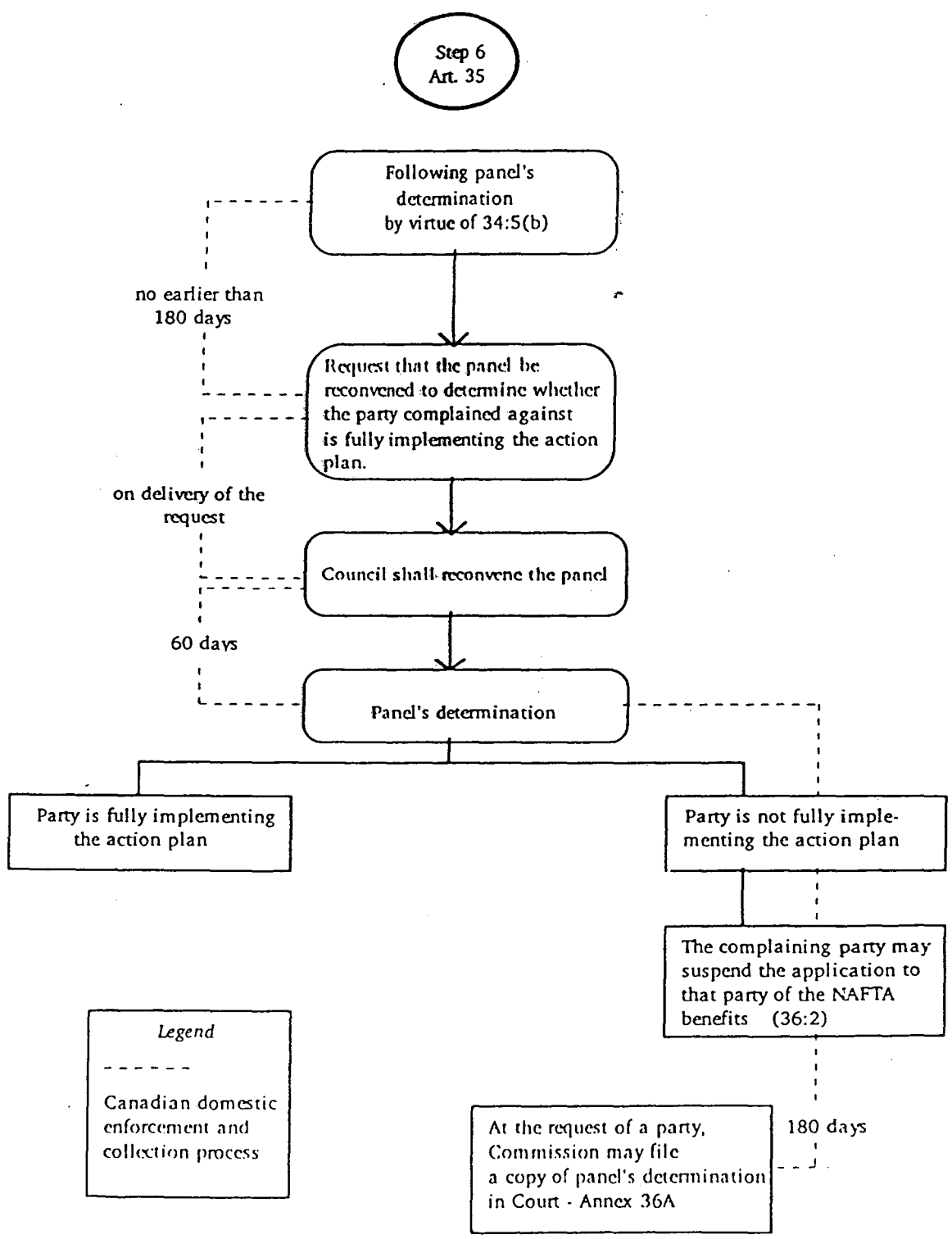
## CONSULTATION AND RESOLUTION OF DISPUTES Review of Implementation



# Appendix I(i)

## CONSULTATION AND RESOLUTION OF DISPUTES

Further Proceeding



## Appendix:II

### *North American Agreement on Environmental Cooperation (Final Draft)*

Between the Government of Canada, the Government of the United Mexican and the Government of the United States of America, 13<sup>th</sup> September 1993.

#### Preamble

The Government of Canada, the Government of the United Mexican States, and the Government of the United States of America.

**CONVINCED** of the importance of the conservation, protection and enhancement of the environment in their territories and the essential role of cooperation in these areas in achieving sustainable development for the well-being of present and future generations;

**REAFFIRMING** the sovereign right of States to exploit their own resources pursuant to their own environmental and development policies and their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

**RECOGNIZING** the interrelationship of their environment;

**ACKNOWLEDGING** the growing economic and social links between them, including the North American Free Trade Agreement (NAFTA);

**EMPHASIZING** the importance of public participation in conserving, protecting and enhancing the environment;

**NOTING** the existence of differences in their respective natural endowments, climactic and geographical conditions and economic, technological and infrastructural capabilities;

**REAFFIRMING** the Stockholm Declaration on the Human Environment of 1972 and the Rio Declaration on Environment and Development of 1992;

**RECALLING** their tradition of environmental cooperation and expressing their desire to support and build on international environmental agreements and existing policies and laws, in order to promote cooperation between them; and

**CONVINCED** of the benefits to be derived from a framework including a Commission to facilitate effective cooperation on the conservation, protection and enhancement of the environment in their territories;

Have Agreed as Follows:

## **PART ONE OBJECTIVE**

### **Article 1: Objectives**

The objectives of this Agreement are to :

- (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
- (b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;
- (c) increase cooperation between the Parties to better conserve, protect and enhance the environment, including wild flora and fauna;
- (d) support the environmental goals and objectives of the NAFTA;
- (e) avoid creating trade distortions or new trade barriers;
- (f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
- (g) enhance compliance with and enforcement of, environmental law and regulation;
- (h) promote economically efficient and effective environmental measures; and
- (i) promote pollution prevention policies and practices.

## **PART TWO OBLIGATIONS**

### **Article 2: General Commitments**

1. Each Party shall, with respect to its territory:
  - (a) periodically prepare and make publicly available reports on the state of the environment;
  - (b) develop and review environmental emergency preparedness measures;
  - (c) promote education in environmental matters, including environmental law;
  - (d) further scientific research and technology development in respect of environmental matters;
  - (e) assess, as appropriate, environmental impacts; and
  - (f) promote the use of economic instruments for the efficient achievement of environmental goals.
2. Each Party shall consider implementing in its law any recommendation developed by

the Council under Article 10(5) (b).

3. Each Party shall consider prohibiting the export to the territories of the other Parties of a pesticide or toxic substance whose use is prohibited within other Parties of a pesticide or toxic substance whose use is prohibiting or severely the Party's territory. When a Party adopts a measure prohibiting or severely restricting the use of a pesticide or toxic substance in its territory, it shall notify the other Parties of the measure, either directly or through an appropriate international organization.

### **Article 3: Levels of Protection**

Recognizing the right of each Party to establish its own levels of domestic environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations, each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.

### **Article 4: Publication**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:

- a. publish in advance any such measure that it proposes to adopt; and
- b. provide interested persons and Parties a reasonable opportunity to comment on such proposed measures.

### **Article 5: Government Enforcement Action**

1. With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action, subject to Article 37, such as:

- (a) appointing and training inspectors;
- (b) monitoring compliance and investigating suspected violations, including through on-site inspections;
- (c) seeking assurances of voluntary compliance and compliance agreements;
- (d) publicly releasing noncompliance information;
- (e) issuing bulletins or other periodic statements on enforcements procedures;
- (f) promoting environmental audits;
- (g) requiring record keeping and reporting;



- (h) providing or encouraging mediation and arbitration services;
- (i) using licenses, permits or authorizations;
- (j) initiating, in a timely manner, judicial, quasi-judicial or administrative proceedings to seek appropriate sanctions or remedies for violations of its environmental laws and regulations;
- (k) providing for search, seizure or detention; or
- (l) issuing administrative orders, including orders of a preventative, curative or emergency nature.

