

Canada's Commission for Environmental Cooperation and the Management of Relations with the United States

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Paper prepared for the conference on “The Canada-United States Relationship: Convergence or Divergence,” sponsored by the Center for the Study of Canada, Plattsburgh State University of New York and the McGill Institute for the Study of Canada, Plattsburgh, New York May 28th, 2004.

Draft of May 27th, 2004

Abstract:

The North American Agreement on Environmental Cooperation (NAAEC) and its Commission for Environmental Cooperation (CEC) that formally took force in 1994 were, like the North American Free Trade Agreement (NAFTA) itself, a US initiative inspired by domestic American politics and the management of America's relationship with Mexico. However, Canada quickly mobilized to design and to operate an NAAEC and CEC that would forward Canada's distinctive national objectives, including those related to the management of Canada's relationship with the United States. Canada's five initial and four emerging objectives for the CEC were all relevant to the management of a relationship with the US that had previously been managed almost exclusively on a bilateral basis, including through relatively “light” institutions such as the International Joint Commission. During the first decade of the CEC's operation, Canada largely met most of its US-related objectives, especially in regard to those CEC principles and program areas on which it has concentrated most. The clearest successes in adjusting America to Canada's preferences have come in the domain of environmental co-operation, notably in the Sound Management of Chemicals (SMOC) and Air Quality projects, and in the trade-environment domain, in projects such as that to assess on an ongoing basis NAFTA's environmental effects. Canada has been less successful in regard to environmental enforcement, notably on Article 14-15 citizen submissions, where the United States has focused most. Yet even here, and in other areas such as Taking Stock, Canada has taken advantage of CEC programs to further national needs. This NAAEC-CEC case thus shows clearly that a trilateral, highly institutionalized, environment-first North American community works well for Canada, and thus provides lessons on how the “deeper integration” of the Canada-US relationship, and the task of “building NAFTA for the next generation,” should proceed.

A. Introduction

The January 1, 1994 advent of the North American Free Trade Agreement (NAFTA), its accompanying North American Agreement on Environmental Cooperation (NAAEC) and

the Commission for Environmental Cooperation (CEC) marked a revolution in North American governance. While the Agreement could be characterized as a US initiative inspired by domestic American politics and the management of America's relationship with Mexico, it was also a transformation with potentially significant implications for environmental policymaking, policy and performance in the member countries of Canada, the United States and Mexico. The creation of the NAAEC also provided Canada with the opportunity to mobilize to design and operate an agreement and an institution that would forward Canada's distinctive national environmental and foreign policy objectives, specifically those relating to the management of Canada's relationship with the US. NAFTA further marked the world's first full free trade agreement joining countries of the developed north and developing south equally. NAFTA introduced pioneering provisions for investment protection and, above all, environmental protection and the promotion of sustainable development. NAFTA and the NAAEC and also the North American Agreement on Labour Cooperation (NAALC) introduced the first major trilateral interaction and institutions to Canada and its North American partners. In doing so, the NAAEC has allowed Canada to develop Canada-US relations in a new, trilateral context. Above all, the NAAEC and CEC brought to North America its first regional international organization, with substantial resources to facilitate environmental co-operation among the three member governments and their citizens, with direct access for civil society in environmental governance and dispute resolution, and with a regional secretariat with autonomous powers all its own.

In characterizing the effectiveness of the advancement of Canadian domestic interests through the NAAEC and the CEC, it is useful to outline the five initial and four emerging Canadian objectives for the NAAEC. In examining these objectives in the context of specific CEC programs and achievements, it becomes clear that Canada has generally experienced success in adjusting the NAAEC architecture to Canadian domestic objectives. However, there is a distinction to be made between areas where Canada has made proactive efforts to advance domestic interests as well as Canada-US relations and areas where Canada has adapted NAAEC provisions that were initially met with some degree of skepticism to meet domestic needs and objectives.

B. Canadian Objectives for the NAAEC

1. Initial Objectives

The negotiators of the NAAEC, ratified in parallel with NAFTA, equipped this agreement with innovative measures intended to promote an environmentally positive relationship among the three countries of North America in the context of NAFTA-induced and -guided trade liberalization. Since January 1994, North America has been seen as a "regional experiment" for testing the utility of the various new provisions and processes intended to have positive impacts for the environment. Canadian participation in this experiment was guided by five seminal objectives: making the CEC work effectively, putting the environment first in the NAFTA era, bringing citizens into a North American community and its governance, securing expanded environmental resources in an age of austerity, and fostering an independent secretariat at the CEC.

Canada's most central and enduring objective in negotiating, accepting and operating the NAAEC was to make NAFTA work. More specifically, it was to ensure the passage and effective operation of NAFTA itself, by reinforcing the environmental provisions of the free trade agreement, by providing an assured mechanism for their realization and implementation, and by creating a centre for broader and expanding environmental co-operation to ensure that any unforeseen environmental opportunities or costs of NAFTA trade and investment liberalization would be, respectively, realized and controlled. To be sure, by the late 1980s there had arisen strong functional ecological grounds for creating what was initially termed the North American Commission for the Environment (NACE) to deal with common trilateral environmental issues, quite apart from any negotiated economic integration that might take place. But it was NAFTA that was the necessary condition for giving birth to the CEC. Equally and reciprocally necessary were the environmental provisions of the draft NAFTA, and the additions of the NAAEC, to bring NAFTA to life as a full free trade agreement.¹ In the true spirit of sustainable development, each agreement was thus equal in value to, and integrally necessary for, the realization of the other, and rooted in a deep belief that there were important mutually reinforcing synergies to be achieved by doing them together in both a temporal and institutional way.

It is thus both the NAFTA-related provisions of the NAAEC, notably those of Article 10(6), and the NAAEC's more stand-alone provisions on ecological co-operation that have equal value in assessing the effectiveness of the NAAEC in advancing Canadian interests. Proactively, in particular, it is the ability of the NAAEC to enhance environmental quality through mobilizing the power of more open trade, investment, technology, social interaction, and regional community and capacity building that is the Canadian standard by which the NAAEC's effectiveness should be judged. Defensively, it was — and is — to ensure that Part Five of the agreement, which allows the United States and Mexico to impose trade sanctions on each other for environmental purposes, would not only legally exempt Canada, but would also never be applied at all or become embedded in agreements elsewhere, and thus recede as a consideration in stakeholders' approach to the overall regime.

The second Canadian objective, integral to the realization of the first, was to convince Canadians that the environment mattered centrally in the NAFTA age. Specifically, it was to persuade Canadians and others in the embryonic North American community that the parties were indeed deeply committed to environmental and sustainable development values, and were faithfully operating an effective regime and organization to ensure that such values were being realized. This objective was particularly important in the year leading up to the acceptance of the agreement, given the deep dislike of Canadians at the time for NAFTA itself and for the preceding CUFTA, and the campaign commitment of the new Canadian government of Prime Minister Jean Chrétien to accept the NAFTA-

¹ This was certainly true in the US and arguably true in Canada as well, given the skepticism of the Chrétien government, which assumed office in the autumn of 1993, and of the Canadian public as a whole (see below).

NAAEC package only with new assurances of additional protections in several areas, including the environmental and sustainable development ones of water and energy.

Yet this objective was much broader, deeper and more durable than just that. Since the late 1980s, almost all Canadians, when asked about their priority values for Canadian foreign policy, have placed “global environmental protection” and natural resource conservation first, and always well ahead of trade liberalization as a goal. Moreover, by the autumn of 2003, the environment was the one policy area where Canadians (along with Americans and Mexicans) wished to “develop integrated North American policies,” rather than in a “more independent fashion.” Environmental protection in its outward orientation is the one value that enduringly unites all Canadians. These Canadians now wish to develop environmental policies (at home and abroad) on a completely integrated (70%) or somewhat integrated (an additional 14%) North American basis (Graves 2003).

A third Canadian objective was to bring citizens into the NAFTA regime. Specifically, it was to assure Canadians that they had a meaningful influence in the ongoing operation and governance of the new North American regime. This influence was both for the defensive task of controlling any NAFTA-induced pressure for reduced domestic environmental enforcement or addressing priority environmental problems, as well as for the offensive task of reaping sustainable development synergies and strengthening the sustainable development values of open, transparent, accountable, broadly multi-stakeholder, consensus-oriented decision making. Here the central NAAEC measures were the Joint Public Advisory Committee (JPAC), the trilateral working groups joining government and nongovernment stakeholders across a wide range of CEC program areas, and the participation of Canadians in the Article 14-15 citizens submission process.

