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24 August, 2013

Estimados colegas:

Muchas gracias por su mensaje y esfuerzo para mejorar el desempeño del TLCAN en materia ambiental y pedir nuestra retroalimentación e ideas.

En mi opinión —he colaborado de cerca en varias iniciativas y actividades relacionadas con los aspectos ambientales del TLCAN por muchos años— ha habido un gran descuido en atender las actividades prácticas, concretas o tangibles. Por ello, es muy importante que identifiquemos y desarrollemos oportunidades que de manera clara beneficien a los tres países, asuntos de interés bi y tri-nacional (ecosistemas y especies compartidos, recursos naturales renovables con distribución internacional, etc.). Si queremos optimizar el uso de recursos limitados, esta debía ser la tónica y el rumbo para definir las prioridades en las próximas décadas, e incluir cuanto antes el uso de indicadores transparentes (de proceso y de logros) que nos permitan evaluar si nos movemos efectivamente en la dirección correcta.

Una oportunidad valiosa que empieza a desarrollarse y que necesita un fuerte impulso y consolidación, es la colaboración para la restauración, conservación y uso sustentable de las islas de los tres países. Las islas son de los territorios naturales más valiosos desde el punto de vista de biodiversidad y recursos naturales en Canadá, México y los EUA. Se trata de una región continental donde ya tenemos recursos humanos, diagnósticos, determinación de prioridades y programas de trabajo, con portafolio de proyectos bien identificados para el cuidado y buen uso de las islas. Está surgiendo a la par una red tri-nacional especializada en el tema con comunicación activa y actitud de colaboración, que incluye agencias de gobierno (sobre todo federal) y ONG, con participación de las comunidades locales y negocios (proveedores de productos y servicios especializados). De hecho, la región del TLCAN está llamada a cumplir con una función de liderazgo en esta área a nivel mundial y hacer aportaciones muy valiosas al resto de América y a otros continentes.

Es decir, está ya la masa crítica pronta para multiplicar los resultados positivos. Un objetivo de extraordinario valor para el 2030 sería tener a todas las islas de los tres países libres de especies invasoras, en particular mamíferos (ratas, ratones, gatos, cabras, etc.), que son la mayor amenaza a la biodiversidad insular en todo el mundo. Lo que hace falta es coordinación más formal y sistemática entre los tres países, así como el establecimiento y

consolidación de esquemas de financiamiento multianual, pues la conservación ambiental efectiva y seria no puede atenderse con convocatorias de horizonte anual.

Quedo a sus órdenes en caso de que se necesite información adicional.

Muchas gracias y saludos cordiales,

Alfonso Aguirre

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September 5, 2013

Mme Marcela Orozco,
JPAC Liaison officer,
Commission for Environmental Cooperation (CEC)
393, rue St-Jacques ouest, Bureau 200
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Subject : What do you think the next 20 twenty years of environmental cooperation in North America should look like? An initial response to the invitation extended by CEC for public input – with particular reference to aboriginal/native/tribal constituencies.

Dear Madame Orozco,

I am, following a telephone exchange with Fabiana Spinelli on August 29, taking up the invitation to comment on the JPAC initiative to launch a discussion on future directions of the Commission for Environmental Cooperation.

I am responding to the CEC announcement because I spent some time, during the first decade of the implementation of the CEC, working quite closely with the Commission on issues which I understood to be relevant to aboriginal constituencies in the development of themes for cooperation between Canada, Mexico and the United States in areas of common environmental interests.

I took a particular interest in the NARAP initiative, and was involved, among other themes, in the mercury and dioxin NARAPs – as well as more generally in discussions about chemicals management and the use of the PRTR as a vehicle for exchanging information between jurisdictions on the release of certain environmental contaminants.

I became aware of the challenges involved in securing the involvement of aboriginal constituencies in the CEC agenda. The political and social contexts vary considerably between the Canada, the U.S.A. and Mexico, as well as within these three countries. That much was evident to me.

At various times during this earlier history of the CEC, the Joint Public Advisory Committee endorsed the objective of involving indigenous or aboriginal constituencies in CEC programme activities. I do not believe, however, that it was clear how this objective might be pursued – and who would be responsible for overseeing and evaluating implementation.

