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## **Trade and Environment in North America**

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## Trade and Environment in North America

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The relationship between international trade and environmental protection exploded into public debate in the early 1990s. One of the catalysts for this debate, the negotiation of a free trade zone in North America, prompted many to view "nature" and "NAFTA" as odd couples, incapable of working in unison. This is partly because negotiations of NAFTA started in the wake of the United States' embargo of imported Yellowfin Tuna – the first import restrictions based on an environmental process-based standard -- from Mexico and the rest of Latin America because of the incidental taking of dolphins. Just as environmentalists saw commerce as detrimental to ecosystems and endangered species, they also recognized the power of trade agreements and trade sanctions to change the behavior of states and firms in favor of environmental goals.

The heightened awareness of this linkage between trade and environment led to the creation of the Commission for Environmental Cooperation (CEC) of North America, also known as the NAFTA CEC. The CEC and its sister organization on labor cooperation were created as a result of pressure by the U.S. environmental and labor movement on the newly-elected Democratic Clinton Administration to add side agreements to NAFTA (the North American Agreements on Environmental and Labor Cooperation) addressing their respective concerns. Specifically, the CEC was designed to counter fears, mainly by environmental groups, that this inaugural regional trade agreement between a developing country and two developed countries would have dire environmental impacts. A notable concern was the possibility of industry moving to the neighboring country with more lax environmental laws, leading to a "race to the bottom" in which the incentive structure encouraged the poorer country not to enforce or augment existing environmental laws.

The CEC's mandate attempts to mitigate against these fears with the following strategy: (a) carrying out an ongoing assessment of the environmental impacts of trade liberalization, (b) preventing potential trade and environmental conflicts, (c) and promoting the effective enforcement of environmental laws in North America. The CEC addresses this mandate through a variety of structures, institutions, and procedures, among them the Joint Public Advisory Committee (JPAC); the Article 14 and 15 Citizen Submission

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Process; Article 10, especially 10(6) calling for collaboration between the environment ministers and the NAFTA Free Trade Commission to achieve the environmental goals and objectives of NAFTA; and the work program of the Secretariat. The JPAC ensures transparency and public participation. The Citizen Submission Process allows any citizen in North America to make a submission to the CEC if they believe that a partner country is failing to effectively enforce its environmental laws. Such a complaint can trigger an investigation and the publication of a factual record and is a cornerstone of the CEC structure. The CEC also assists the Free Trade Commission in environment-related matters and, most importantly, contributes to the prevention or resolution of environment-related trade disputes. For example, the CEC can identify experts able to provide information or technical advice to NAFTA committees, working groups, and other NAFTA bodies which then clarifies or defuses a potential dispute.

Finally, the CEC structure includes a Secretariat staffed by approximately 60 professionals from the three countries working on four program areas. The Environmental, Economy, and Trade program inherited the mandate of monitoring the environmental impacts of NAFTA on an ongoing basis and later diversified its work to include ways of greening trade in North America through the development of environmentally preferable goods and services and financing and the environment. The Conservation of Biodiversity program facilitated the development of the first *"Strategic Plan for North American Cooperation in the Conservation of Biodiversity,"* currently being implemented focusing on marine and grassland species and ecosystems of common concern.

The Pollutants and Health program publishes the highly regarded Taking Stock reports on pollutant releases and transfers in North America, implements plans for the Sound Management of Chemicals and promotes cooperation to address air quality and children's health issues. The Law and Policy program acts as a catalyst to improve domestic law and policy, and enhance environmental enforcement and compliance across North America. The Citizen Submissions Process allows North Americans to submit a claim that one of the NAFTA governments is failing to effectively enforce its environmental law. In addition, a small Mexico office helps with capacity building in Mexico, especially with respect to the sound management of chemicals. In addition to its outreach through programs, the CEC connects with the public through the JPAC, while the Secretariat responds directly to the Council made up of the ministers of the environment of Canada and Mexico and the US EPA administrator.