A fourth Canadian objective was to secure additional resources, beyond those of the Canadian government, to address Canada’s domestic and regional environmental objectives. The NAAEC and CEC were born at a time of substantial and sustained fiscal consolidation within the Canadian government. This process was to lead Environment Canada and several provincial environment departments to suffer budget reductions of about 35% and substantial reductions in expert personnel as well. At the same time, the advent of a regional organization in the form of the CEC brought additional central infrastructure costs, beyond those of actual NAAEC programs themselves. Canada thus supported the initial compromise that gave the CEC Secretariat an annual budget of US\$9 million, composed — unusually for an international organization — of three equal national contributions of US\$3 million each. This was in spite of a US government that preferred a budget of US\$15 million, some US nongovernmental organizations (NGOs) that wanted as much as US\$50 million and a Mexican government that preferred far less or, indeed, nothing at all. With its experience in the International Joint Commission (IJC) between Canada and the United States, Canada accepted the unusual formula of equal trilateral contributions (Spencer, Kirton and Nossal 1982). Yet Canada was aware that even a US\$3 million contribution represented an enormous commitment for a still relatively new and still developing Mexican environmental ministry.

Even though the Canadian government had returned to fiscal surplus by 1998, the government’s substantial accumulated national debt and continuing commitment to fiscal

surplus gave this concern with cost effectiveness an ongoing force. Reinforced by exchange rates changes, Environment Canada's budget had declined from US\$474 million in 1995 to US\$414 million by 1999 (Hufbauer et al. 2000: 50).² To this day, the annual Environment Canada contribution to the CEC constitutes one of the largest Canadian contributions to any international environmental organization, thus giving it a centrality and prominence in Environment Canada's and the government of Canada's overall budgetary life.³ With reduced or restricted national resources for environmental protection and enhancement, Canada has been particularly committed to ensuring that CEC programs directly provide cost-effective environmental solutions at a regional level to distinctive Canadian national priorities.

A fifth Canadian objective was to have a strong, visible, independent CEC Secretariat. In part, this was driven by Canada's sense of ownership of the Secretariat as its "own" international organization located in Montreal. The Secretariat served as a visible symbol of the unifying values that all Canadians shared. In part, it was motivated by Canada's confidence, given its successful multilateral environmental leadership in the early 1990s "Rio" era, that effective international institutions would naturally bring to life Canada's environmental priorities and Canadians' environmental convictions. It also reflected a reaction to the reality that Mexico had opposed the addition of the NAAEC and was eager to restrict its autonomy and impact in ways discrepant with Canadian values and experience with international environmental institutions. Indeed, Canada reacted negatively to an initial effort by Mexico, which was by trilateral agreement to choose the first Executive Director of the CEC, to appoint an individual too closely tied to the Mexican government. The Canadian government and its leading stakeholders enthusiastically supported and endorsed the eventual selection of Victor Lichtinger, widely regarded as an independently oriented and environmentally committed leader. A further reflection of Canada's preference for an independent, environmentally committed secretariat was the NAAEC's "roving spotlight" Article 13, which had been a priority of Canada's leading NGOs such as Pollution Probe, and indeed partly crafted by them, and was readily incorporated by the Canadian government into the Canadian negotiating position.

2. Evolving Objectives

Over the years of the NAAEC's operation, the Canadian government developed additional objectives. The four most important were preserving balance by emphasizing co-operation, facilitating intergovernmental co-operation, forwarding domestic strategy, and employing the CEC's trade-environment work.

² Similarly, the budget of Mexico's environmental ministry (SEMARNAP) had declined from US\$949 million in 1996 to US\$880 million in 1999, while that of the US Environmental Protection Agency (EPA) had increased from US\$5.5 billion in 1994 to US\$7.7 billion in 1999.

³ The Canadian contribution to the CEC is about the same as that to United Nations Environmental Programme (UNEP), which is US\$2.7 million a year, and was recently enhanced as a result of the 2002 World Summit on Sustainable Development (WSSD).

The first two were aimed at preserving the initial balance in the face of unexpected developments in the CEC's life. The first of these additional objectives was containing the growing centrality of the Article 14-15 process in the CEC Council, the Secretariat, the JPAC, and the lives of the government and the public. From the start, there had been a senior-level view at Environment Canada that the CEC was to be a "commission on environmental co-operation," and not a "commission on environmental enforcement." Indeed, this was a strong government-wide position, as chief NAFTA negotiator John Weekes had opposed the unduly "prosecutorial and adversarial" approach of the initial American draft of the NAAEC (Winham 1994: 41). Canada's approach prevailed in the naming of the new entity, as the initial US proposed term — the North American Commission for the Environmental — was replaced by the agreed-upon name of the CEC and the NAAEC, with the work "co-operation" added and prominently featured in both the agreement and the organization it established.

Canada's aversion to undue legalization was reinforced as the early years brought a heavy and unexpected number of submissions against Canada and a consequent "legalization" of the CEC's work. The Canadian government became concerned that this trend would detract from the limited resources available to the CEC for its other programs, particularly those aimed at direct environmental improvements in Mexico. In addition, the growth of a litigious, adversarial approach to the CEC's work and culture was discrepant with Canada's preferred approach, indeed unifying cultural commitment, to broad, multi-stakeholder-based, scientifically grounded, consensus-oriented decision making.

The second additional objective was ensuring that the CEC served as a facilitator of co-operation and even co-ordination among the three national governments of North America, as opposed to its strong contribution as an independent provider of policy development, initiative and policy direction. In the early years, the latter role had quickly acquired prominence as a result of several factors. These included the strong independence of the CEC's first Executive Director, the expectations surrounding this novel regional organization, the need of the Secretariat to establish relations with — and secure the confidence of — the broader stakeholder and civil society communities, the innovative nature of many of the CEC's projects and the absence in most areas of established intergovernmental networks or relationships among the three North American governments. Over time, however, the Canadian government developed expertise in many project areas, such as the environmental assessments of trade liberalization agreements, as the habit of successful trilateral intergovernmental co-operation developed. The demand thus grew for a greater emphasis on the CEC's role as a responsive intergovernmental facilitator, as opposed to that of an independent institutional initiator. Canada's concern for greater balance in this direction was reinforced, after 2000, by the advent in Mexico of a government enthusiastically committed to environmental protection and civil society participation, and by a new administration in the United States reserved about delegating national responsibilities to autonomous international environmental organizations.

A third evolving objective was to tie the CEC's work more closely to Canada's domestic policy priorities, and use the former as a strategic instrument for realizing the latter. At the start, due to the novelty of the CEC and Canadian respect for the Commission's independence, Canada's approach had been largely a matter of general attitude and senior-level emphasis, centred on an feeling that the CEC's primary purpose was to build environmental capacity in Mexico. Since 1999 there has been a shift, to the point where all proposed CEC activities are systematically and thoroughly assessed according to their ability to forward Canada's domestic environmental priorities and in Canada's management of its relationship with the US. The objective is to ensure that Canada's main priorities are reflected in the CEC work program, while respecting the need for the CEC as an autonomous institution to engage in activities that are not necessarily current Canadian priorities. Part of this shift has been to involve more senior individuals in Environment Canada in the work of the CEC, through briefing senior officials on CEC activities and soliciting their views on more high-level issues, for example at assistant deputy minister (ADM) and deputy minister (DM) meetings. The major thrust has been an attempt to involve more departments within the Canadian government in the work of the CEC.

A fourth evolution has been a significant shift in Canada's attitude to the value of specific CEC programs. A leading example is the Environment, Economy and Trade Program, which both Environment Canada and the Department of Foreign Affairs and International Trade (DFAIT) had been skeptical about during its initial phase, when the emphasis was on developing a method to assess NAFTA's environmental effects on an ongoing basis, pursuant to the mandatory provision of Article 10(6)(d). While doubt still exists in some places about how the resulting research can be transformed into visible benefits, there is now considerable enthusiasm at both Environment Canada and DFAIT for the assessment and other trade-environment work of the CEC.