If the CEC is now committed to the development of a long-range strategy for the development and implementation of environmental strategies of common interest to the three major jurisdictions, both the JPAC and the CEC as the body responsible for administration and coordination may want to revisit the issue of involving indigenous or aboriginal constituencies.

It is not the purpose of this letter to make specific recommendations at this point either to the CEC or JPAC. What I would like to suggest, however, is that an effort be made to bring together individuals or agencies with an interest in this matter and seek their collective advice on this matter – in a manner which takes into account the diverse economic, social and demographic conditions in the three national jurisdictions. It may be concluded that there is little to be gained from adopting strategies with indigenous jurisdictions in mind. However, that conclusion – if that is the direction the CEC will take - should be based on adequate consultation, discussion – and supporting analysis and documentation.

I expect that the Cree leadership in the Eeyou Istchee territory (James Bay) in NW Québec (Canada) will take an interest in CEC's future directions, and will be willing to contribute to the analysis of options. The natural resource industries in their territory, based on hydro-electricity, mining and forestry provide ample illustrations of environmental aspects of natural resources development of potential relevance to the CEC – and to the Cree First Nation communities.

Please do not hesitate to contact me if you wish to pursue these matters further.

Yours sincerely,

ALAN PENN
Science Advisor
Cree Regional Authority

cc: Deputy Grand Chief Rodney Mark
Isaac Voyageur
Bill Namagoose

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I believe, as a scientific researcher, that the CEC Operational Plans up to this date have diplomatically avoids to explicitly address the more tragic environmental problem in Mexico: the devastating environmental, social and health impacts that are causing the Open Pit Mining in Mexican territory. The issue is not trivial, it is really the most tragic environmental problem of Mexico: almost 40% of our national territory is already concessioned to Foreign Mining Companies, and most of them are Canadian Mining Companies. This problem, due to its magnitude and devastating effects, should be expressed openly in CEC Work Plans and Programs as a separate topic that requires urgent attention and joint monitoring.

Alvaro R. Osornio-Vargas
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29 August, 2013

Establishment of a North American environmental agenda.

In my opinion the impact of environmental changes on human health is a topic that remains elusive in the North American Environmental Agenda. Attempts have been made without too much traction. Misalignments in country-specific health agendas are part of the problem. The lack of bridging mandates between Health and Environmental Ministries in Mexico and Canada is another situation that prevents moving the health and the environment agenda. I still consider that the CEC initiative on Children's Health and the Environment is one that needs to prevail in order to move forwards a tri-national agenda addressing the impacts of environmental changes in human health and sustainability of the human "wealth" in the region.

Thank you

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26 August, 2013

Comments concerning the Joint Public Advisory Committee of the Commission for Environmental Cooperation Public Review of the First 20 Years of NAFTA and the NAAEC

The twentieth anniversary of the North American Free Trade Agreement (NAFTA) and the North American Agreement on Environmental Cooperation (NAAEC) offers a valuable opportunity to reflect upon the Commission for Environmental Cooperation's (CEC) progress and achievements to date, current activities and to look forward to the future.

While without a doubt progress has been made on environmental issues in the three jurisdictions over the past twenty years, ongoing challenges remain and new ones continue to present themselves. The Monarch Butterfly, the symbol of the CEC, has just been recorded at one of its latest migrations with the lowest population ever. This demonstrates the interconnectivity of ecosystems and the environment in North America which ignores the political boundaries of Canada, the United States of America and Mexico. Further work needs to be done in integrating cooperation in areas such as Species at Risk especially in the light of the current and foreseen impacts of climate change.