2. Each Party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its law to sanction or remedy violations of its environmental laws and regulations.

3. Sanction and remedies provided for a violation of a Party's environmental laws and regulations shall, as appropriate:

- a. take into consideration the nature and gravity of the violation, any economic benefit derived from the violation by the violator, the economic condition of the violator, and other relevant factors; and
- b. include compliance agreements, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.

#### **Article 6: Private Access to Remedies**

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and regulations and shall give such requests due consideration in accordance with law.

2. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, or judicial proceedings for the enforcement of the Party's environmental laws and regulations.

3. Private access to remedies shall include rights, in accordance with the Party's law, such as:

- a. to sue another person under that Party's jurisdiction for damages;
- b. to seek sanctions or remedies such as monetary penalties, emergency closures, or orders to mitigate the consequences of violations of its environmental laws and regulations;
- c. to request the competent authorities to take appropriate action to enforce that Party's environmental laws and regulations in order to protect the environment or to avoid environmental harm; or
- d. to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws and regulations or from tortious conduct.

## **Article 7: Procedural Guarantees**

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in Articles 5 (2) and 6 (2) are fair, open and equitable and to this end shall provide that such proceedings:

- a. comply with due process of law;
- b. are open to the public, except where the administration of justice otherwise requires;
- c. entitle the parties to the proceedings to support or defend their respective positions and to present information or evidence; and
- d. are not unnecessary complicated and do not entail unreasonable charge or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

- a. in writing and preferably state the reasons on which the decisions are based;
- b. made available without undue delay to the parties to the proceedings and consistent with its law, to the public; and
- c. based on information or evidence in respect of which the parties were offered the opportunity to be heard.

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

## **PART THREE COMMISSION FOR ENVIRONMENTAL COOPERATION**

### **Article 8: The Commission**

1. The Parties hereby establish the Commission for Environmental Cooperation.
2. The Commission shall comprise a Council, a Secretariat, and a Joint Public Advisory Committee.

## **Section A: The Council**

### **Article 9: Council Structure and Procedures**

1. The Council shall comprise cabinet-level or equivalent representative of the Parties, or their designees.
2. The Council shall establish its rules and procedures
3. The Council shall convene:
  - a) at least once a year in regular session; and
  - b) in special session at the request of any Party.Regular sessions shall be chaired successively by each Party.
4. The Council shall hold public meetings in the course of all regular sessions. Other meetings held in the course of regular or special sessions shall be public where the Council so decides.
5. The Council may:
  - a) establish, and assign responsibilities to, ad hoc or standing committees, working groups or expert groups;
  - b) seek the advice of nongovernmental organizations or persons, including independent experts; and
  - c) take such other action in the exercise of its functions as the Parties may agree.
6. All decisions and recommendations of the Council shall be taken by consensus, except as the Council may otherwise decide or as otherwise provided in this Agreement.
7. All decisions and recommendations of the Council shall be made public, except as the Council may otherwise decide or as otherwise provide in this Agreement.

### **Article 10: Council Functions**

1. The Council shall be the governing body of the Commission and shall:
  - a) serve as a forum for the discussion of environmental matters within the scope of this Agreement;
  - b) oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience;
  - c) oversee the Secretariat;
  - d) address questions and differences that may arise between the Parties regarding the interpretation or application of this Agreement;
  - e) approve the annual program and budget of the Commission; and
  - f) promote and facilitate cooperation between the Parties with respect to environmental matters.
2. The Council may consider, and develop recommendations regarding:
  - a) comparability of techniques and methodologies for data gathering and analysis, data management and electronic data communications on matters covered by this Agreement;
  - b) pollution prevention techniques for reporting on the state of the environment:

- c) approaches and common indicators for reporting on the state of the environment.
- d) the use of economic instruments for the pursuit of domestic and internationally agreed environmental objectives;
- e) scientific research and technology development in respect of environmental matters;
- f) promotion of public awareness regarding the environment;
- g) transboundary and border environmental issues, such as the long-range transport of air and marine pollutants;
- h) exotic species that may be harmful;
- i) the conservation and protection of wild flora and fauna and their habitat, and specially protected natural areas;
- j) the protection of endangered and threatened species;
- k) environmental emergency preparedness and response activities;
- l) environmental matters as they relate to economic development;
- m) the environmental implication of goods throughout their life cycles;
- n) human resource training and development in the environmental field;
- o) the exchange of environmental scientists and officials;
- p) approaches to environmental compliance and enforcement;
- q) ecologically sensitive national accounts;
- r) eco-labelling; and
- s) other matters as it may decide.

3. The Council shall strengthen cooperation on the development and continuing improvement of environmental laws and regulations, including by:

- a) promoting the exchange of information on criteria and methodologies used in establishing domestic environmental standards; and
- b) without reducing levels of environmental protection, establishing a process for developing recommendations on greater compatibility of environmental technical, regulations, standards and conformity assessment procedures in a manner consistent with the NAFTA.

4. The Council shall encourage:

- a) effective enforcement by each Party of its environmental laws and regulations;
- b) compliance with those laws and regulations; and
- c) technical cooperation between the Parties.

5. The Council shall promote and as appropriate, develop recommendations regarding:

- a) public access to information concerning the environment that is held by public authorities of each Party, including information on hazardous material and activities in its communities, and opportunity to participate in decision-making processes related to such public access; and
- b) appropriate limits for specific pollutants, taking into account differences in ecosystems.

6. The Council shall cooperate with the NAFTA Free Trade Commission to achieve the environmental goals and objectives of the NAFTA by:

- a) acting as a point of inquiry and receipt for comments from non-governmental organizations and persons concerning those goals and objectives;
- b) providing assistance in consultations under Article 1114 of the NAFTA where a Party considers that another Party is waiving or derogating from, or offering to waive or otherwise derogate from, an environmental measure as an encouragement to establish, acquire, expand or retain an investment of an investor, with a view to avoiding any such encouragement;
- c) contributing to the prevention or resolution of environment-related trade disputes by:
  1. seeking to avoid disputes between the Parties,
  2. making recommendations to the Free Trade Commission with respect to the avoidance of such disputes, and
  3. identifying experts able to provide information or technical advice to NAFTA committees, working groups and other NAFTA bodies;
- d) considering on an ongoing basis the environmental effects of the NAFTA; and
- e) otherwise assisting the Free Trade Commission in environment- related matters.

7. Recognizing the significant bilateral nature of many transboundary environmentally issues, the Council shall with a view to agreement between the Parties pursuant to this Article within three years on obligations, consider and develop recommendations with respect to:

- a) assessing the environmental impact of proposed projects subjects to decisions by a competent government authority and likely to cause significant adverse transboundary effects, including a full evaluation of comments provided by other Parties and persons of other Parties;
- b) notification, provision of relevant information and consultation between Parties with respect to such projects; and
- c) mitigation of the potential adverse effects of such projects.

8. The Council shall encourage the establishment by each Party of appropriate administrative procedures pursuant to its environmental laws to permit another Party to seek the reduction, elimination or mitigation of transboundary pollution on a reciprocal basis.

9. The Council shall consider and, as appropriate, develop recommendations on the provision by a Party, on a reciprocal basis, of access to and rights and remedies before its courts and administrative agencies for persons in another Party's territory who have suffered or are likely to suffer damage or injury caused by pollution originating in its territory as if the damage or injury were suffered in its territory.