C. Canadian Successes in Adjusting the NAAEC to meet Canadian Objectives

Canada's successes in adjusting the NAAEC to meet Canadian objectives can best be characterized by grouping the successes into two distinct categories. Canada, in attempting to assert its own domestic agenda, pushed for the creation and development of certain programs such as SMOC, the Air Quality programs, and NAFTA effects, evaluating the environmental effects of trade agreements. In doing so, Canada has advanced the objectives described above in a proactive manner. Alternatively, NAAEC provisions such as the Article 14-15 submissions and the Taking Stock program were initially less warmly received by the Canadian government. Advancing Canadian interests via these programs has required Canada to react defensively to ensure domestic objectives are met. While Canada was generally wary of the citizen submissions procedure, in examining the Article 14-15 process, it becomes clear that the process has helped Environment Canada to maintain its enforcement budget in a time of severe cutbacks as a result of submissions against the Canadian government. Article 14-15 submissions have also generally contributed to the Canadian objective of advancing citizen participation in the North American community and its governance.

Taking Stock is another instructive example of a program that the Canadian government was initially reluctant to support as a result of the early use of the US Toxics Release Inventory (TRI) in place of the Canadian National Pollutants Release Inventory (NPRI). However, through lobbying by the CEC secretariat, Canada was able to ameliorate its concerns about the TRI through incorporating Canadian principles and as a result, the Taking Stock program has become a useful tool and has resulted in the advancing of a bilateral relationship between Canada and the US through cooperation on increasing compatibility between the two systems.

Canada has experience varying degrees of success in advancing its interests proactively. The SMOC program has received a great deal of praise in terms of Canada's consistent commitment, and Canadian support of the project has been instrumental in the success of the capacity building components of the project. The Air Quality program has been a more recent focus of the Canadian government, and is also an area where Canada hopes to develop resources that would allow for more highly developed data on smog and acid rain. However, budget cutbacks in this program area have limited Canada's ability to advance the objective of capacity building through the elimination of the best available technologies (BET). The NAFTA effects component of the NAAEC's trade and environment program has been criticized as being academic and irrelevant, but over time has come to be seen as a positive tool and a highly valuable model for evaluating the environmental impacts of trade in North America and beyond.

D. Canada's Proactive Achievements

1. SMOC

The first of these activities, SMOC, is regarded as by far the most useful, valuable and effective CEC program of all, from the perspective of Environment Canada, the Canadian government, and the broader Canadian community. It is considered the flagship program and is probably the most visible achievement of the CEC to Canadians as a whole. There are very good grounds for the highly favourable consensus that SMOC commands. Indeed, so strong, sustained and widespread are SMOC's benefits, both to Canada directly and further afield, that it alone could justify the NAAEC's value for Canada during the agreement's first ten years.

At the CEC, since the start, Canada has been the only member consistently supporting SMOC. Canada pushed the project and the funding and programs to implement its regional action plans. Within Mexico, the initiative was enthusiastically welcomed by the responsible national official, who used the external support to develop the national program and the capacity that Mexico then almost entirely lacked. The US has at times been reluctant to move ahead rapidly on particular substances, such as benzene, that have been proposed.

SMOC is so highly valued because it is a concrete expression of the larger Canadian desire to have the NAAEC serve as an instrument to build environmental capacity and management at the national level, above all in Mexico. It has given a dynamic individual

within the Mexican environment ministry the external support and resources necessary to develop and implement a far-reaching program to reduce and eliminate deadly chemicals within Mexico. As Canada has no other effective trilateral or bilateral frameworks to secure the desired action in this field within Mexico, the CEC has been indispensable in securing this Canadian objective.

SMOC has further shown that the three countries are working easily and effectively together. It is an example of successful Secretariat-Party co-operation. SMOC was an initiative of CEC Secretariat members Janine Ferretti, Victor Lichtinger and Andy Hamilton. The Secretariat served as catalyst and then facilitator for a Party-driven project in which the commitments for reductions through regional action plans involved hard negotiations and decisions among the Parties themselves.

SMOC also put into practice, internationalized and demonstrated the value of the Canadian approach to an open, transparent, multi-stakeholder consultation format. The value of this approach was shown in SMOC's work on the most controversial subject, mercury.

SMOC resulted in a process of balanced mutual adjustment, in which all parties adjusted their domestic laws, but in which Canada clearly gained the most. SMOC did foster useful activity in Canada. But in the case of DDT and chlordane, it was Mexico that "gave." In the case of chlordane, it was the US as well. The inability of the US to otherwise secure Mexican adjustment and the accompanying US adjustment to Canadian preferences demonstrate that this was not a classic case of a more powerful but "downwind victim" state securing change from a smaller "upwind aggressor." Rather, it was a case of a regional organization making an autonomous difference in skewing outcomes in favour of the medium-sized, most distant, downwind state.

Above all, SMOC has delivered clear, concrete deliverables that have brought substantial environmental improvement to Canada and to critical Canadian populations, notably indigenous peoples in Canada's Arctic. It has done so by eliminating or reducing in Mexico the use of demonstrably harmful chemicals that flowed north into Canada. It has thus directly saved lives in Canada. Thus far, the first set of "dirty dozen" chemicals have been addressed across North America through action under the program. In particular, the program has eliminated new sources of DDT and chlordane from the environment. It is currently refining its North American Regional Action Plan on lindane and other hexachlorocyclohexanes (HCH).⁴

Moreover, SMOC has been an instrument for erecting extended outer defences, by replicating the SMOC framework in Central America. Here many of the most deadly chemicals are still produced, used and flow into Canada. There is now much attention in South America to the need to reduce and eliminate DDT. Other regions are also looking to the SMOC regional action plans as a success story and a model of how to proceed.

⁴ CEC (2004), "Alaskans Consulted on Lindane Action Plan," February 12
<www.cec.org/news/details/index.cfm?varlan=english&ID=2592> (April 2004).

Most broadly, SMOC was seen from the start as a regional implementation vehicle for the United Nations Conference on Environment and Development (UNCED), for work in the OECD, and then for the Convention on Persistent Organic Pollutants (POPS) when it became clear it would be signed. SMOC has helped Canada implement its commitments under this POPS convention that it proudly sponsored, signed and ratified. It has also sensitized US officials to the value of supporting POPS.

2. Air Quality Programs

One area where Canada has begun to act more strategically and successfully in recent years is the Air Quality Program. In the past, CEC work in regard to air flowed from Secretariat initiatives such as the Article 13 Report on Continental Pollutant Pathways. It also came from strategic US initiatives, based on the US desire to stop dirty air from Mexico entering the US, to create emissions inventories in Mexico that lead to public participation and pressure, and to constitute the foundation for transport modelling.

Consistent with Minister David Anderson's priority concern with clean air, Canada recently inspired the creation of a CEC working group on air in line with the Canadian objective of ensuring the NAAEC and CEC advance domestic policy interests. This push also came from the Secretariat, JPAC and the CEC's Article 13 report on electricity. The latter confirmed that coal, as a major fuel to generate electricity, had a significant impact on smog and acid rain. The North American Air Working Group first met in June 2003. The Secretariat put existing air-related activity under the heading of the working group and gave it a small amount of money to do air quality monitoring in Mexico. The working group then began to develop a strategic plan.

Canada's approach has been to have a focus for the working group's work, to avoid duplicating other work that Canada was conducting bilaterally with the US, to have the CEC work on matters such as emission inventories that were consistent at both borders, and to take up issues of particular Canadian concern, such as best available technology (BAT) for air pollution control. Within the Canadian government, senior levels have been engaged to examine how to use the trilateral framework to advance Canada's bilateral interests with the US. Canada sees the role of the CEC in air quality not as setting policy, but as building tools to support Canadian interests, notably those relating to smog and acid rain.

As the same smog and acid rain crosses only one North American border, and is thus physically a bilateral rather than trilateral issue. Canada sees the Air Working Group's role as developing common tools and information on air quality and on monitoring mechanisms in Mexico to identify air quality for smog. Canada hopes that this work will provide high-quality, detailed data that can be made public, of the sort that Canada lacks at home.

The proposed work on BAT was a high-priority project that Canada brought to the Air Working Group. Here it was Canada that needed capacity building, for each province is responsible for granting stationary source permits. Smaller provinces lack the capacity to

ensure that the best available technologies are used. Such work could thus fuel environmental and technological innovation and enhancement in Canada.

Due to the current budget constraints, led by the cutbacks needed to adjust to the declining value of the US dollar, Canada's proposal on BAT was eliminated from the CEC's 2004 work plan. More broadly, a disproportionately large share of the overall budget reductions — CA\$90,000 of the entire CA\$500,000 — was taken from the air program alone, notwithstanding Minister Anderson's priority on clean air. As a result, the initial successes Canada has experienced in advancing its objectives through the Air Quality program have been tempered by the budgetary constraints of the CEC.