It is not solely animals which have had political boundaries drawn through their territories as there are indigenous communities in North America whose traditional territories predate the establishment of Canada, the U.S.A. and Mexico and subsequently are situated across present-day borders. These indigenous communities often find themselves dealing with two or more jurisdictions with completely different regulations that they are forced to comply with. This also includes at the least a doubling of government authorities, departments and other organizations with which the communities must deal with on a regular basis. These come with different networks, procedures and levels of funding. Consequently some indigenous communities are burdened by the extra workload and are faced with the unusual situation of complying with multiple regulations and policies which do not necessarily smoothly overlap in the same community. This is compounded by the fact that each country addresses its environmental issues based upon its own priorities. The CEC should focus on cross-border indigenous communities to assess how they are able to address environmental issues, what challenges they face and how they can be overcome when working within multiple jurisdictions. This can lead towards recommendations to the Joint Public Advisory Committee (JPAC) on how cooperation between the three countries can be improved to the benefit of shared ecosystems, Indigenous Peoples and border communities.

The CEC should prioritize engagement with Indigenous Peoples as Indigenous Peoples are among the most vulnerable populations in North America, many of whom live in poverty with worse health outcomes to the general population, live in environmentally sensitive areas, continue to live off the natural resources and food provided by the land and hold valuable traditional ecological knowledge. Due to strong physical, spiritual and cultural connection to the land and environment, Indigenous Peoples risk being more affected by environmental issues – and in different ways – than the general population.

The recent rail disaster in Lac-Mégantic has highlighted the inherent danger of transporting hazardous materials across North America, yet such a practice remains crucial to our shared economies. Prior to the disaster in Lac-Mégantic, a derailment in Northern Ontario near the Pic Mobert First Nation and Pic River First Nation caused a significant oil spill which potentially threatened the communities' water source. Chief Michano of Pic River First Nation has stated that he wants to know what is being transported on the trains that pass through his community and he is not alone. There are many indigenous communities in Canada and across North America that are dissected by major transportation routes including rail, road and waterway. Yet these indigenous communities are not made aware of the quantity and type of hazardous substances that are being transported through their communities. These hazardous substances would pose a threat to the environment and health and safety if a spill or leak occurred. This has far reaching impacts upon communities' ability to respond in the face of a spill or contamination of their lands. The CEC can play a facilitative role in promoting discussions on how to keep local and indigenous communities informed when hazardous materials which would pose a risk to the environment during a spill situation are being transported through their communities. This would lead to better emergency preparedness during a spill to minimize the effect upon the environment and human health.

The CEC has worked in the past to promote the comparability of Canada's National Pollutant Release Inventory, the U.S.A.'s Toxics Release Inventory and Mexico's Registro de Emisiones y Transferencia de Contaminantes. However, as the threshold required to report substances, the list of substance and even the method of release continues to evolve and change across all three programs, further work is needed to promote and integrate the programs. While releases of pollutants to air and waterways are known to inadvertently cross national borders, it is also known that certain Persistent Organic Pollutants accumulate in the north and therefore disproportionately affect Canada's Indigenous Peoples. The CEC needs to undertake further efforts to promote these pollutant release inventories and their interpretation and meaningfulness for Indigenous Peoples. Crucial to this work is looking at sources of pollutants that are beyond national borders and grounded in localized monitoring programs to assess their potential impact upon environmental health.

Key to the abovementioned pollutant release programs is an evolving understanding of the potential risks that specific chemical substances may pose to human and environmental health. New chemical substances are introduced to commerce daily and transparent and effective risk assessment must be undertaken before new substances can be allowed to be introduced to the environment. It is not only legacy pollutants that turn out to be persistent, bioaccumulative, or both. As such, chemical risk assessment programs such as Canada's Chemicals Management Plan, the U.S.A's action under the Toxic Substances Control Act and similar work within Mexico need to keep pace with and inform each other and come to similar conclusions in order to protect environmental health. Indigenous Peoples are often considered to be a vulnerable population due to the environmental health risks of consumption and exposure to contaminated traditional foods, air and water. Furthermore, Indigenous Peoples hold a cultural and spiritual connection to their traditional lands, medicines, plants, animals and waters. Often, alternate suggestions to avoid a contaminated food or geographic area are not culturally appropriate. Low-levels of contaminants not seen to impact health from a western scientific perspective can also be

seen as unacceptable from a holistic indigenous perspective on environmental health, especially as concerning traditional medicines. Better risk assessment and management of chemicals as can be promoted through the CEC could address some of the concerns raised by First Nations and lead to more effective programs in Canada, the U.S.A. and Mexico.