## **Environmental Cooperation in North America**

Though the original focus of the Commission's work was on enforcement – or a watchdog role – increasingly its value can be found in its role as a catalyst for regional cooperation, a source of information and analysis, and a forum for public dialogue and participation on issues of environmental concern. As trade has intensified under NAFTA, so has awareness of the need to cooperate to solve shared environmental challenges at the North American level, including transboundary air and water pollution, the quickening loss of biodiversity, growing pressures on freshwater quantity and quality, the long-range transportation of toxic chemicals, the generation and international shipment of hazardous wastes, and a list of other important challenges. Indeed, parties are favoring cooperation over applying WTO or NAFTA disciplines, even in the dolphin-tuna case that became the poster child for the clash between trade and the environment.

Not surprisingly, the CEC process often begins with the development of a shared understanding of an environmental problem, its dimensions, scale and root causes, before working to develop a shared and strategic action plan with all the stakeholders in the three countries. Public participation is assured in all CEC projects through its ongoing conferences, symposia, workshops and seminars. This participation is also channeled through a formal process such as the JPAC—which involves five citizens from each partner country—providing ongoing advice to the Council and the Secretariat. One particularly successful tool used by the CEC to foster cooperation, community involvement and the development of a North American community is the North American Fund for Environmental Cooperation (NAFEC). From its creation in 1995 until 2003, NAFEC has awarded 196 grants for a total of C\$9.36 million which funded community-based projects to strengthen and build the capacities of local organizations and emphasized sustainability making environmental, social and economic linkages. For example, NAFEC supported a Binational Initiative for Installing New Sustainable Thermoelectric Plants in the US/Mexico Border Region. The project ensures that communities have the information and capacity required to be effective actors and to work with governments and developers to encourage the adoption of technology and policy frameworks aimed at reducing impact on the environment and community health and maximizing the use of sustainable alternatives.

## **Lessons from North America on Free Trade and the Environment**

The CEC has also been instrumental in gathering and analyzing data to assess the environmental impact of NAFTA and, by extension, of trade liberalization agreements in general. The framework for this analysis, developed by the CEC between 1995 and 1999, is unique in setting out initial hypotheses to be tested regarding the linkages between trade and the environment. These hypotheses arise from the highly polarized discussion that accompanied the negotiation process of NAFTA and include the following:

- Does NAFTA trade liberalization lead to a regulatory/migratory “race-to-the bottom”?
- Does NAFTA give rise to competitive pressures for capital and technological modernization or to pollution havens?
- Does NAFTA lead to upward convergence of environmental practice through activities of the private sector or the government?
- Does NAFTA reinforce existing patterns of comparative advantage and specialization to the benefit of efficiency?
- Do liberalized rules under NAFTA serve to increase the use of environmentally preferable products?

The framework reflects two key innovations of NAFTA. First, because NAFTA was the first agreement to include new disciplines covering trade-related investment, the framework recommends that analysis refer not only to NAFTA rule changes and trade flow data, but also to the relationship between foreign direct investment (FDI) and environmental quality. Beyond examining the specific implications of NAFTA Chapter 11 on investment, the framework tracks FDI flows closely associated with changes in trade patterns and compares pre- and post-NAFTA changes in FDI stocks and patterns among the three countries. Second, the framework assumes that institutions matter for environmental quality. In the case of NAFTA, several institutions exert important influence on environmental quality and policy in North America. In addition to the CEC itself, there are approximately 26 trilateral working parties and groups under the Free Trade Commission (FTC) which focus on various technical issues such as pesticides, standards harmonization and hazardous wastes. Similarly, there are various bilateral plans, including the U.S.-Mexico border initiative, which are equally significant.

The single most important lesson of the CEC’s work on environmental assessment is a simple one: the public needs to be engaged early and often. Transparency and meaningful public input forms the foundation

of democratic governance and is vital to ensuring legitimacy. Public participation is encouraged through all stages of the CEC's work. For example, in 1999, the CEC invited members of the public to road test the CEC Framework for assessing the environmental impact of free trade (CEC, 1999a). For the first time ever, trade experts, government officials, citizen groups and academics gathered at a North American Symposium on Trade and the Environment to discuss specific findings from across the continent on the important issue of trade-related environmental changes. The two-day symposium brought together more than 300 environmental and trade experts, development analysts, representatives from environment, trade, industry and Canadian, Mexican and United States government departments, private sector representatives, as well as representatives of several international organizations involved in the ongoing trade and environment debate. The 2000 symposium followed a public call for papers that resulted in almost 60 submissions with 13 research papers accepted for publication. A subsequent symposium held in the spring of 2003 focused on impacts at the regional and sectoral levels, in particular looking at agriculture and electricity.