3. Trade-Environment Programs

The Canadian government trade policy community has a generally and increasingly favourable judgement of the CEC's trade-environment work. This rests on two of the three pillars of the work under NAAEC Article 10(6). These pillars are the Article 10(6)(d) obligation to consider "on an ongoing basis the environmental effects of the NAFTA," the work of the subsequently created "10(6) Working Group on Trade-Environment Linkages" and the desire to express trade-environment integration and equality at the ministerial level through a joint meeting of the CEC Council and NAFTA's Free Trade Commission (FTC).

The Environment, Economy and Trade Program is composed of activities on assessing the environmental effects of trade, trade in environmentally preferable goods and services, financing for environmental protection, energy and carbon sequestration, and the Environment and Trade Officials Group.

At the outset, in defining the first work plan, there was a desire at the official level, from a broadly critical DFAIT, Industry Canada and Environment Canada, not to have the CEC take up trade and environment issues. At the time, the big focus of the economy-environment work was the NAFTA Environment Effects project (see below), and the Canadian government had no clear idea of what it wanted out of the CEC in the field of the environment, economy and trade. Ten years later, there is still a strong view in important quarters of the Canadian government that the CEC should focus on its co-operative agenda, and that the Environment, Economy and Trade Program has so far produced very little of practical, visible value. Yet, on the whole, the Canadian government's attitude has changed a great deal.

At Environment Canada, the CEC is now seen as having usefully raised the profile of environmental ministries in North America within their larger governments in regard to economic decision making, and in making the environment a more important, integral part of trade negotiations and policy formation. It has helped to create a context that supports the development of a substantial unit within Environment Canada to work on trade-environment issues. It has directly addressed the concern that environmental regulations are intended or unintended barriers to trade. And it has helped promote the message that trade and the environment are mutually supportive, to show that

environmental measures are good for business and to focus policy thinking on making trade liberalization work for the environment.

The program is further seen as demonstrating the value of the CEC in tackling issues others have not been able to take up because of the number of actors from which permission must be obtained. The CEC's work on NAFTA Environmental Effects and labelling is cited in this regard. Others see an important research and "think tank" role for the CEC in trade-environment issues. They support the CEC doing more such work and attribute shortcomings to the Parties rather than the CEC.

Yet there have also been disappointments. There is an inadequate relationship with trade counterparts in other countries in and through the program. There has not been a strategic plan that would prevent the ad hoc "follow-on" imperative from producing, for example, a proposed project on palm trees that Canada opposed, following the CEC's project on shade coffee. Nor has it been possible to attract the trade ministers to meet with the environment ministers in order to deal with shared concerns. Moreover, while the CEC is well respected for the quality of its NAFTA Environmental Effects work, it is seen in some places as academic and irrelevant at this stage, even if it produces results when the methodology is applied. From this perspective, the shift from NAFTA Environmental Effects to a broader trade-environment agenda has been a welcome step.

a. NAFTA's Environmental Effects

Article 10(6)(d) imposes on the CEC a mandatory obligation to assess on an ongoing basis NAFTA's environmental effects. Members of the trade policy community judge the CEC's output under its ensuing Environment, Economy and Trade Program to be balanced and not propagandistic. This judgement applies to such politically charged studies as those on Mexican maize. The work is seen as credible and helpful in showing that trade liberalization under NAFTA is not destroying the environment. DFAIT officials dealing with the trade-environment interface from an environmental perspective also have high regard for the CEC-created framework to assess NAFTA's environmental effects. Indeed, those negotiating Canada's trade agreements have called this breakthrough work from the CEC.

In the environmental assessment work of the WTO in Geneva, and at the United Nations Environmental Programme (UNEP), the CEC's trade-environment work is well known. When there has been a discussion of environmental assessment, reference is made to the CEC work. Indeed, Canadian representatives have had to distinguish between the Canadian government's own national environmental assessment framework and the CEC's framework, suggesting that the CEC work has acquired greater visibility, and perhaps even greater value, internationally than the national effort has.

Within Environment Canada, the NAFTA Environmental Effects project, despite the agonies involved in its production, is seen as offering some interesting new approaches which have been applied constructively, and which made a contribution to the larger debate (Vaughan 2002; Richardson 2002). Canada has thus encouraged the holding of

CEC symposiums to develop and apply the NAFTA Environmental Effects framework. Canada has supported the push forward with high-quality work to look at specific issues. Of particular value has been the compounding evidence that NAFTA has produced no environmental regulatory race to the bottom, thus demystifying this central allegation of the initial and ongoing NAFTA debate.

Internationally, the NAFTA Environmental Effects framework, produced by an environmental organization, stands out as being based on an environment-first multidisciplinary approach and on the particular characteristics of North America, including that of its developing or emerging country member Mexico. It thus stands apart from the one major earlier effort, developed by the OECD. This framework, from an economic organization, offered an economy-first framework based on economic methodologies and reflecting the experience of developed countries, largely in the European core. Not surprisingly, the CEC framework has been attractive to ENGOs and developing countries now taking up the task of assessment through organizations such as UNEP. Here the influence of the CEC framework has come less on paper than through people, as those familiar with the CEC framework have moved on to contribute to the task of developing methodologies appropriate on a global scale.

Within North America, the move to apply the NAFTA Environmental Effects framework by a broad range of stakeholders who report their results at CEC-sponsored public symposia has led to practical benefits in Canada. One study, which highlighted the great increase in Canada's hazardous waste trade after NAFTA, led to ministerial-level attention to how Canada's domestic regulations on hazardous waste might fuel this increase in undesirable ways (Jacott, Reed and Winfield 2002).

b. Article 10(6) Working Group on Trade-Environment Linkages

Of less direct benefit thus far has been the Article 10(6) Working Group on Trade-Environment Linkages, a body created once the construction of the NAFTA Effects framework was largely complete. The Working Group has helped Canadian government trade officials become more directly involved in the work of the CEC, and more familiar with the CEC's approach and its value to forging the trade-environment link. These officials have come to regard the annual CEC work program on Environment, Economy and Trade as making a sensible contribution.

Yet the Working Group has not led to a similar intra-national integration between the trade and environment communities within the US and Mexico. This has made working group discussions somewhat unbalanced. Nor has the working group been able to help with central issues, such as the approach to precaution. In addition, Canada resisted a JPAC proposal that the working group take up the question of NAFTA's Chapter 11 investment dispute process, on the grounds that the three governments were already dealing with this issue in another forum under NAFTA itself.

Most recently, DFAIT has proposed that the trade community in all three countries be involved more directly in the design of the work program, so that it can address its priorities as a department more directly. The CEC appears to be open to this proposal,

given its longstanding desire, in the spirit of sustainable development, to foster closer co-operation between the environment and trade.

At a time of diminishing resources for environmental protection and enhancement in Canada during the mid 1990s, the NAAEC has helped maintain activity and forward movement in several important and innovative areas, including environmental enforcement.

The NAAEC has further demonstrated its value in the critical domain of sustainable development and the link between trade and the environment. This is clear from an analysis of those cases of “environmental regulatory protection,” defined as intergovernmental activity on issues directly involving both trade and environmental values taking place between or among the three NAFTA Parties from 1980 to 1998. The outcomes of these 84 cases, when completed, increasingly favour the interests of Canada, the North American environmental community and, above all, the three countries and two communities together, as the NAFTA era takes effect, as the NAFTA institutions are used and as cases are processed through the CEC (Kirton 2003b, 2002d; Rugman, Kirton and Soloway 1999). In short, NAFTA in general and the CEC in particular help Canada realize its national objectives, and help all North Americans “win together” in the trade-environment field.

The NAAEC’s sustainable development success is further evident, on a broader plane, in the way in which Canada’s trade policy community, centred in DFAIT, has come to view the CEC’s added value. That community regards its work as a useful, if modest, contribution, to Canada’s trade goals. Its members judge the CEC to be an effective organization. Since the start of NAFTA, the trade community has sought to assure often skeptical environmentalists that NAFTA was not creating economic pressures that would unwittingly or unknowingly damage ecological capital and concerns. They see the CEC doing a credible job in meeting that core goal. In particular, they value the CEC’s contribution in evaluating trade-related impacts and identifying trade-related problems, in environmental co-operation, environmental management and Mexican environmental capacity building.

Most generally, the NAFTA-NAAEC model for incorporating into trade agreements environmental provisions that do not restrict trade has given Canada experience in, and a valuable model for, building environmental mechanisms into its subsequent trade agreement in ways that are tailored to each country case but that provide an overall coherence among them. It thus serves the larger strategic objective of building a cumulatively compatible set of full bilateral and regional trade agreements on a NAFTA foundation, and of guiding Canada’s approach to the multilateral negotiations in the Free Trade Agreement of the Americas (FTAA) and the Doha Development Agenda of the World Trade Organization (WTO) (Kirton 2003a).