The impacts of climate change on the most vulnerable in North America are often exacerbated by the fact that these vulnerable people live in a perpetual state of poverty and extreme poverty. Indigenous Peoples, including First Nations in Canada are hyper-vulnerable to the changes and impacts brought on by a changing climate, because they often lack the resources (human and financial) to properly research, address, plan and adapt to on-going and/or current changes in their environment.

The shared historical experience of Indigenous Peoples, and their Tribal- and Nation-based knowledge of the environment serve as key benchmarks in understanding, and therefore, adapting to climate change. Recent meetings (2013) between First Nations and Tribal representatives in Bangor, ME, USA and Fredericton, NB, Canada brought to light that there is an immediate need to focus on better cooperation between and among Indigenous Peoples and mainstream climate change research, activities and processes. It is all but essential, if not for creating a comprehensive understanding of the climate change challenges facing all North Americans, but for the physical and cultural survival of geographically isolated Indigenous Peoples who exist in poverty and are susceptible to the impacts of climate change that necessary and sufficient supports be identified and allocated to foster capacity among Indigenous Peoples throughout North America.

The development of Indigenous Peoples' capacity to address climate change impacts and adaptations is essential, as the participants from the First Nations and Tribes stressed during their deliberations. The CEC can support this process by enhancing its focus on vulnerable communities, including more focused research and process that provides knowledge and skills transfers to and among Indigenous Peoples.

In light of the abovementioned concerns, the CEC should take steps to promote the profile of Indigenous Peoples in North America including their environmental concerns, knowledge and solutions. Further capacity building is needed in order for Indigenous Peoples to address their environmental problems in light of continued risks posed by activities that originate in the broader North American economy, legislative and regulatory regimes. Trade, economic and environmental legislation, regulation and policy within North America needs to be grounded in the principle of free, prior and informed consent for indigenous communities, and other communities that stand to be potentially affected by the legislation, regulation or policy in question. The CEC can raise awareness of the environmental impacts that the North American Free Trade Agreement has had upon Indigenous Peoples and the opportunities that it has presented. One way in which this can be achieved is by ensuring that Indigenous Peoples are included in the National Advisory Committees and the JPAC. However, a more effective means might be to establish an Indigenous Advisory Committee to advise the CEC with regular opportunities for all of the committees to meet to discuss issues, share perspectives and advance joint recommendations.



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14 August 2013

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*** BY EMAIL AT JPAC@CEC.ORG AND MAIL***

Attn. Joint Public Advisory Committee

To the Commission on Environmental Cooperation:

**Re: Public input on NAAEC successes and failures
NAAEC's failure to address Canada's gutting of environmental laws**

We write to you regarding the North American Agreement on Environmental Cooperation (NAAEC) and its failure to address Canada's recent actions in gutting a wide range of environmental laws, apparently at the request of industry. This failure raises broader questions about NAAEC effectiveness and the CEC's mandate, relevant to your current public consultations.

In this letter, we suggest ways to strengthen the NAAEC and the CEC to help ensure that Parties' uphold their commitment to conserve, protect and enhance the environment. We trust our feedback and suggestions will be helpful in achieving the important objective of improving Canada's environmental laws, regulations, procedures, policies and practices.

Removing high levels of environmental protection

Canada committed in the NAAEC to "ensure that its laws and regulations provide for high levels of environmental protection" and to "strive to continue to improve those laws and regulations."¹ Although the commitment does recognize that each country may modify its laws and choose how it ensures a high level of environmental protection, recent changes to Canada's major environmental statutes, initiated after pressure from the oil and gas industry,² do not credibly maintain current Canada's previous environmental standards.

¹ North American Agreement on Environmental Cooperation, Article 3 (NAAEC).