## **Section B: The Secretariat**

### **Article 11: Secretariat Structure and Procedures**

1. The Secretariat shall be headed by an Executive Director, who shall be chosen by the Council for a three-year term, which may be renewed by the Council for one additional three-year term. The position of Executive Director shall rotate consecutively between nationals of each Party. The Council may remove the Executive Director solely for cause.
2. The Executive Director shall appoint and supervise the staff of the Secretariat, regulate their powers and duties and fix their remuneration in accordance with general standards to be established by the Council. The general standards shall provide that:
  - a) staff shall be appointed and retained and their conditions of employment shall be determined, strictly on the basis of efficiency, competence and integrity;
  - b) in appointing staff, the Executive Director shall take into account lists of candidates prepared by the Parties and by the Joint Public Advisory Committee;
  - c) due regard shall be paid to the importance of recruiting an equitable proportion of the professional staff from among the nationals of each Party; and
  - d) the Executive Director shall inform the Council of all appointments.
3. The Council may decide, by a two-thirds vote, to reject any appointment that does not meet the general standards. Any such decision shall be made and held in confidence.
4. In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any government or any other authority external to the Council. Each party shall respect the international character of the responsibilities of the Executive Director and the staff and shall not seek to influence them in the discharge of their responsibilities.
5. The Secretariat shall provide technical, administrative and operational support to the Council and to committees and groups established by the Council, and such other support as the Council may direct.
6. The Executive Director shall submit for the approval of the Council the annual program and budget of the Commission, including provision for proposed cooperative activities and for the Secretariat to respond to contingencies.
7. The Secretariat shall, as appropriate, provide the Parties and the public information on where they may receive technical advice and expertise with respect to environmental matters.
8. The Secretariat shall safeguard:

- a) from disclosure information it receives that could identify a non-governmental organization or person making a submission if the person or organization so requests or the Secretariat otherwise considers it appropriate; and
- b) from public disclosure any information it receives from any non-governmental organization or person where the information is designated by that non-government organization or person as confidential or proprietary.

## **Article 12: Annual Report of the Commission**

1. The Secretariat shall prepare an annual report of the Commission in accordance with instructions from the Council. The Secretariat shall submit a draft of the report for review by the Council. The final report shall be released publicly.
2. The report shall cover:
  - a) activities and expenses of the Commission during the previous year;
  - b) the approved program and budget of the Commission for the subsequent year;
  - c) the actions taken by each Party in connection with its obligations under this Agreement, including data on the Party's environmental enforcement activities;
  - d) relevant views and information submitted by nongovernmental organizations and persons, including summary data regarding submissions, and any other relevant information the Council deems appropriate;
  - e) recommendations made on any matter within the scope of this Agreement; and
  - f) any other matter that the Council instructs the Secretariat to include.
3. The report shall periodically address the state of the environment in the territories of the Parties.

## **Article 13: Secretariat Reports**

1. The Secretariat may prepare a report for the Council on any matter within the scope of the annual program. Should the Secretariat wish to prepare a report on any other environmental matter related to the cooperative functions of this Agreement, it shall notify the Council and may proceed unless, within 30 days of such notification, the Council objects by a two-thirds vote to the preparation of the report. Such other environmental matters shall not include issues related to whether a Party has failed to enforce its environmental laws and regulations. Where the Secretariat does not have specific expertise in the matter under review, it shall obtain the assistance of one or more independent experts of recognized experience in the matter to assist in the preparation of the report.
2. In preparing such a report, the Secretariat may draw upon any relevant technical, scientific, or other information, including information:

- a) that is publicly available;
- b) submitted by interested nongovernmental organizations and persons;
- c) submitted by the Joint Public Advisory Committee;
- d) furnished by a Party;
- e) gathered through public consultation, such as conferences, seminars, and symposia; or
- f) developed by the Secretariat, or by independent experts engaged pursuant to paragraph 1.

3. The Secretariat shall submit its report to the Council, which shall make it publicly available, normally within 60 days following its submission, unless the Council otherwise decides.

#### **Article 14: Submissions on Enforcement Matters**

1. The Secretariat may consider a submission from any nongovernmental organization or person asserting that a Party is failing to effectively enforce its environmental law, if the Secretariat finds that the submissions:

- a) is in writing in a language designated by that Party in a notification to the Secretariat;
- b) clearly identifies the person or organization making the submission;
- c) provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based;
- d) appears to be aimed at promoting enforcement rather than at harassing industry;
- e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and
- f) is filed by a person or organization residing or established in the territory of a Party.

2. Where the Secretariat determines that a submission meets the criteria set out in paragraph 1, the Secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the Secretariat shall be guided by whether:

- a) the submission alleges harm to the person or organization making the submission;
- b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement;
- c) private remedies available under the Party's law have been pursued; and
- d) the submission is drawn exclusively from mass media reports;

Where the Secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

3. The Party shall advise the Secretariat within 30 days or, in exceptional circumstances and on notification to the Secretariat, within 60 days of delivery of the request;

- a) whether the matter is the subject of a pending judicial or administrative



- proceeding, in which case the Secretariat shall proceed no further; and
- b) of any other information that the Party wishes to submit, such as
    - i) whether the matter was previously the subject of a judicial or administrative proceeding, and
    - ii) whether private remedies in connection with the matter are available to the person or organization making the submission and whether they have been pursued.

### **Article 15: Factual Record**

1. If the Secretariat considers that the submission, in the light of any response provided by the Party, warrants developing a factual record, the Secretariat shall so inform the Council and provide its reasons.
2. The Secretariat shall prepare a factual record if the Council, by a two-thirds vote, instructs it to do so.
3. The preparation of a factual record by the Secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.
4. In preparing a factual record, the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information:
  - a) that is publicly available;
  - b) Submitted by interested nongovernmental organization or persons;
  - c) submitted by the Joint Public Advisory Committee; or
  - d) developed by the Secretariat or by independent experts.
5. The Secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.
6. The Secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.
7. The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission.

### **Section C: Advisory Committee**

#### **Article 16: Joint Public Advisory Committee**

1. The Joint Public Advisory Committee shall comprise 15 members, unless the Council otherwise decides. Each party or it the Party so decides, its National Advisory Committee convened under Article 17, shall appoint an equal number of members.

2. The Council shall establish the rules of procedure for the Joint Public Advisory Committee, which shall choose its own chair.

3. The Joint Public Advisory Committee shall convene at least once a year at the time of the regular session of the Council and at such other times as the Council, or the Committee's chair with the consent of a majority of its members may decide.

4. The Joint Public Advisory Committee may provide advice to the Council on any matter within the scope of this Agreement, including on any documents provided to it under paragraph 6, and on the implementation and further elaboration of this Agreement, and may perform such other functions as the Council may direct.

5. The Joint Public Advisory Committee may provide relevant technical, scientific, or other information to the Secretariat, including for purposes of developing a factual record under Article 15. The Secretariat shall forward to the Council copies of any such information.

6. The Secretariat shall provide to the Joint Public Advisory Committee at the time they are submitted to the Council copies of the proposed annual program and budget of the Commission, the draft annual report, and any report the Secretariat prepares pursuant to Article 13.

7. The Council may, by a two-thirds vote, make a factual record available to the Joint Public Advisory Committee.

#### **Article 17: National Advisory Committee**

Each Party may convene a national advisory committee, comprising members of its public, including representatives of nongovernmental organizations and persons to advise it on the implementation and further elaboration of this Agreement.

#### **Article 18: Governmental Committees**

Each Party may convene a governmental committee, which may comprise or include representatives of federal and state or provincial governments, to advise it on the implementation and further elaboration of this Agreement.

### **Section D: Official Languages**

#### **Article 19: Official Languages**

The official languages of the Commission shall be English, French and Spanish. All annual reports under Article 12, reports submitted to the Council under Article 13, factual records submitted to the Council under Article 15 (6) and panel reports under Part Five shall be available in each official language at the time they are made public. The Council shall establish rules and procedures regarding interpretation and translation.

**PART FOUR  
COOPERATION AND PROVISION  
OF INFORMATION**

**Article 20: Cooperation**

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to resolve any matter that might affect its operation.
2. To the maximum extent possible, each Party shall notify any other Party with an interest in the matter of any proposed or actual environmental measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.
3. On request of any other Party of, an provide to that Party, any credible information regarding possible violations of its environmental law, specific an sufficient to allow the other Party to inquire into the matter. The notified Party shall take appropriate steps in accordance with its law to so inquire and to respond to the other Party.