In general, amidst the comprehensive array of NAAEC goals and implementing activities, Canada can find a record of visible and valuable activity on its priority concerns. At the same time, legitimate questions of emphasis and balance arise. Some

may question whether critical Canadian concerns at the outset, such as emergency preparedness and pollution prevention action, have received sufficiently robust budget attention, for example, in regard to the threat to coastal waters from land-based, maritime and other threats to fragile oceanic ecosystems. Other areas, such as environmental impact assessments, have proven difficult to secure progress on through the CEC. Most generally, the NAAEC has been more clearly successful in its more limited, procedurally focused Obligations than on its broader and more ambitious objectives, especially those in the economy-environment domain. The CEC Secretariat budgetary resources devoted to the Environment, Economy and Trade Program, while substantial, do not necessarily fully reflect the emphasis accorded to these linkages in the Objectives themselves. Such observations fuel questions about whether the spirit of the initial economy-environment bargain that brought NAFTA into being is fully respected as the first decade ends.

E. Canada's "Defensive" Achievements

1. Environmental Enforcement – 14/15 Submissions

The NAAEC's Article 14-15 process allows any nongovernmental organization or person to initiate direct action against governments that are felt to be not effectively enforcing their own environmental regulations (Winham 1994; Raustiala 1995; Markell 2000; Kirton 2002a; Blair 2003; Fitzmaurice 2003). As Appendix E shows, there have been 42 such submissions, or cases, filed from NAFTA's start to the end of 2003. This mechanism, designed largely for the ENGO community, has generated more activity than the NAFTA's Chapter 11 on investment disputes, which was designed for use by firms. Indeed, Article 14-15 has generated almost three times as much activity, if only the 16 environmentally related Chapter 11 cases are included in the count.

Of the 42 cases initiated under the Article 14-15 process to the end of 2003, Mexico has been the target of 20, Canada 14 and the United States 8. The balance, however, shifts when one considers only those eight cases that have proceeded all the way to the release of a factual record. Here the distribution is Mexico three, Canada four and the US only one. Of the eleven cases listed as active at the end of 2003, Mexico is the subject of seven and Canada four. The US currently has no cases under active consideration. However, not all these ongoing cases need end in factual records. Yet when they do, the factual records have caused Parties to examine and take another look at the way they operate, and may thus catalyze environmentally enhancing change (Alanis 2002).

Article 14-15 was a provision that Canada supported during the negotiations, as an alternative to a US-designed approach that was more prosecutorial (Winham 1994). Yet Canada subsequently developed concerns about the place of Article 14-15 in the CEC's overall life. Soon after the NAAEC took effect, the Parties determined that an elaboration of how the citizens submissions process would work was needed. Canada viewed Article 14-15 as the most novel concept in the agreement. Yet in negotiating the agreement, the Parties had only gone so far in spelling out how Article 14-15 citizens submissions would work. The Parties thus sought to elaborate submission guidelines.

Once the Canadian desire was known, the CEC started work on submission guidelines, in the classic CEC way of bringing in experts to produce a report. The countries, led by Canada and Mexico, did not wish to proceed in this way, and saw the Secretariat as getting ahead of the Parties themselves (Wilson 2002; Tollefson 2002; Markell 2000). There was much concern and suspicion about the Secretariat's role with an independent function in administering Article 14-15.

These concerns were compounded when the first submission, on Cozumel, came in before guidelines were worked out (Alanis 2002). The Canadian government had wanted the Secretariat to help the CEC to be successful in order to showcase Article 14-15. Canada was thus very interested in the Mexican submission and how the Parties would deal with it. There were government discussions about what the process should be, in particular for making the resulting factual record public with a two-out-of-three vote. The US had an executive order always to vote to make the record public. Canada had no such policy directive, but felt that in order for the process to work, it made sense for the factual record to be made public. There was concern that the US and Canada would vote against Mexico, in what would be seen as a division among the Parties, when transparency on the part of all was the real issue. Canada helped Mexico to recognize that it was better to vote as a block together to make the Cozumel factual record public. The Mexicans did so, but were so unhappy with the process that they published their own factual record on Cozumel. In addition, none of the three Parties was not pleased when the Secretariat decided to release the Cozumel factual record on the very day the Mexican President was flying to Canada for a bilateral visit designed to repair Mexico's image as a modern country after the peso crisis of 1995. The timing eroded Canadian confidence in the political sensitivity and sophistication of the CEC's Executive Director.

The meetings among the Parties to elaborate the guidelines were complicated and lengthy. As with the launch of the CEC, they were complicated by the Mexican belief that the guidelines were a creature of the US being imposed upon Mexico. The relationships among the Parties and between the Parties and Secretariat were thus tainted by strain and an absence of goodwill.

Canada also took very seriously the way in which the first submission against Canada was handled. Its growing concern flowed less from the unexpectedly large number of Article 14-15 cases directed against it, although the BC Hydro case did reinforce its desire to elaborate the submission guidelines. However, Canada's primary concern related to the preoccupation that Article 14-15 was becoming in the CEC's overall life. The first Council meeting attended by Minister David Anderson, in Dallas in June 2000, focused heavily on Article 14-15. At the subsequent Council meeting he hosted, in Ottawa in 2000, he indicated a desire to emphasize substantive environmental policy and cooperation, rather than mainly focusing on the process of citizens submissions under Article 14-15.

Despite these difficulties, the Article 14-15 process has served Canadian interests. It has proven to have an embarrassment factor, leading to questioning within Environment Canada and the government as a whole as well as from legislators when factual records

against Canada are released. It has helped cushion the enforcement resources in Environment Canada against cutbacks at a time of severe departmental downsizing across the board. It has helped Environment Canada more broadly support a strong enforcement process. NGOs still use the mechanism to launch submissions against Canada, showing the mechanism has value in their judgement. And a CEC study has pointed to the many ecological improvements that have come as a result of the BC Hydro Article 14-15 case (Bowman 2001). In this case, the CEC Secretariat faced little opposition in its recommendation to proceed with a factual record. The US was eager to go forward and Canada did not resist. The record dealt with the strengths and weaknesses of the existing watershed management program and led to better integration on the Watershed Management Plan, in ways that the submitters themselves recognize and approve.

Given its record in Canada, the Article 14-15 model has been regarded as appropriate for — and thus included in modified form in — the other bilateral free trade agreements that Canada has gone on to negotiate. For example, Canada's agreement with Chile has an Article 14-15-like clause, with some modifications resulting from the absence of a Secretariat in the Canada-Chile case.

2. Taking Stock

The PRTR, with its annual report, *Taking Stock*, is a program for providing rigorously comparable, readily comprehensible, public environmental and pollution information on the industrial release of major toxic pollutants (see Appendix D). It is one of the CEC's largest programs, with a current budget of US\$450,000. The PRTR seeks to harmonize national programs, in the limited sense of comparing and informing the public throughout North America, rather than adjusting national programs to operate in the same way. It was motivated in part by the belief that such standardized public comparisons could help in assessing the environmental impacts of NAFTA-related trade.

When the CEC started the PRTR project, Canada was not particularly supportive. Its first reservation derived from the fact that the project was only a bilateral comparison of releases between Canada and US, rather than a genuinely trilateral activity. Canada's second concern was the CEC's adoption of the US national Toxics Release Inventory (TRI) framework as the model for the PRTR, as opposed to the creation of one that was adapted to include the superior features of Canada's National Pollutants Release Inventory (NPRI). This CEC decision may have been a result of the initial need seen by the CEC for rapid action, and of the familiarity of the responsible CEC project manager with the US system. Yet this approach produced considerable Canadian discomfort, on scientific and environmental grounds. The core concern was that because the US method aggregated pollutants in a less sensitive way than Canada's method did, it could mislead the public. The US TRI examined all substances and aggregated them by weight to produce an overall national ranking of the top releasers. In contrast, Canada's NPRI did not aggregate but ranked releasers individually for each of the top ten individual pollutants. The CEC's US-based approach raised concerns for the Canadian government, Canadian industry and some Canadian environmental groups. They felt it was misleading, because an emitter could be ranked low overall even if it had high releases of carcinogens in particular. Canadian firms wrote letters to the Minister of the

Environment, expressing concern that their stock price might fall because of the misleading public reports.