² Galloway, G. "Controversial changes to Fisheries Act guided by industry demands" in *The Globe and Mail* (5 August 2013), available at <http://www.theglobeandmail.com/news/politics/fisheries-act-change-guided-by-industry/article13606358/>, last accessed 9 August 2013. See also Letter dated 12 December 2011 from Energy Framework Initiative to Peter Kent, Canada's Minister of Environment, available at http://www.greenpeace.org/canada/Global/canada/pr/2013/01/ATIP_Industry_letter_on_enviro_regs_to_Oliver_and_Kent.pdf, last accessed 9 August 2013; and Gage, A. The Smoking Gun: Who was the real author of the 2012 omnibus bills? (11 January 2013), available at <http://wcel.org/resources/environmental-law-alert/smoking-gun-who-was-real-author-2012-omnibus-bills>, last accessed 8 August 2013.

With its enactment of the *Canadian Environmental Assessment Act, 2012*, Canada eliminated thousands of environmental assessments of activities and projects, including projects which can have major environmental impacts³ and (especially in the assessment of oil and gas pipelines) severely reduced public participation.⁴ These changes weaken environmental protection and public involvement, despite Canada's commitment in NAAEC to the appropriate assessment of environmental impacts.⁵

Canada's only law setting targets for the reduction of greenhouse gases and requiring the Canadian government to plan how to achieve its targets, the *Kyoto Protocol Implementation Act*, has been repealed, and has not been replaced with any equivalent legislation. This means that, unlike Mexico or the U.S., Canada has no "flagship legislation" guiding its response to climate change.⁶

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- ³ *CEAA, 2012* established a much higher threshold for which projects would receive environmental assessments. Under the Act, only projects that are designated in regulations will be assessed, and when Canada enacted the regulations designating projects as requiring environmental assessments, only the largest projects were listed. Moreover, the government retains a broad discretion not to require an environmental assessment. As a result, nearly 3,000 screening-level environmental assessments were cancelled in the month following the enactment of *CEAA, 2012*, and a wide range of mid- to large-sized and environmentally significant projects will no longer receive an assessment by any level of government. See Canadian Environmental Assessment Agency, Screenings Cancelled in July 2012, webpage available at <https://etc-cte.ec.gc.ca/o10/type1abandon-eng.cfm?yyyy=2012&m=7>. See also P. Duck, J. Sinclair, and G. Assessing the smaller projects: an essential step towards sustainability. (March 2012), available at https://d3n8a8pro7vbm.cloudfront.net/envirolawsmatter/pages/38/attachments/original/1332998632/Assessing_the_Smaller_Projects_08-03-2012.pdf?1332998632, last accessed 8 August 2013.
- ⁴ *CEAA, 2012*, S.C. 2012, s. 19(1)(a), indicates that while in most assessments comments from the general public must be considered, for environmental assessments of pipelines, conducted by the National Energy Board, only the comments of "interested parties" must be considered. "Interested parties" is defined as a party that is "directly affected" by the project, or parties which, in the view of the NEB, has relevant expertise (s. 1(2)). In relation to assessments conducted by review panels (for most larger projects), the comments of the public must be considered, but only "interested parties" have a right to participate in the assessment (s. 43(1)(c)). See Gage, A. Who is silenced under Canada's new environmental assessment act? (27 April 2012), available at <http://wcel.org/resources/environmental-law-alert/who-silenced-under-canada%E2%80%99s-new-environmental-assessment-act>, last accessed 8 August 2013.
- ⁵ NAAEC, Article 2(1)(e). Appropriate is not, of course, defined, but direction may be taken from the Rio Declaration on the Environment and Economy, at Principle 17, which all three NAAEC signatories had signed shortly before, which states that environmental assessments should assess "proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority." To our knowledge, there is no scientific or other basis for maintaining that projects not captured by *CEAA, 2012* pose no risk of a significant adverse effect on the environment.
- ⁶ Globe International. *GLOBE Climate Legislation Study (3rd Edition)* (2013), available at <http://www.globeinternational.org/index.php/legislation-studies/publications/climate-legislation-study-3rd-edition>, last accessed 8 August 2013. Of the 33 nations reviewed by Globe International, only Canada and Mozambique lack such legislation, and only Canada had such legislation and repealed it.