**Article 21: Provision of Information**

1. One request of the Council or the Secretariat, each Party shall, in accordance with its law, provide such information as the Council or the Secretariat may require, including:
  - a) promptly making available any information in its possession required for the preparation of a report or factual record, including compliance and enforcement data; and
  - b) taking all reasonable steps to make available any other such information requested.
2. If a Party considers that a request for information from the Secretariat is excessive or otherwise unduly burdensome, it may so notify the Council. The secretariat shall revise the scope of its request to comply wit any limitations established by the council by a two-thirds vote.
3. If a Party does not make available information requested by the Secretariat, as may be limited pursuant to paragraph 2, it shall promptly advise the Secretariat of its reasons in writing

## **PART FIVE CONSULTATION AND RESOLUTION OF DISPUTES**

### **Article 22: Consultations**

1. Any Party may request in writing consultations with any other Party regarding whether there has been a persistent pattern of failure by that other Party to effectively enforce its environmental law.
2. The requesting Party shall deliver the request to the other Parties and to the Secretariat.
3. Unless the Council otherwise provides in its rules and procedures established under Article 9(2), a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to the Secretariat.
4. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

### **Article 23: Initiation of Procedures**

1. If the consulting Parties fail to resolve the matter pursuant to Article 22 within 60 days of delivery of a request for consultations, or such other period as the consulting Parties may agree, any such Party may request in writing a special session of the Council.
2. The requesting Party shall state in the request the matter complained of and shall deliver the request to the other Parties and to the Secretariat.
3. Unless it decides otherwise, the Council shall convene within 20 days of delivery of the request and shall endeavor to resolve the dispute promptly.
4. The Council may:
  - a) call on such technical advisers or create such working groups or expert groups as it deems necessary;
  - b) have recourse to good offices, conciliation, mediation, or such other dispute resolution procedures; or
  - c) make recommendations

as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute. Any such recommendations shall be made public if the Council, by a two-thirds vote, so decides/

5. Where the Council decides that a matter is more properly covered by another agreement or arrangement to which the consulting Parties are party, it shall refer the

matter to those Parties for party, it shall refer the matter to those Parties for appropriate action in accordance with such other agreement or arrangement.

#### **Article 24: Request for an Arbitral Panel**

1. If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 23, the Council shall, on the written request of any consulting Party and by a two-thirds vote, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its environmental law relates to a situation involving workplaces, firms, companies, or sectors that produce goods or provide services:

- a) traded between the territories of the Parties; or
- b) that compete, in the territory of the Party complained against, with goods or services produced or provided by persons of another Party.

2. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties and the Secretariat. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of the vote of the Council to convene a panel.

3. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

#### **Article 25: Roster**

1. The Council shall establish and maintain a roster of up to 45 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

2. Roster members shall:

- a) have expertise or experience in environmental law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical or professional expertise or experience;
- b) be chosen strictly on the basis of objectivity, reliability and sound judgement;
- c) be independent of and not be affiliated with or take instructions from, any Party, the Secretariat, or the Joint Public Advisory Committee; and
- d) comply with a code of conduct to be established by the Council.

#### **Article 27: Panel Selection**

1. Where there are two disputing Parties, the following procedures shall apply:

- a) The Panel shall comprise five members.
- b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days after the Council votes to convene the panel. If the disputing

Parties are unable to agree on the chair within this period, the disputing Party Chosen by lot shall select within five days a chair who is not a citizen of that Party.

- c) Within 15 days of selection of the chair, each disputing Party shall select two panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

- a) The panel shall comprise five members.
- b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days after the Council votes to convene the panel. If the disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen fo such Party or Parties.
- c) Within 30 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two are citizens of the Party complained against.
- d) If any disputing Party fail to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a preemptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 30 days after the individual has been proposed.

4. If a disputing Party believes tht a panelist is in violation of the cods of conduct, the disputing Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

#### **Article 28: Rules of Procedure**

1. The Council shall establish Model Rules of Procedure. The procedures shall provide:

- a) a right to at least one hearing before the panel;
- b) the opportunity to make initial and rebuttal written submission; and
- c) that no panel may disclose which panelists are associated with majority or minority opinions.

2. Unless the disputing Parties otherwise agree, panels convened under this Part shall be established and conduct their proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties otherwise agree within 20 days after the Council votes to convene the panel, the terms of reference shall be:

“To examine, in light of the relevant provisions of the Agreement, including those contained in Part Five, whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, and to make findings,

determinations and recommendations in accordance with Article 31 (2).”

#### **Article 29: Third Party Participation**

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties and to the Secretariat, shall be entitled to attend all hearings, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties.

#### **Article 30: Role of Experts**

On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

#### **Article 31: Initial Report**

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 30.
2. Unless the disputing Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the disputing Parties an initial report containing:
  - a) findings of fact;
  - b) its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, or any other determination requested in the terms of reference; and
  - c) in the event the panel makes an affirmative determination under subparagraph (b), its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of nonenforcement.
3. Panelists may furnish separate opinions on matters not unanimously agreed.
4. A disputing Party may submit written comments to the panel on its initial report within 30 days of presentation of the report.
5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:
  - a) request the views of any participating Party;
  - b) reconsider its report; and
  - c) make any further examination that it considers appropriate.

#### **Article 32: Final Report**

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the disputing Parties otherwise agree.
2. The disputing Parties shall transmit to the council the final report of the panel, as well as any written views that a disputing Party desires to be appended, on a confidential basis within 15 days after it is presented to them.

3. The final report of the panel shall be published five days after it is transmitted to the council.

### **Article 33: Implementation of Final Report**

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, the disputing Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel. The disputing Parties shall promptly notify the Secretariat and the Council of any agreed resolution of the dispute.

### **Article 34: Review of Implementation**

1. If, in its final report, a panel determines that there has been a persistent pattern of failure by complained against to effectively enforce its environmental law, and:

- a) the disputing Parties have not agreed on an action plan under Article 33 within 60 days of the date of the final report, or
- b) the disputing Parties cannot agree on whether the party complained against is fully implementing
  - i) an action plan agreed under Article 33,
  - ii) an action plan deemed to have been established by a panel under paragraph 2, or
  - iii) an action plan approved or established by a panel under paragraph 4.

any disputing Party may request that the panel be reconvened. The requesting Party shall deliver the request in writing to the other Parties and to the Secretariat. The Council shall reconvene the panel on delivery of the request to the Secretariat.

2. No Party may make a request under paragraph 1 (a) earlier than 60 days, or later than 120 days, after the date of the final report. If the disputing Parties have not agreed to an action plan and if no request was made under paragraph 1 (a), the last action plan, if any, submitted by the Party complained against to the complaining Party or Parties within 60 days of the date of the final report, or such other period as the disputing Parties may agree, shall be deemed to have been established by the panel 120 days after the date of the final report.

3. A request under paragraph 1(b) may be made no earlier than 180 days after an action plan has been:

- a) agreed under Article 33;
- b) deemed to have been established by a panel under paragraph 2; or
- c) approved or established by a panel under paragraph 4;

and only during the term for any such action plan.

4. Where a panel has been reconvened under paragraph 1 (a), it:

- a) shall determine whether any action plan proposed by the Party complained against is sufficient to remedy the pattern of nonenforcement and
  - i) if so, shall approve the plan, or
  - ii) if not, shall establish such a plan consistent with the law of the Party complained against, and



b) may, where warranted, impose a monetary enforcement assessment in accordance with Annex 34, within 90 days after the panel has been reconvened or such other period as the disputing Parties may agree.

5. Where a panel has been reconvened under paragraph 1 (b), it shall determine either that:

- a) the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment; or
- b) the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 34,

within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

6. A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 4 (a) (ii) or 5 (b), request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan. On delivery of the request to the other Parties and the Secretariat, the Council shall reconvene the panel. The panel shall make the determination within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

#### **Article 36: Suspension of Benefits**

1. Subject to Annex 36A, where a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by a panel:

- a) under Article 34 (4) (b), or
- b) under Article 34 (5) (b), except where benefits may be suspended under paragraph 2 (a),

any complaining Party or Parties may suspend, in accordance with Annex 36B, the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment.

2. Subject to Annex 36A, where a panel has made a determination under Article 34(5)(b) and the panel:

- a) has previously imposed a monetary enforcement assessment under Article 34 (4) (b) or established an action plan under Article 34 (4) (a) (ii); or
- b) has subsequently determined under Article 35 that a Party is not fully implementing an action plan;

the complaining Party or Parties may, in accordance with Annex 36B, suspend annually the application to the Party complained against of NAFTA benefits in an amount no greater than the monetary enforcement assessment imposed by the panel under Article 34 (5) (b).