Canada brought its concerns to the CEC, which did address some of them. A new CEC project manager examined both the US and Canadian systems thoroughly, and selected what she regarded as the superior features of each for the PRTR. At the same time, Canadian representatives conducted what were, in effect, two parallel dialogues, one with the Mexicans focused on capacity building and one with the Americans focused on transparency and the right to know.

Slowly, the PRTR has become important to Canada. Now regarded as an area where the Secretariat has started on the right track, it has produced a record of useful concrete deliverables. It is one of the CEC projects and publications that has had the most heavy and favourable impact in Canada. In particular, the PRTR has produced a number of clear benefits for Canada.

First, the PRTR has created stronger bilateral relations and results between Canada and the United States. Even though the evolving PRTR framework is still about 80% American in design, every year there are more incremental improvements and compatibility in information exchange between Canada and the US.

Second, within the Canadian government, the PRTR has influenced Environment Canada's approach to reporting in the NPRI. It tries to see how the NPRI and the TRI can be more compatible, by resolving the areas where comparison is not possible, and perhaps moving toward a system that provides greater comparability. Canada has learned more effective ways from the US to communicate data to the public, such as becoming familiar with tools used by the EPA to work with NGOs in developing maps so citizens can view what is being released in their neighbourhood. It has thus affected the way Canada's national programs work.

Third, the annual PRTR report regularly receives more news coverage in Canada than does Canada's own NPRI. This is perhaps because PRTR packages the data more effectively for public release, because of the greater credibility the international CEC source gives it, and because of Canadians' inherent interest in how their country is performing relative to the neighbouring US.

Rather than resisting, Canadian industry is living with the PRTR, responding to it, and trying to get a better performance as a result. Canada's steel companies and others are now issuing reports and press releases highlighting the fact that they have improved or moved up on the PRTR list or explaining their apparently disappointing ranking in the PRTR report.⁵ This is a sign that industry is taking the report and its "shaming" effect

⁵ For example, Noranda (2003), "International Report Demonstrates Importance of Metal Recycling at Noranda," News Release April 17 <micro.newswire.ca/release.cgi?rkey=1104172291&view=65281-0&Start=30> (April 2004), and François Blain, Canadian Pulp and Paper Association (1997), "Letter to the Editor of the Ottawa Citizen, the Globe and Mail, and the Toronto Star," <www.cppa.org/english/news/press84.htm> (April 2004).

seriously, and responding in a desirable way. There is a belief that it has also had some impact in reducing toxic emissions in Canada.⁶ There is a hope that it might do so for smog and acid rain pollutants, as indicators for these substances are slated to be added to the PRTR list.

Beyond Canada, the Canadian government's commitment to trilateralism is slowly being realized in the PRTR. The CEC brought American and Canadian pressure to bear on Mexico to introduce regulations to require industry to disclose this information to the public. In the face of major resistance from industry in Mexico, much pressure was applied from the EPA Administrator and Canada's Environment Minister. Considerable capacity-building assistance also came from the CEC, and from the discretionary resources of Environment Canada (Kirton 2002a). Mexico has thus increasingly provided data to be incorporated into what is now a trilateral PRTR, if still one heavily oriented to the US and Canada. For the 2002 report, 117 Mexican facilities reported 1999 data voluntarily. Mexico has continued to provide information on a voluntary and partial basis. Mexico now has a system in place (Registro de Emisiones y Transferencia de Contaminantes, or RETC) and in late 2001 passed the authorizing legislation for a mandatory reporting system modeled on Canada's NPRI, rather than on the American TRI. Although the law was weakened under Vicente Fox's administration, and Mexico has not yet passed the required regulations, Canada remains optimistic that it will do so. Canada's patience flows in part from its awareness of how long it took Canadians to develop and implement their own NPRI. Canada judges the CEC to have worked well to produce the advances seen thus far. It believes the causes for the slowness of the progress lie beyond the CEC's reach, within Mexico itself.

Looking ahead, Canada sees PRTR as a concrete expression of Canada's strategic vision to have the CEC focus on activities that it does better than anyone else, and on public accessibility to information, by making available and accessible existing data, rather than by creating new information. Yet there remain several Canadian disappointments in regard to the PRTR. One is the continuing need to promote the PRTR within Environment Canada and other Canadian government departments. The second is to overcome resistance flowing from the fact that PRTR is a self-reporting system with minimal methodological requirements. The third is that media attention on the PRTR, while desirable in itself, has taken attention away from the other accomplishments of the CEC. A fourth is that the CEC did not have its own funding to finance the capacity building required in Mexico to make the PRTR more rapidly a more fully trilateral regime. Yet together these continuing reservations pale in comparison to the clear benefits that Canada has secured through the PRTR.

⁶ The *Taking Stock* report released on May 29, 2002, which contained the first five-year trend review, showed a 3% decline in the total of toxic chemicals generated in North America. The report released in the spring of 2003 showed a 5% drop from 1995 to 2000 in North American chemicals released into the environment and shipped for recycling or other disposal, with an 8% drop in air emissions in the US and an increase in Canada.

F. Conclusion: Adjusting America through the CEC

The Canadian experience with the NAAEC and the CEC indicates that a trilateral, highly institutionalized, environment-first North American community works well for Canada. Indeed, it has worked increasingly well as the years have passed. Moreover, it promises to work even better for Canada in the years ahead. This is especially likely if a more strategic Canadian vision, more continuous Canadian ministerial leadership and a process of major modification of the CEC and its surrounding architecture are brought to bear.

The strengthening of the CEC as a trilateral institution is only likely to increase the ability of Canada to achieve its CEC related objectives, particularly with regards to using the CEC as a mechanism for advancing Canadian interests in the context of Canada-US relations.

The CEC has enabled Canada to meet such domestic priority objectives as advancing trilateral capacity building, particularly through SMOC and the PRTR/Taking Stock programs; ensuring citizen participation in North American governance through Article 14-15 submissions; advancing domestic health and safety concerns relation to air pollution and chemical transfers; and strengthening Canada-US cooperation and harmonization in standards for measuring pollution inventories.

The results show that the CEC stands as one of the Canadian government's "big four" international environmental institutional investments, as follows: the Montreal Protocol on Ozone at CA\$10,208,900, the CEC at CA\$4,650,000, the International Institute for Sustainable Development at CA\$3,361,000 and UNEP at \$2,525,000. The CEC thus emerges as a leading investment, but not a singularly central one. This portrait is especially the case when one accounts for Canada's need to contribute less to the broadly multilateral regimes, where there are many more members, and many richer members, to provide the finance. The CEC certainly consumes enough scarce Canadian dollars to be worthy of the senior-level, strategic attention from Canadian ministers and officials that it has increasingly come to have. Yet, in relative terms, the investment is sufficiently modest and manageable to raise legitimate questions about its adequacy in relation to the task that could reasonably be asked of the CEC in the future, and the ability of the Canadian government as a whole to afford the additional investment.

Looking ahead, a strong and financially secure CEC will further enable Canada to meet its domestic objectives and advance the management of Canada-US relations. The CEC provides a unique forum for Canada and has the potential to serve in the future as an important context for advancing the Canadian interests in such areas as cooperation on energy and electricity markets.

References and Related Sources

Alanis Ortega, Gustavo (2002), "Public Participation within NAFTA's Environmental Agreement: The Mexican Experience," in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate), pp. 183–186.

Audley, John (1997), *Green Politics and Global Trade: NAFTA and the Future of Environmental Politics* (Washington, DC: Georgetown University Press).

Bennett, David (1994), "Harmonization and Risk Assessment in the North American Free Trade Agreement," in Ted Schrecker and Jean Dalglish, eds., *Growth, Trade and Environmental Values* (London: Westminster Institute for Ethics and Human Values), pp. 113–122.

Blair, David (2003), "The CEC's Citizen Submission Process: Still a Model for Reconciling Trade and the Environment?" *Journal of Environment and Development* 12 (September): 295–324.

Bowman, Jamie (2001), "Citizen Submission Process Proves Valuable in BC Hydro Case," *Trio* (Fall)
<www.cec.org/trio/stories/index.cfm?ed=5&ID=70&varlan=english#top> (April 2004).

Commission for Environmental Cooperation (2003), *Biodiversity* (Montreal: Commission for Environmental Cooperation).

Commission for Environmental Cooperation (1999), *Assessing Environmental Effects of the North American Free Trade Agreement (NAFTA): An Analytic Framework (Phase II) and Issue Studies* (Montreal: Commission for Environmental Cooperation).