Amendments to the *Fisheries Act* have been passed that will, if brought into force, severely curtail the protection of all fish habitat⁷ and eliminate protection for fish that are not part of, or otherwise support, a commercial, recreational or aboriginal fishery.⁸

Similarly, one of its oldest laws, Canada's *Navigable Waters Protection Act*, has provided protection for both navigation and the environment on tens of thousands of streams and lakes since 1882. However, amendments to that Act have been passed that would, if brought into force, limit its legal protection to a relatively small number of listed water bodies.⁹

In each case these changes were made with little or no meaningful public consultation. Indeed, all of the legislative changes were buried within two omnibus "budget" bills that ran into the hundreds of pages.¹⁰ As noted above, oil and gas industry lobbyists asked for many of these changes just months before they were introduced into Parliament.¹¹

The government has also promised sweeping changes to the country's *Species at Risk Act*, which the oil and gas industry has also requested, although these have not yet been unveiled.

What is more, the NAAEC also commits Canada to "further scientific research and technology development in respect of environmental matters."¹² Despite this commitment, in recent years the Canadian government has stopped funding a range of crucial scientific research into environmental matters,¹³ as well as forbidden its environmental scientists from talking publicly about their work without vetting by public relations officials.¹⁴

What this means for NAAEC

The NAAEC allows members of the public to request an investigation of non-enforcement of environmental laws. While the commitment to enforce environmental laws is indeed a crucial piece of the NAAEC, the Agreement does not contain any remedy for members of the public when a government violates the many other commitments found in it – commitments to maintain strong environmental laws, to promote science, to ensure public process. Instead, the Canadian government has ignored these provisions with apparent impunity.

We ask you to notify the Canadian government that bringing into force its recent amendments to the *Fisheries Act* and the *Navigable Waters Protection Act* may be inconsistent with the NAAEC.

⁷ Gage, A. Limiting fish protection to "Serious harm" is a serious problem. (1 May 2012), available at <http://wcel.org/resources/environmental-law-alert/limiting-fish-protection-%E2%80%9Cserious-harm%E2%80%9D-serious-problem>, last accessed 8 August 2013.

⁸ Section 35 of the *Fisheries Act* as modified by 2012, c. 19, ss. 142(2) to (4).

⁹ Bill C-45, 2012, ss. 316-339, especially at 316, 318 and 331.

¹⁰ Bill C-38, 2012; Bill C-45, 2012.

¹¹ Above, note 2.

¹² NAAEC, above, note 1, Article 2(1)(d).

¹³ The Death of Evidence, webpage available at <http://www.deathofevidence.ca/why>, last accessed 9 August 2013.

¹⁴ Greenwood, C.. Muzzling Civil Servants: A Threat to Democracy. (Victoria: Environmental Law Centre, February 2013), available at http://www.elc.uvic.ca/press/documents/2012-03-04-Democracy-Watch_OIPLtr_Feb20.13-with-attachment.pdf, last accessed 8 August 2013.

In addition, we suggest the following measures to ensure that the objectives and commitments in the NAAEC and NAFTA should be adopted:

- The NAAEC should be amended to include specific commitments related to its objective to “promote transparency and public participation in the development of environmental laws, regulations and policies.”¹⁵ Laws cannot be based on meetings with industry lobbyists behind closed doors.
- The CEC needs to have a stronger role in evaluating changes to environmental laws and notifying the public of weakened environmental laws;
- The NAAEC should include specific commitments related to procedural and substantive rights to participate in decision-making (for example, through environmental assessments);
- There needs to be economic consequences for intentionally weakening environmental laws in order to give industry a competitive advantage; and
- While the NAAEC allows the public to complain about a failure to enforce environmental laws, the role of the public, and the CEC, in evaluating changes to the law that weaken environmental protection should be strengthened.

Congratulations on your upcoming 20th anniversary, and thank you for the opportunity to give input into how to better protect North America’s natural environment under the NAAEC.

Sincerely,



Anna Johnston
Staff Lawyer



Andrew Gage
Staff Lawyer

cc. Prime Minister’s Office

¹⁵ NAAEC, above, note 1, Article 1.

Ángel Mendoza González
nicanmx@yahoo.com
Mexico
27 August, 2013

Oaxaca de Juárez, Oaxaca; México, 27 de agosto de 2013

“¿Cuáles deberían ser las prioridades de la CCA para la próxima década y allende?”