3. Where more than one complaining Party suspends benefits under paragraph 1 or 2, the combined suspension shall be no greater than the amount of the monetary enforcement assessment.

4. Where a Party has suspended benefits under paragraph 1 or 2, the Council shall, on the delivery of a written request by the Party complained against to the other Parties and the Secretariat, reconvene the panel to determine whether the monetary enforcement assessment has been paid or collected, or whether the Party complained against is fully implementing the action plan, as the case may be. The panel shall submit its report within 45 days after it has been reconvened. If the panel determines that the assessment has been paid or collected, or that the Party complained against is fully implementing the action plan, the suspension of benefits under paragraph 1 or 2, as the case may be, shall be terminated.

5. On the written request of the Party complained against, delivered to the other Parties and the Secretariat, the Council shall reconvene the panel to determine whether the suspension of benefits by the complaining Party or Parties pursuant to paragraph 1 or 2 is manifestly excessive. Within 45 days of the request, the panel shall present a report to the disputing Parties containing its determination.

## **PART SIX GENERAL PROVISIONS**

### **Article 37: Enforcement Principle**

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

### **Article 38: Private Rights**

No Party may provide for a right of action under its law against any other Party on the ground that another Party has acted in a manner inconsistent with this Agreement.

### **Article 39: Protection of Information**

1. Nothing in this Agreement shall be construed to require a Party to make available or allow access to information:

- a) the disclosure of which would impede its environmental law enforcement; or
- b) that is protected from disclosure by its law governing business or proprietary information, personal privacy, or the confidentiality of governmental decision making.

2. If a Party provide confidential or proprietary information to another Party, the Council, the Secretariat, or the Joint Public Advisory Committee, the recipient shall treat the information on the same basis as the Party providing the information.

3. Confidential or proprietary information provided by a Party to a panel under this Agreement shall be treated in accordance with the rules of procedure established under Article 28.

**Article 40: Relation to Other Environmental Agreements**

Nothing in this Agreement shall be construed to affect the existing rights and obligations of the Parties under other international environmental agreements, including conservation agreements, to which such Parties are party.

**Article 41: Extent of Obligations**

Annex 41 applies to the Parties specified in that Annex.

**Article 42: National Security**

Nothing in this Agreement shall be construed:

- a) to require any Party to make available or provide access to information the disclosure of which it determines to be contrary to its essential security interests; or
- b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests relating to
  - i) arms, ammunition and implements of war, or
  - ii) the implementation of national policies or international agreements respecting the nonproliferation of nuclear weapons or other nuclear weapons or other nuclear explosive devices.

**Article 43: Funding of the Commission**

Each Party shall contribute an equal share of the annual budget of the Commission, subject to the availability of appropriated funds in accordance with the Party's legal procedures. No Party shall be obligated to pay more than any other Party in respect of an annual budget.

**Article 44: Privileges and Immunities**

The Executive Director and staff of the Secretariat shall enjoy in the territory of each Party such privileges and immunities as are necessary for the exercise of their functions.

**Article 45: Definitions**

1. For purposes of this Agreement:

A Party has not failed to “**effectively enforce its environmental law**” or to comply with Article 5 (1) in a particular case where the action or inaction in question by agencies or officials of that Party:

- a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or
- b) results from *bona fide* decision to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities;

**nongovernmental organization** means any scientific, professional, business, nonprofit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

**persistent pattern** means a sustained or recurring course of action or inaction beginning after the date of entry into force of this Agreement;

**province** means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors; and

**territory** means for a Party the territory of that Party as set out in Annex 45.

2. For purposes of Article 14(1) and Part Five:

- a) **environmental law** means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through
- i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;
  - ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes and the dissemination of information related thereto; or
  - iii) the protection of wild flora or fauna, including endangered species, their habitat and specially protected natural areas

in the Party's territory, but does not include any statute or regulation or provision thereof, directly related to worker safety or health.

b) For greater certainty the term **environmental law** does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

3. For purposes of Article 14(3), **judicial or administrative proceeding** means:

- a) a domestic judicial, quasi-judicial, or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such action comprise: Mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement : seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and

b) an international dispute resolution proceeding to which the Party is party.

## **PART SEVEN FINAL PROVISIONS**

### **Article 46: Annexes**

The Annexes to this Agreement constitute an integral part of the Agreement.

### **Article 47: Entry into Force**

This Agreement shall enter into force on 1 January 1994, immediately after entry into force of the NAFTA, on an exchange of written notifications certifying the completion of Necessary legal procedures.

### **Article 48: Amendments**

1. The Parties may agree on any modification of or addition to this Agreement.
2. When so agree, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

### **Article 49: Accession**

Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Council and following approval in accordance with the applicable legal procedures of each country.

### **Article 50: Withdrawal**

A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

### **Article 51: Authentic Texts**

The English, French and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by the respective governments, have signed this Agreement.

## **Annex 34**

### **Monetary Enforcement Assessments**

1. For the first year after the date of entry into force of this Agreement, any monetary enforcement assessment shall be no greater than 20 million dollars (U.S.) or its equivalent in the currency of the Party complained against. Thereafter, any monetary assessment shall be no greater than 0.007 percent of total trade in goods between the Parties during the most recent year for which data are available.

2. In determining the amount of the assessment, the panel shall take into account:

- a) the pervasiveness and duration of the Party's persistent pattern of failure to effectively enforce its environmental law;
- b) the level of enforcement that could reasonable be expected of a Party given its resources constraints;
- c) the reasons, if any, provided by the Party for not fully implementing an action plan;
- d) efforts made by the Party to begin remedying the pattern of nonenforcement after the final report of the panel; and
- e) any other relevant factors.

3. All monetary enforcement assessments shall be paid in the currency of the Party complained against into a fund established in the name of the Commission by the Council and shall be expanded at the direction of the Council t improve or enhance the environment or environmental law enforcement in the Party complained against, consistent with its law.

### **Annex 36A** **Canadian Domestic Enforcement and Collection**

1. For the purposes of this Annex, panel determination means:

- a) a determination by a panel under Article 34 (4) (b) or 5 (b) that provides that Canada shall pay a monetary enforcement assessment ; and
- b) a determination by a panel under Article 34 (5) (b) that provides that Canada shall fully implement an action plan where the panel:
  - i) has previously established an action plan under Article 34 (4) (a) (ii) or imposed a monetary enforcement assessment under Article 34 (4)(b); or
  - ii) has subsequently determined under Article 35 that Canada is not fully implementing an action plan.

2. Canada shall adopt and maintain procedures that provide that:

- a) subject to subparagraph (b), the Commission, at the request of a complaining Party, may in its won name file in a court of competent jurisdiction a certified copy of a panel determination;
- b) the Commission may file in court a panel determination that is a panel determination described in paragraph 1 (a) only if Canada has failed to comply with the determination within 180 days of when the determination was made;
- c) when filed, the panel determination, for purposes of enforcement, shall become an order of the court;
- d) the Commission may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person against

whom the panel determination is addressed in accordance with paragraph 6 of Annex 41;

- e) proceedings to enforce a panel determination that has been made an order of the court shall be conducted by way of summary proceedings;
- f) in proceedings to enforce a panel determination that is a panel determination described in paragraph 1 (b) and that has been made an order of the court, the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the panel determination, and the decision of the panel shall be binding on the court;
- g) a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and
- h) an order made by the court in proceedings to enforce a panel determination that has been made an order of the court shall not be subject to review or appeal.

3. Where Canada is the Party complained against, the procedures adopted and maintained by Canada under this Annex shall apply and the procedures set out in Article 36 shall not apply.

4. Any change by Canada to the procedures adopted and maintained by Canada under this Annex that have the effect of undermining the provisions of this Annex shall be considered a breach of this Agreement.