From the evidence assembled from the CEC's first two symposia, the main conclusion is that good policy makes the difference (CEC, 2002c, Panitchpak di, 2002). CEC work also shows that liberalized trading rules under NAFTA do not by and themselves lead to environmentally-preferable outcomes without additional policy activism by governments. A good example of this phenomenon can be seen in the CEC's project on *Trade in Environmentally-Preferable Goods and Services*. Alternatively called "Greening Trade," the project seeks to connect the growing numbers of suppliers and consumers of greener goods and services throughout North America. Part of that work is helping to break down barriers to eco-friendly goods and services, including low consumer awareness of the environmental effects of purchasing habits, confusion about eco-labeling, and difficulties in financing small companies in this field. This project builds on growing interest to "harness the power of the market" in support of the environment, and, if successful, will go a long way towards demonstrating that trade can actually promote environmental protection. Consumers, institutions and governments are also being asked to vote with their dollars and send a signal to companies that less pollution and less dirty energy equal more business. CEC projects thus far have focused on products like shade-grown coffee, sustainable *chamaedorea* palm, eco-tourism, and renewable energy.

## **Limitations**

Despite the advancement made in this area and other concrete successes of the CEC – such as the elimination of DDT across the three countries, the revision upward of Canadian hazardous waste treatment laws, and the confirmation that Mexico will join Canada and the US in their program of mandatory disclosure by industry of their pollution release – critics argue that the trade agreement coined as the “greenest” in the world is not living up to expectations. Many find NAFTA's environmental advantages illusory and the positive impact of the CEC equally so.

Some critics focus on institutional weaknesses of the CEC, which include its lack of communication and cooperation with the FTC as called for by Article 10(6) of the agreement. This lack of cooperation minimizes the chances that lessons from NAFTA can be incorporated in future agreements and, more importantly, in the design of economic, trade and environment policies that are mutually supportive. Others blame the unfortunate tension between the environment and trade community caused by the tuna-dolphin event and the heated debates leading up to the signing of NAFTA. Moreover, it has been argued that Mexicans and Canadians felt forced to accept the environmental side-agreement in order to gain access to the US market, and leftover feelings of coercion have also impinged on trilateralizing the trade and environmental relationships. Critics also point to the lack of activities at the CEC on hot environmental and trade issues for the North Americans such as soft lumber debate, mad cow disease, declining fish resources, and cross-border water management.

Finally, critics complain that the CEC's enforcement mechanisms lack “teeth.” They note that once an Article 14 and 15 challenge has proven a citizen's allegations of non-enforcement of environmental laws, the CEC Council can still vote down the preparation of a factual record. And even when the factual record is produced, there is no discipline to force a quick remediation of the situation, nor are there adequate means for the other two NAFTA countries to impose countervailing duties in response, as can be done on the trade side of the agreement.

## **Conclusions**

The environmental assessment of free trade is a complex and evolving discipline. After nine years' developing a framework to assess the environmental impacts of trade liberalization and measuring the impacts in North America, the analysis remains in its infancy. However, within these limitations, the CEC

has accumulated a considerable body of evidence concerning the environmental impact of trade, especially between developed and developing nations. With respect to NAFTA specifically, it is clear that neither the dire environmental fears predicted nor the direct improvement in environmental performance stemming from higher income has generally materialized. In general it is increasingly clear that trade is necessary but not sufficient for environmental and social improvement following trade liberalization, and that institutions can and do matter to environmental outcomes. Though the CEC itself is also in its infancy, the early signs are that, with political will and a dedication to transparency and public accountability, the CEC can be a force for regional cooperation as well as for environmental protection in North America.