Respuesta:

Proteger de verdad el medio ambiente y la salud de sus habitantes.
Impidiendo los cultivos de Organismos Genéticamente Modificados, para no seguir contaminando el medio ambiente y la salud de los habitantes de América del Norte y en especial en México por ser centro de origen del Maíz.

Esperamos su intervención para evitar la destrucción de la vida en el planeta.

Muchas gracias, por escucharnos y comprendernos.

Atentamente

Ángel Mendoza González

Ariadna Itzel Reyes Sánchez
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He participado en las reuniones de la Comisión desde el año 2009 donde presenté una petición sobre las oportunidades de la academia en el diseño científico de acciones y políticas públicas sobre mitigación de emisiones de gases de efecto invernadero. Posteriormente, como investigadora del Centro Mario Molina, he solicitado acciones que impulsen la edificación sustentable y resiliente en diversas reuniones. La sustentabilidad en las edificaciones podría dar lugar a comunidades ambientalmente eficientes, socialmente incluyentes y económicamente asequibles. Asimismo, tiene una gran área de oportunidad en la mitigación de emisiones (por la reducción en el consumo de energía) y en la adaptación (por la creación de comunidades resilientes a situaciones de estrés como una inundación, por ejemplo). No obstante, en México es necesario primero impulsar efectivos instrumentos de planeación que eviten la expansión descontrolada de las ciudades en zonas vulnerables a marginación social y a los efectos del cambio climático. Desde mi perspectiva, la planeación urbana sustentable es un tema que la Comisión debería de impulsar por su gran relevancia en la sustentabilidad de las ciudades de Norte América.

Actualmente, soy estudiante de Doctorado de Planeación Ambiental de Ciudades Sustentables en la Universidad de Texas en Austin y me encantaría compartir mis investigaciones en la reunión de enero.

Armando Montoya Figueroa
Subdirector de Planeación Académica

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**JPAC public review of the first 20 years of NAFTA and the North American Agreement on
Environmental Cooperation**

Call for Information and Comments

Assessment of the environmental effects of NAFTA *(Source: OECD, Environmental Performance
Reviews: Mexico, 2003; country submission)*

The list below does not pretend to be exhaustive, just to mention the main issues from the report, related to the environment. There have been several positive aspects, as well as, opportunity areas in the last 10 years that strongly impact over the environment and the economy of the country and the region.

Relevant Points:

1. Over the last decade, air quality has generally improved,
2. Capacity for hazardous waste treatment more than tripled.
3. There have been somewhat higher levels of patenting activity for some environmental technologies and renewable energies.
4. PROFEPA has been giving greatest priority to self-regulation and environmental audits.
5. Infrastructure for hazardous waste treatment was developed and treatment capacity more than tripled from 5.2 million tonnes in 2000 to 16.7 million tonnes in 2011.
6. Increasing electricity generation from non-fossil fuels to 35%.

Opportunity areas:

1. Further efforts are needed to improve public participation in environmental decision-making.
2. Mexico has the least R&D-intensive economy in the OECD and one of the lowest private sector shares in gross expenditure on R&D. Innovation outcomes have been weak.
3. Integration of environmental concerns in economic decisions.- tax rates are not linked to the environmental performance of vehicles.
4. Elimination of subsidies with harmful environmental effects.

The CEC's Cooperative Work Program—its successes and shortcomings

The main success of the CEC's Cooperative Work Program has been the implementation of the strategy for 2010-2015: Healthy Communities and Ecosystems; Climate Change – Low-Carbon Economy; and, Greening the Economy in North America.

However it is clear that the budget need to be increased to work not only in the big projects but in the small ones as well, especially in the local ones, of course approved coordinated and controlled through the CEC.

For instance, as you know, Profepa handles the voluntary audit program. Once the facility demonstrates, through an audit, that their environmental performance is above the law, Profepa issues the "Clean Industry Certificate" This is our main objective, our primary goal, our daily activity, but we do not know if the certificate itself or the process can be homologated somehow with our partners: United States and Canada in order to adopt the best practices.

The work we perform every day is a key issue to improve the environment and should be supported by our partners.