#### **Annex 36 B Suspension of Benefits**

1. Where a complaining Party suspends NAFTA tariff benefits in accordance with this Agreement, the Party may increase the rates of duty on originating goods of the Party complained against to levels not to exceed the lesser of:

- a) the rate that was applicable to those goods immediately prior to the date of entry into force of the NAFTA, and
- b) the Most-Favored-Nation rate applicable to those goods on the date the Party suspends such benefits,

and such increase may be applied only for such time as is necessary to collect, through such increase, the monetary enforcement assessment.

2. In considering what tariff or other benefits to suspend pursuant to Article 36 (1) or (2):
- a) a complaining Party shall first seek to suspend benefits in the same sector or sectors as that in respect of which there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law; and
  - b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector may suspend benefits in other sectors.

#### **Annex 41**

## **Extent of Obligations**

1. On the date of signature of this Agreement, or of the exchange of written notifications under Article 47, Canada shall set out in a declaration a list of any provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration shall be effective on delivery to the other Parties, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify the other Parties six months in advance of any modification to its declaration.

2. When considering whether to instruct the Secretariat to prepare a factual record pursuant to Article 15, the Council shall take into account whether the submission was made by a nongovernmental organization or enterprise incorporated or otherwise organized under the laws of a province included in the declaration made under paragraph 1.

3. Canada may not request consultations under Article 22 or a Council meeting under Article 23 or request the establishment of a panel or join as a complaining Party under Article 24 against another Party at the instance, or primarily for the benefit, of any government of a province not included in the declaration made under paragraph 1.

4. Canada may not request a Council meeting under Article 23, or request the establishment of a panel or join as a complaining Party under Article 24 concerning whether there has been a persistent pattern of failure by another Party to effectively enforce its environmental law, unless Canada states in writing that the matter would be under federal jurisdiction if it were to arise within the territory of Canada, or:

- a) Canada states in writing that the matter would be under provincial jurisdiction if it were to arise within the territory of Canada; and
- b) the provinces included in the declaration account for at least 55 percent of Canada's Gross Domestic Product (GDP) for the most recent year in which data are available; and
- c) where the matter concerns a specific industry or sector, at least 55 percent of total Canadian production in that industry or sector is accounted for by the provinces included in the declaration for the most recent year in which data are available.

5. No other Party may request a Council meeting under Article 23 or request the establishment of a panel or join as a complaining Party under Article 24 concerning whether there has been a persistent failure to effectively enforce an environmental law of a province unless that province is included in the declaration made under paragraph 1 and the requirements of subparagraphs 4 (b) and (c) have been met.

6. Canada shall, no later than the date on which an arbitral panel is convened pursuant to Article 24 respecting a matter within the scope of paragraph 5 of this Annex, notify in writing the complaining Parties and the Secretariat of whether any monetary enforcement



assessment or action plan imposed by a panel under Article 34 (4) or 34 (5) against Canada shall be addressed to Her Majesty in right of Canada or Her Majesty in right of the province concerned.

7. Canada shall use its best efforts to make this Agreement applicable to as many of its provinces as possible.

8. Two years after the date of entry into force of this Agreement, the Council shall review the operation of this Annex and, in particular, shall consider whether the Parties should amend the thresholds established in paragraph 4.

#### **Annex 45 Country-Specific Definitions**

For purposes of this Agreement:

**Territory means:**

- a) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources;
- b) with respect to Mexico,
  - i) the states of the Federation and the Federal District;
  - ii) the islands, including the reefs and keys, in adjacent seas;
  - iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean;
  - iv) the continental shelf and the submarine shelf of such islands, keys and reefs;
  - v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;
  - vi) the space located above the national territory, in accordance with international law; and
  - vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the *United Nations Convention on the Law of the Sea*, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources; and
- c) with respect to the United States,
  - i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;
  - ii) the foreign trade zones located in the United States and Puerto Rico; and
  - iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

**Appendix IV**  
**Executive Order 12915 of 13 May 1994**

**Federal Implementation of the North American Agreement on Environmental Cooperation**

59 F.R. 25775

By the authority vested in me as President by the Constitution, and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103-182; 107 stat. 2057 ("NAFTA Implementation Act"), and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1. Policy.**

(a) The North American Agreement on Environmental Cooperation ("Environmental Cooperation Agreement") shall be implemented consistent with United States policy for the protection of human, animal or plant life or health, and the environment. The Environmental Cooperation Agreement shall also be implemented to advance sustainable development, pollution prevention, environmental justice ecosystem protection and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement ("NAFTA") and the Environmental Cooperation Agreement.

(b) Effective implementation of the Environmental Cooperation Agreement is essential to the realization of the environmental objectives of NAFTA and the NAFTA Implementation Act and promotes cooperation on trade and environmental issues between the United States, Canada and Mexico

**Section 2. Implementation of the Environmental Cooperation Agreement.**

(a) *Policy Priorities.* In accordance with Article 10(2) of the Environmental Cooperation Agreement, it is the policy of the United States to promote consideration of, with a view toward developing recommendations and reaching agreement on, the following priorities within the Council of the Commission for Environmental Cooperation ("Council").

(1) pursuant to Article 10(2)(m), the environmental impact of goods throughout their life cycles, including the environmental effects of processes and production methods and the internalization of environmental costs associated with products from raw material to disposal;

(2) pursuant to Articles 10(2) (b), (g), (i), (j) and (k), pollution prevention techniques and strategies, transboundary and border environmental issues, the conservation and protection of wild flora and fauna (including endangered species), their habitats and specially protected natural areas, and environmental emergency preparedness and response activities:

(3) pursuant to Article 10(3) and 10(4), implementation of Environmental Cooperation Agreement provision and the exchange of information among the United States, Canada and Mexico concerning the development, continuing improvement and effective enforcement of, and compliance with, environmental laws, policies, incentives, regulations, and other applicable standards;

(4) pursuant to Article 10(5)(a), public access to environmental information held by public authorities of each party to the Environmental Cooperation Agreement, including information on hazardous materials and activities in its communities and the opportunity to participate in decision-making processes related to such public access;

(5) pursuant to Article 10(2)(1), environmental matters as they relate to sustainable development; and

(6) other priorities as appropriate or necessary.

(b) *United States Representation on Council.* The Administrator of the Environmental Protection Agency ("EPA") shall be the representative of the United States on the Council. The Policies and positions of the United States in the Council shall be coordinated through applicable interagency procedures.

(c) *Environmental Effects of NAFTA.* Pursuant to Article 10(6)(d) of the Environmental Cooperation Agreement, the Administrator of the EPA shall work actively within the Council to consider on an ongoing basis the environmental effects of the NAFTA and review progress toward the objectives of the Environmental Cooperation Agreement.

(d) *Transparency and Public Participation.* The United States, as appropriate, shall endeavor to ensure the transparency and openness of , and opportunities for the public to participate in, activities under the Environmental Cooperation Agreement.

(1) To the greatest extent practicable, pursuant to Articles 15(1) and 15(2), where the Secretariat of the Commission for Environmental Cooperation ("Secretariat") informs the Council that a factual record is warranted, the United States shall support the preparation of such factual record.

(2) To the greatest extent practicable, the United States shall support public disclosure of all nonconfidential and nonproprietary elements of reports, factual records, decisions, recommendations and other information gathered or prepared by the Commission for Environmental Cooperation ("Commission"). Where requested information is not made available, the United States shall endeavor to have the Commission state in writing to the public its reasons for denial of the request.

(3) The United States shall provide public notice of the opportunity to apply for inclusion on a roster of qualified individuals available to serve on arbitral panels under the Environmental Cooperation Agreement.

(4) The United States shall seek to ensure that the Model Rules of Procedure for dispute settlement established pursuant to Articles 28(1) and 28(2) of the Environmental Cooperation Agreement provide for the preparation of public versions of written submissions and arbitral reports not otherwise made publicly available, and for public access to arbitral hearings.

(5) Consistent with the Environmental Cooperation Agreement, the EPA Administrator shall develop procedures to inform the public of arbitral proceedings and Commission activities under the Environmental Cooperation Agreement, and to provide appropriate mechanisms for receiving public comment with respect to such arbitral proceedings and Commission activities involving the United States.

(6) As a disputing party, the United States shall seek to ensure, pursuant to Article 30 of the Environmental Cooperation Agreement, that the arbitral panels consult with the appropriate experts for information and technical advice.