Commission for Environmental Cooperation (1997), *NAFTA's Institutions: The Environmental Potential and Performance of the NAFTA Free Trade Commission and Related Bodies* (Montreal: Commission for Environmental Co-operation).

Fitzmaurice, Malgosia (2003), "Public Participation in the North American Agreement on Environmental Cooperation," *International and Comparative Law Quarterly* 52 (April): 333–368.

Graves, Frank (2003), "Climate Change, The Environment and Continental Policy Convergence," part of the "Rethinking North American Integration" Study, Ekos. Presentation to the Public Policy Forum conference, Ottawa, October 30.

Hockin, Thomas (2004), "The World Trade Organization, the North American Free Trade Agreement, and the Challenge of Sustainable Development," in John Kirton and Michael Trebilcock, eds., *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (Aldershot: Ashgate, forthcoming), pp. 261–274.

Hufbauer, Gary, Daniel Esty, Diana Orejas, Luis Rubio and Jeffrey Schott (2000), *NAFTA and the Environment: Seven Years Later* (Washington, DC: Institute for International Economics).

Jacott, Marisa, Cyrus Reed, and Mark Winfield (2002), “The Generation and Management of Hazardous Wastes and Transboundary Hazardous Waste Shipments between Mexico, Canada and the United States, 1990–2000,” in Commission for Environmental Cooperation, *The Environmental Effects of Free Trade: Papers presented at the North American Symposium on Assessing the Linkages between Trade and Environment (October 2000)* <www.cec.org/files/pdf/ECONOMY/symposium-e.pdf> (April 2004).

Johnson, Pierre Marc and Andre Beaulieu (1996), *The Environment and NAFTA: Understanding and Implementing the New Continental Law* (Washington DC: Island Press).

Kirton, John (2004), “NAFTA for the Next Generation: Lessons Learned and Challenges Ahead.” Paper prepared for a workshop on “Regionalism in the 21st Century: A Canada-ASEAN Dialogue as Part of an Opening-Up of New Cross-Pacific Linkages,” ASEAN Secretariat, Jakarta, Indonesia, March 9 <www.envireform.utoronto.ca> (April 2004).

Kirton, John (2003a), “Canada’s Sustainable Trade Strategy: New Partners, The WTO and Beyond,” Paper prepared for a conference on “Canada’s Relations with Taiwan and China under the WTO Framework,” Centre for WTO Studies, National Chenchi University, Taiwan, December 11–12 <www.envireform.utoronto.ca> (April 2004).

Kirton, John (2003b), “NAFTA’s Trade-Environment Regime and Its Commission for Environmental Cooperation: Contributions and Challenges Ten Years On,” *Canadian Journal of Regional Science* 25:2 (Summer): 135–163.

Kirton, John (2002a), “International Institutions, Sustainability Knowledge and Policy Change: The North American Experience.” Paper prepared for the 2002 Berlin Conference on the Human Dimensions of Global Environmental Change, Berlin, December 6–7.

Kirton, John (2002b), “NAFTA’s Environmental Regime and the CEC: The Canadian Contribution.” Paper prepared for a conference on “Canada-US Environmental Relations: From Bilateral Conflicts to Global Alliance?”, Université de Québec à Montréal, Montreal, November 15.

Kirton, John (2002c), “International Institutions, Sustainability and Policy Change: The North American Experience,” in Frank Biermann, Rainer Brohm, Klaus Dingworth, eds., *Proceedings of the 2001 Berlin Conference on the Human Dimensions of Global Environmental Change: Global Environmental Change and the Nations State*, PIK Report 80, Potsdam Institute for Climate Impact Research, Berlin, December.

Kirton, John (2002d), “Winning Together: The NAFTA Trade-Environment Record,” in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate), pp. 73–99.

Kirton, John (1999), "Trade's Benefits and Costs for US and Foreign Environmental Quality," in Alan V. Deardorff and Robert M. Stern, eds. *Social Dimensions of US Trade Policies* (Ann Arbor: University of Michigan Press), pp. 129–158.

Kirton, John (1998), "The Impact of Environmental Regulation on the North American Auto Industry Since NAFTA," in Sidney Weintraub and Christopher Sands, eds., *The North American Auto Industry under NAFTA* (Washington, DC: CSIS Press), pp. 184–220.

Kirton, John (1997), "NAFTA's Commission for Environmental Cooperation and Canada-US Environmental Relations," *American Review of Canadian Studies* 27 (Winter): 459–486.

Kirton, John and Raphael Fernandez de Castro (1997), *NAFTA's Institutions: The Environmental Potential and Performance of the NAFTA Free Trade Commission and Related Bodies* (Montreal: Commission for Environmental Cooperation).

Kirton, John and Virginia Maclaren (2002), "Forging the Trade-Environment-Social Cohesion Link, Global Challenges, North American Experiences," in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment, and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate), pp. 1–23.

Kirton, John and Sarah Richardson (1992) "Canada's Contribution to a New Trade-Environment Regime," in John Kirton and Sarah Richardson, eds., *Trade, Environment and Competitiveness: Sustaining Canada's Prosperity* (Ottawa: National Roundtable on the Environment and the Economy), pp. 235–264.

Kirton, John and Alan Rugman (1999), "Regional Environmental Impacts of NAFTA on the Automotive Sector," *Canadian Journal of Regional Science* 21 (Summer): 227–254.

Logsdon, Jeanne and Bryan Husted (2000), "Mexico's Environmental Performance Under NAFTA: The First Five Years," *Journal of Environment and Development* 9 (December): 370–383.

Maclaren, Virginia and John Kirton (2002), "Conclusions," in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment, and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate), pp. 325-331.

Markell, David (2000), "The Commission for Environmental Cooperation's Citizen Submission Process," *Georgetown International Environmental Law Review* 7(3, Spring): 565–574.

Mayer, Frederick (1998), *Interpreting NAFTA: The Science and Art of Political Analysis*, (New York: Columbia University Press).

Munton, Don and John Kirton (1994), "Environmental Cooperation: Bilateral, Trilateral, Multilateral," *North American Outlook* 4 (March): 59–87.

Ostry, Sylvia (2002), "Fix It or Nix It? Will the NAFTA Model Survive?" in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment, and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate). pp. 319–324.

Raustiala, Kal (1995), "The Political Implications of the Enforcement Provisions of the NAFTA Environmental Side Agreement: The CEC as a Model for Future Accords," *Environmental Law* 25 (Winter): 31–56.

Richardson, Sarah (2002), "Sustainability Assessments of Trade Agreements: Global Approaches," in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate), pp. 243–263.

Richardson, Sarah (1994), "The Trade-Environment Linkage: Future Challenges of Liberalized Trade and Environmental Compliance," in Ted Schrecker and Jean Dalglish, eds., *Growth, Trade and Environmental Values* (London: Westminster Institute for Ethics and Human Values), pp. 11–28.

Rugman, Alan and John Kirton (2002), "NAFTA, Environmental Regulations and Firm Strategies," in S. Mansoob Murshed, eds., *Issues in Positive Political Economy* (London: Routledge), pp. 130–146.

Rugman, Alan and John Kirton (1999), "NAFTA, Environmental Regulations and International Business Strategies," *Global Focus* 11 (4).

Rugman, Alan and John Kirton (1998), "Multinational Enterprise Strategy and the NAFTA Trade and Environment Regime," *Journal of World Business* 33 (4): 438–454.

Rugman, Alan, John Kirton and Julie Soloway (1999), *Environmental Regulations and Corporate Strategy: A NAFTA Perspective* (Oxford: Oxford University Press).

Rugman, Alan, John Kirton and Julie Soloway (1997), "NAFTA, Environmental Regulations and Canadian Competitiveness," *Journal of World Trade* 31 (August): 129–144.

Sanchez, Roberto, Konrad von Moltke, Steven Mumme, John Kirton and Don Munton (1998), "The Dynamics of Transboundary Environmental Agreements in North America: Discussion of Preliminary Findings," in Richard Kiy and John D. Wirth, eds., *Cooperation and Conflict* (College Station, TX: Texas A&M University Press), pp. 32–52.

Spencer, Robert, John Kirton and Kim Nossal, eds. (1982), *The International Joint Commission Seventy Years On* (Toronto: Centre for International Studies, University of Toronto).

Swenarchuck, Michelle (1994), "The Environmental Implications of NAFTA: A Legal Analysis," in Ted Schrecker and Jean Dalglish, eds., *Growth, Trade and Environmental Values* (London: Westminster Institute for Ethics and Human Values), pp. 83–112.