(e) *Consultation with States* (1). Pursuant to Article 18 of the Environmental Cooperation Agreement, the EPA Administrator shall establish a governmental committee to furnish advice regarding implementation and further elaboration of the Agreement. Through this committee, or through other means as appropriate, the EPA Administrator and other relevant federal agencies shall:

- A) inform the States on a continuing basis of matters under the Environmental Cooperation Agreement that directly relate to, or will potentially have a direct impact on, the States, including:
  - (i) dispute settlement proceedings and other matters involving enforcement by the States of environmental laws; and
  - (ii) implementation of the Environmental Cooperation Agreement, including Council committee and working group activities, in any area in which the States exercise concurrent or exclusive legislative, regulatory, or enforcement authority;
- B) provide the States with an opportunity to submit information and advice with respect to matters identified in Section 2 (e)(1)(A) of this order; and
- C) involve the State to the greatest extent practicable at each stage of the development of United States positions regarding matters identified in Section 2(e)(1)(A) of this order that will be addressed by the Council, committees, sub-committees, or working groups established under the Environmental Cooperation Agreement, or through dispute settlement processes prescribed under the Environmental Cooperation Agreement, or through dispute settlement processes prescribed under the Environmental Cooperation Agreement (including involvement through the inclusion of appropriate representatives of the States).

(2) When formulating positions regarding matters identified in Section 2(e)(1)(A) of this order, the United States shall take into account the information and advice received from States.

(3) The United States, where appropriate, shall include representatives of interested States as Members of the United States shall take into account the information and advice received from States.

**Section 3. National Advisory Committee.** The EPA Administrator shall utilize a National Advisory Committee as provided under Article 17 of the Environmental Cooperation Agreement.

**Section 4. United States Contributions to the Commission for Environmental Cooperation.** In accordance with section 532(a)(2) of the NAFTA Implementation Act, the EPA is designated as the agency authorized to make the contributions of the United States from funds available for such contributions to the annual budget of the Commission for Environmental Cooperation.

**Section 5. Judicial Review.** This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE  
13 May 1994.

## Appendix V

### **An Act to Amend the Crown Liability and Proceeding Act**

#### Summary

The North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation each establish a mechanism for the resolution of disputes between Parties to the Agreement with respect to whether there has been a persistent pattern of failure by a Party to effectively enforce its environmental law or to effectively enforce its occupational safety and health child labor or minimum wage technical labor standards.

Each Agreement provides for the establishment of panels to make findings of fact and determinations with respect to the matter in dispute. A panel may, in its determination, require a party to adopt an action plan and, in certain cases, to a monetary enforcement assessment.

This enactment amends the *Crown Liability and Proceedings Act* so as to permit domestic enforcement by the Federal Court of Canada of any panel determination that is addressed to the Crown in right of Canada.

The major elements of the enactment are as follows:

1. The enactment sets out a procedure by which a panel determination may be filed in the Federal Court. On filing, the panel determination would become an order of the Federal Court.
2. A panel determination that is made an order of the Federal Court would be enforceable in the same manner as any other order of that Court, subject to certain limitations.
3. There would be no right of appeal against a panel determination or an order or decision made by the Court in any enforcement proceedings. The enactment also contains a privative clause to exclude domestic judicial review of panel proceedings, panel determinations, enforcement proceedings taken in Federal Court, and orders and decisions made by the Federal Court in any enforcement proceedings.

### **An Act to Amend the Crown Liability and Proceeding Act**

*[Assented t 12 May 1994]*

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

**1. The *Crown Liability and Proceedings Act* is amended by Adding the following after Section 20:**

**Environmental and Labor Cooperation Agreements**

**20.1** In this section and Section 20.2 to 20.4,  
“appropriate Commission” means

(a) in respect of a panel determination as defined in Annex 36A of the Environmental Cooperation Agreement, the Commission for Labor Cooperation established under Article 8 of that Agreement; and

(b) in respect of a panel determination as defined in Annex 41A of the Labor Cooperation Agreement, the Commission for Labor Cooperation established under Article 8 of that Agreement;

“Environmental Cooperation Agreement” means the North American Agreement on Environmental Cooperation entered into by the Government of Canada, the Government of the United Mexican States and the Government of the United States of America and signed on 14 September 1993, as amended from time to time in accordance with Article 48 of that Agreement;

“Labor Cooperation Agreement” means the North American Agreement on Labor Cooperation entered into by the Government of Canada, the Government of the United Mexican States and the Government of the United States of America and signed on 14 September 1993, as amended from time to time in accordance with Article 52 of that Agreement;

“panel” means an arbitral panel convened under Article 24 of the Environmental Cooperation Agreement or Article 29 of the Labor Cooperation Agreement;

“Panel determination” means an arbitral panel convened under Article 24 of the Environmental Cooperation Agreement or Annex 41A of the Labor Cooperation Agreement.

**20.2** (1) A panel determination that is addressed to the Crown may, for the purpose of its Enforcement only, be made an order of the Federal Court.

(2) To make a panel determination an order of the Federal Court, the appropriate Commission shall file a certified copy of the determination in the Registry of that Court and, on filing, the determination becomes an order of that Court/

**20.3** (1) Subject to subsections (2) to (5), a panel determination that is made an order of the Federal Court is enforceable in the same manner as any other order of that Court.

(2) Proceedings for enforcement of a panel determination that is made an order of the Federal Court may be taken against the Crown only in that Court and only by the appropriate Commission.

(3) Any proceedings referred to in subsection (2) shall be heard and determined in a summary way.

(4) If any question of fact or interpretation of a panel determination arises in any proceedings referred to in subsection (2), the Federal Court shall refer the question to the panel that made the determination, and the decision of the panel on the question is binding on that Court.

(5) No person or body may intervene in any proceedings referred to in subsection (2).

**20.4** (1) Panel determinations, including panel determinations that are made orders of the Federal Court, and orders and decisions made by the Federal Court in any proceedings referred to in subsection 20.3(2) are final and binding and are not subject to appeal to any court.

(2) Subject to Section 20.3, no panel determination, including a panel determination that is made an order of the Federal Court, no determination or proceedings of a panel made or carried on or purporting to be made or carried on under the Environmental Cooperation Agreement or the Labor Cooperation Agreement, no order or decision made by the Federal Court in any proceedings referred to in subsection 20.3(2), and no proceedings of that Court made or carried on or purporting to be made or carried on under that subsection shall be

- (a) questioned, reviewed, set aside, removed, prohibited or restrained; or
- (b) made the subject of any proceedings in, or any process or order of, any court whether by way of or in nature of injunction, certiorari, prohibition, quo warrantor declaration or otherwise,

on any ground, including the ground that the determination, proceedings, order, or decision is beyond the jurisdiction of the panel or the Federal Court, as the case may be, or that, in the course of any proceedings, the panel or the Federal Court for any reason exceeded or lost its jurisdiction.

### **Coming Into Force**

**2.** This Act shall come into force on a day to be fixed by order of the Governor in Council.



## **Appendix VI**

### **Canadian Intergovernmental Agreement Regarding the North American Agreement on Environmental Cooperation**

#### **Preamble**

**GIVEN** that Canada has entered into the North American Free Trade Agreement (NAFTA) and the North American Agreement on Environmental Cooperation (NAAEC) with the United Mexican States and the United States of America;

**RECOGNIZING** that partnership and cooperation between the federal, provincial and territorial governments are essential in order to achieve the goals of the NAAEC and the environmental goals of the NAFTA;

**REAFFIRMING** the importance of interjurisdictional cooperation as set out in the "Statement of Interjurisdictional Cooperation on Environmental matters" adopted by the Canadian Council of Ministers of the Environment (CCME) on 20 March 1990 in Vancouver;

**AFFIRMING** that cooperation for the conservation, protection and enhancement of the environment is an essential element for achieving sustainable development;

**RECOGNIZING** the important roles and respective responsibilities of the federal, provincial and territorial governments in the area of the environment; and

**CONFIRMING** that nothing in this Agreement affects in any way the respective powers status or jurisdictional authority of any of the signatories to this Agreement;

The undersigned governments have agreed as follows:

#### **Objectives**

##### **Article 1**

The objectives of this Agreement are to:

- (a) continue to ensure cooperation with regard to environmental matters and to better conserve, protect and enhance the environment through the effective and efficient implementation of the NAAEC;
- (b) establish a mechanism that will provide for the full participation of the provincial and territorial governments with the federal government in the implementation, management and further elaboration of the NAAEC in accordance with the terms of this Agreement; and

- (c) define roles in the implementation, management and further elaboration of the NAAEC.

## **Rights and Obligations of the NAAEC**

### **Article 2**

The signatory governments to this Agreement shall enjoy the rights of the NAAEC and shall be bound by its obligations in accordance with their respective jurisdictions.

### **Governmental Committee**

#### **Article 3**

1. A Governmental Committee is hereby created to develop and manage Canada's involvement in the NAAEC including, without limiting the foregoing, the establishment of Canada's positions and approaches as well as the preparation for, participation at, and follow-up to meetings of the Council of the Commission for Environmental Cooperation (Council).
2. The Governmental Committee will be composed of the ministers responsible for the environment, or their designees, from each signatory government. It will be co-chaired by the federal minister and a minister from one of the other signatory governments, the latter chosen for a one-year term and in a manner to be determined by the Governmental Committee. The Governmental Committee will meet at the ministerial level at least once a year and as necessary.
3. The Government Committee will be supported by a Committee of Senior Officials composed of representatives from each signatory government. It will be co-chaired and operate on the same basis as the Governmental Committee.
4. Both Committees will function on the basis of consensus, unless otherwise specified in this Agreement.
5. Both Committees will cooperate with the appropriate intergovernmental committees on international trade when addressing trade-related matters under the NAAEC or the NAFTA.
6. Representatives of governments that have not signed this Agreement may participate in the meetings of both Committees. They will have the opportunity to comment and will normally be invited to participate in cooperative activities of the NAAEC and, as appropriate, in other activities under this Agreement. They shall not be included in the determination of consensus under paragraph 4 above.
7. The Committees will perform their functions in a cost-effective manner. To this end, existing intergovernmental mechanisms such as the CCME may be invited to provide support as appropriate.

8. Secretariat services for and as assigned by the Governmental Committee will be provided by the federal government. Their signatory governments may second officials for this purpose

9. The Governmental Committee will adopt its own rules of procedure.

## **Representation on the Commission for Environmental Cooperation**

### **Article 4**

The federal Minister of the Environment will represent Canada on the Council. Canadian delegations to Council meetings will be determined by the Governmental Committee and will normally include a representative of at least one other signatory government. Participation in the Council working groups and other bodies of the Commission for Environmental Cooperation will be established by the Governmental Committee.

## **Provision of Information**

### **Article 5**

1. The Governmental Committee will provide a forum for the ongoing mutual exchange of information between and among the federal government and the provincial and territorial governments regarding issues related to the NAAEC.

2. As a general rule, all documents relating to the operation of this Agreement and to Canadian activities under the NAAEC will be provided promptly to all governments. All governments will be advised promptly of all other NAAEC documents and will be provided with the documents upon request.

3. With respect to matters arising under Articles 14 and 20 of the NAAEC, the Canadian Representative will immediately convey to provincial and territorial governments any submission or question that relates to an enforcement practice in Canada. The government concerned will prepare an appropriate response, consulting with other interested governments.

4. Where information is requested from the Canadian Representative under Article 21 of the NAAEC, the signatory governments shall ensure that all the rights and obligations of Article 21 (Provision of Information) and 39 (Protection of Information) of the NAAEC are respected. Pursuant to Article 21 of the NAAEC, the Canadian Representatives will only convey to the Council or Secretariat of the Commission for Environmental Cooperation information on or regarding a province or territory after the provincial or territorial government concerned has been afforded a reasonable opportunity to provide written advice to the federal government regarding the information that may be conveyed and the information that must be withheld in accordance with the NAAEC and domestic law.

## **Cooperation, Consultation and Resolution of Disputes**

### **Article 6**

1. Notwithstanding the general rule of consensus, if a signatory to this Agreement brings to the attention of the Governmental Committee practices on the part of another Party to the NAAEC that may be inconsistent with that Party's obligations, the Canadian Representative, after an opportunity for discussion and comment in the Governmental Committee, will as a general rule pursue the matter in accordance with the terms of the NAAEC.

2. If, exceptionally, the Canadian Representative should wish to delay or not to pursue a matter, the Canadian Representative will cooperate with the government that raised the matter, with a view to developing an agreed course of action.

### **Article 7**

1. When the Canadian Representative is notified of a request for consultations under Article 22 of the NAAEC, the Canadian Representative shall immediately notify the signatory government concerned. The signatory government shall report to the Governmental Committee on the circumstances and there shall be an opportunity for the Committee to discuss and comment. Where the request involves a provincial or territorial enforcement practice, the consultations and there shall be an opportunity for the Committee to discuss and comment. Where the request involves a provincial or territorial enforcement practice, the consultations under the NAAEC shall involve, and include representation from, both the federal government and the other signatory government concerned.

2. When a special session of the Council is requested under Article 23 of the NAAEC, the Canadian delegation to the Council will include representative from the provincial or territorial government whose enforcement practice is the subject of the dispute.

3. Notwithstanding the general rule of consensus, in the event that a signatory government is the subject of a request for an arbitral panel under Article 24 of the NAAEC, the dispute settlement procedures will be led and positions established by the governmental or governments whose enforcement practice is the subject of the dispute.

4. Where a provincial or territorial government enforcement practice is the subject of an arbitral panel, the federal government shall participate in all proceedings. Where a federal enforcement practice is the subject of an arbitral panel, any province or territory may provide appropriate advice or assistance.

5. A provincial or a territorial government may invite the federal government to co-manage an arbitral panel procedure where the provincial or territorial enforcement practice is the subject of the dispute.

6. The Governmental Committee will be kept informed and have an opportunity to comment on arbitral panels in progress.

### **Article 8**

Each signatory to this Agreement shall take all necessary measures within its jurisdiction to implement any action plan or ensure payment of any monetary enforcement assessment, with respect to the nonenforcement of its environmental law, imposed by an arbitral panel pursuant to the NAAEC.

### **Article 9**

1. Any implementation of an action plan or payment of a monetary enforcement assessment shall be the responsibility of the government whose environmental law is the subject of the complaint under the NAAEC.
2. The Canadian Representative will consult with the government whose enforcement practice is the subject of a dispute prior to making a written declaration pursuant to paragraph 6 of Annex 41 of the NAAEC.
3. Further to paragraph 3 of Annex 34 of the NAAEC, the Canadian Representative will seek to ensure that any monetary enforcement assessment expended in Canada will be expended in the jurisdiction whose enforcement practice was the subject of the complaint.

### **National Advisory Committee**

#### **Article 10**

The Governmental Committee will establish and appoint members to a National Advisory Committee to advise it on the implementation and further elaboration of the NAAEC. the National Advisory Committee may provide advice on its own initiative or at the request of the Governmental Committee.

### **Funding**

#### **Article 11**

Each government shall bear the cost of its own participation in the ongoing implementation of this Agreement, including costs related to its participation in delegations, committees or working groups established under the NAAEC.

### **Amendments**

#### **Article 12**

Any modification of or addition to this Agreement shall be by agreement of the Signatory governments.

## **Entry Into Force**

### **Article 13**

1. This Agreement shall enter into force upon the signature of the federal government and a minimum of one provincial government. The federal government will notify the other Parties accordingly under Annex 41 of the NAAEC.

2. A provincial or territorial government may sign this Agreement at any time and the federal government will amend the declaration under Annex 41 of the NAAEC accordingly.

## **Withdrawal**

### **Article 14**

A government may withdraw from this Agreement six months after it provided written notice of its intent to withdraw to the other signatory governments and the federal government will amend the declaration under Annex 41 of the NAAEC accordingly. If a government, other than the federal government, withdraws, the Agreement remains in force for the remaining governments.

## **Authentic Texts**

### **Article 15**

The English and French texts of this Agreement are equally authentic.