Tollefson, Christopher (2002), "Stormy Weather: The Recent History of the Citizen Submission Process of the North American Agreement on Environmental Cooperation," in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate), pp. 153–182.

Vaughan, Scott (2002), "Understanding the Environmental Effects of Trade: Some Lessons from NAFTA," in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate), pp. 225–239.

Weintraub, Sidney (1997), *NAFTA at Three: A Progress Report* (Washington, DC: Center for Strategic and International Studies).

Wilson, Serena (2002), "Article 14-15 of the North American Agreement on Environmental Cooperation: Intent of the Founders," in John Kirton and Virginia Maclaren, eds., *Linking Trade, Environment and Social Cohesion: NAFTA Experiences, Global Challenges* (Aldershot: Ashgate), pp. 187–193.

Winham, Gil (1994), "Enforcement of Environmental Measures: Negotiating the NAFTA Environmental Side Agreement," *Journal of Environment and Development* 3 (Winter): 29–41.

Appendix A
Canadian and CEC Priorities Compared
1997–2003

Year	Canadian Priorities	CEC Council Agenda Items
1997	<ul style="list-style-type: none"> • Meeting International Obligations • Public and Private Sector Performance • Performance Measurement • Accounting for Sustainable Development 	<ul style="list-style-type: none"> • Reducing the Threat of Toxic Chemicals to Human Health and the Environment • Strengthening Efforts to Improve Environmental Compliance • Transboundary Environmental Impact Assessment • Review of Enforcement Submission Guidelines • Environment and Trade • Transboundary Air Monitoring and Modelling • Evaluating Success of the NAAEC
1998	<ul style="list-style-type: none"> • Canada’s International Environmental Commitments • Climate Change • Biodiversity • Strategic Approach to Sustainable Development • Environmental Assessment: A Critical Tool for Sustainable Development • Counting the Environment in Performance Measurement for Sustainable Development Strategies 	<ul style="list-style-type: none"> • Environment, Economy and Trade • Regional Action on Global Issues • Public Submissions Revisions • Engaging the Public • Other decisions (financial matters, increased co-operation with North American centres of excellence to analyze potential for environmental emergencies co-operation)
1999	<ul style="list-style-type: none"> • Implementing Sustainable Development Strategies: Laying the Groundwork for Progress • Sustainable Development Strategy Consultations • Managing the Risks of Toxic Substances: Obstacles to Progress • Streamlining Environmental Protection Through Federal–Provincial Agreements: • Making International Environmental Agreements Work: The Canadian Arctic Experience • Managing for Sustainable Development • Greening Policies and Programs: Supporting Sustainable Development Decisions 	<ul style="list-style-type: none"> • Sound Management of Chemicals • Strengthening Environment and Trade Relationships • Promoting Effective Enforcement and Compliance • Transboundary Environmental Impact Assessment • Pollutant Release and Transfer Register • North American Bird Conservation Initiative • Upper San Pedro River Initiative • Silva Reservoir

Year	Canadian Priorities	CEC Council Agenda Items
2000	<ul style="list-style-type: none"> • Implementing Sustainable Development Strategies • Greening Government Operations • Government Support for Energy Investments • Smog: Our Health at Risk • Partnerships for Sustainable Development • Working Together in the Federal Government • Co-operation Between Federal, Provincial and Territorial Governments • Working with the Private Sector 	<ul style="list-style-type: none"> • Children's Health and the Environment • Sound Management of Chemicals • Pollutant Release and Transfer Register • Citizen Submissions on Enforcement Matters • Law and Policy • Trade and Environment • Conservation of Biodiversity • North American Fund for Environmental Cooperation
2001	<ul style="list-style-type: none"> • A Legacy Worth Protecting: Charting a Sustainable Course in the Great Lakes and St. Lawrence River Basin • Sustainable Development Management Systems • Reporting on Sustainable Development: Is the System Working? • Assessing the First Sustainable Development Strategies • Integrating the Social Dimension: A Critical Milestone • Climate Change and Energy Efficiency: A Progress Report • Connecting with Canadians: The Environmental Petitions Process 	<ul style="list-style-type: none"> • Timely and Accurate Environmental Information • Market-Based Approaches to Environmental Conservation • Regional Co-operation for the Implementation of Global Agreements • Capacity Building in All Aspects of the CEC's Work • Initiatives to Build Partnerships and Strategic Linkages (including children's health and the environment, freight traffic, the electricity market, Biodiversity Conservation Working Group, North American Bird Conservation, industry practices, transboundary environmental impact assessment and strengthening the CEC's relationship with the private sector) • Public Participation
2002	<ul style="list-style-type: none"> • Toxic Substances Revisited • The Legacy of Federal Contaminated Sites • Abandoned Mines in the North • Invasive Species • Sustainable Development Strategies • Exercising Your Right to Know: The Environmental Petitions Process 	<ul style="list-style-type: none"> • Energy and Environment (North America's Electricity Market) • Children's Health and the Environment • Sound Management of Chemicals • Hazardous Waste • North American Pollutant Release and Transfer Register • North American Bird Conservation Initiative • Trade and Environment • Finance and Environment • Corporate Environmental Stewardship • World Summit on Sustainable Development • Joint Meeting with the International Joint Commission and International Boundary and Water Commission

Year	Canadian Priorities	CEC Council Agenda Items
2003	<ul style="list-style-type: none"> • Managing the Safety and Accessibility of Pesticides • Road Transportation in Urban Areas: Accountability for Reducing Greenhouse Gases • Sustainable Development Strategies • Environmental Petitions 	<ul style="list-style-type: none"> • Conservation of Biodiversity • Management of Freshwater • Sound Management and Tracking of Hazardous Waste • Article 14 and 15 Submissions • Environmental Enforcement and Compliance Cooperation • Children’s Health and the Environment • Sound Management of Chemicals • Cooperation on North American Pollutant Release and Transfer Register • Cooperation on North American Air Quality Issues • Renewable Energy • Corporate Environmental Stewardship • Disclosure of Financially Relevant Environmental Information • North American Green Purchasing Initiative • Trade and Environment

Notes:

Government of Canada priorities are taken from the Reports of the Commissioner of the Environment and Sustainable Development available at <www.oag-bvg.gc.ca/domino/cesd_cedd.nsf/html/menu3_e.html> (April 2004).

CEC Priorities are measured by Council Agenda Items, as taken from Council communiqués.

Appendix B Canada's Accomplishments at the NAAEC-CEC

Objective/Activity	Canadian Success		
	Level	Trend	Prospects
<i>Canadian Objectives</i>			
a. Make CEC Work	Medium	Uncertain	Favourable
b. Put Environment First	Medium	Stable	Unfavourable
c. Bring Citizens In	High	Stable	Favourable
d. Expand Resources	Medium	Stable	Uncertain
e. Foster Independence	Medium	Declining	Uncertain
f. Emphasize Co-operation	Medium	Stable	Favourable
g. Facilitate Intergovernmentalism	Medium	Improving	Favourable
h. Forward National Strategy	Medium	Improving	Favourable
i. Employ Trade Work	Low	Improving	Favourable
<i>NAAEC Activities</i>			
a. Preamble Objectives/Obligations	High	Stable	Uncertain
b. CEC Budget	Medium	Declining	Unfavourable
c. Council	High	Improving	Favourable
d. Secretariat	High	Stable	Uncertain
e. Article 13	Medium	Improving	Unfavourable
f. JPAC	Medium	Declining	Stable
g. Environment, Economy and Trade	Low	Improving	Uncertain
h. Conservation of Biodiversity	Medium	Improving	Favourable
i. SMOC	Very High	Improving	Favourable
j. Taking Stock (PRTR)	Medium	Improving	Favourable
k. Air Quality	Low	Improving	Uncertain
l. Children's Health	Medium	Stable	Stable
m. Law and Policy	Low	Stable	Stable
n. NAFTA's Environmental Effects	Medium	Improving	Favourable
o. Article 10(6) Working Group	Low	Improving	Stable
p. A Council-FTC Joint Meeting	Low	Declining	Unfavourable
q. Article 14-15	Medium	Improving	Stable
r. Part 5	Negative	Stable	Unfavourable
s. Provincial Participation	Low	Stable	Stable
<i>Specific NAAEC Impacts</i>			
1. Industrial Pollutants	High	Improving	Favourable
2. Biodiversity	Low	Improving	Favourable
3. Environmental Health	High	Improving	Favourable
4. Water	Low	Improving	Favourable