Susan Bain Canada Email address: sfebain@gmail.com
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In 1994 Canadians were worried that NAFTA could see our country becomes a “pollution haven”, and to address those concerns Canada signed on to the NAAEC. Twenty years later we are facing the very fate we took action to prevent.

The Canadian government’s recent actions show that the North American Agreement on Environmental Cooperation (NAAEC) has failed to ensure that the signatories to the agreement maintain high environmental standards.

It is clear that Canada’s government is listening to industry, and ignoring both the public and its obligations under the NAAEC. Last year’s omnibus “budget” bills, Bills C-38 and C-45, contained sweeping revisions to many of Canada’s environmental laws. Only a few months before Bill C-38 was introduced, the oil and gas industry had asked for many of these same changes.

Coral Bentley Canada Email address: sylrayj@rogers.com
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As I understand it, Canada and the United States and Mexico all promised to keep strong environmental laws, as part of NAFTA.

As I understand it, Canada has weakened protections upon lakes and rivers; has designated environmental protection groups as 'terrorists'; has removed many environmental assessment jobs; has silenced those who are best able to report to the government breaches in protection; and has removed provincial right to refuse natural resource exploitation within their territories.

This does not sound like a country maintaining strong environmental laws to me.

The public is prevented from providing real input into the development of these laws, by removing the option for public response and by labeling those entities which could speak up for us as terrorist organizations.

I have no idea why the Governor General is unresponsive when these sorts of concerns are brought to him. Political parties respond with form letters, probably so inundated with pleas that they cannot do otherwise - but nothing changes. I am hoping that you have the power to do something.

You want to know what the public thinks of the strong environmental accord which the three countries of NAFTA have agreed upon; now you know my opinion of the actions by Canada's government. We are lost.

Janet Berketa

Canada

Email address: janetberketa@gmail.com

I do not understand why the Canadian government's recent actions show that the North American Agreement on Environmental Cooperation (NAAEC) has failed to ensure that the signatories to the agreement maintain high environmental standards.

Bonita Poulin
MCS-Global
Canada
NGO
Email: b_poulin@aol.com
19 September 2013

Comments: All free trade agreements should be abolished! The only ones who benefit are large corporations. Industry is leaving the US and Canada for cheap labour and lack of environmental oversight elsewhere, which hurts us all. Industry controls governments while the populations become slaves to the elite! It is not sustainable! Every country would be better off if they were as self sufficient as possible!

Bruce Agnew
Cascadia Center
Seattle, US
Email: bagnew@discovery.org
1 August, 2013

David

Thank you for the thoughtful invitation to comment on the CEC and NAAEC in light of the 20th Anniversary of NAFTA (copied in part below).

I will take you up on your offer to provide some thoughts and will canvas members of our "Destination Sustainability" advisory committee before the August 30 comment deadline.

Is the October 2013 session in Washington DC open?

I believe that since NAFTA was passed in 1994, climate change, sustainable transportation, North American energy interdependence and alternative fuels have risen to the rank of trade liberalization in terms of providing opportunities for tri-national environmental protection. Witness the current lively debate on the Keystone pipeline.

And - as our report emphasized – engaging and incentivizing private industry to "green" the increasingly global logistics supply chain is the clearest path to melding environmental and economic goals of NAFTA while strengthening the trading platform of North America as we compete (and trade) with Europe and Asia. Your point on the Trans Pacific Partnership is well taken.

As I indicated to you and Irasema, our West Coast Corridor Coalition and joint PNWER/Cascadia organizations are fully supporting the NAFTANEXT Conference in Chicago in April 2014 as the best way to bring industry and government leaders together to work with the national governments on incentives and regulations in the NAFTA environment. It also seems like a logical follow on to your October session.

Again, thanks for reaching out to me on CEC and NAAEC. I am glad to see JPAC initiate an important dialogue among sector leaders of the three countries.

Bruce Agnew
Cascadia Center
Seattle

Chris Rose
Retired
350 Sutil Road, PO Box 621 Quathiaski Cove
Quadra Island, BC V0P 1N0
BC, Canada
Email address: chris@sculptor.bc.ca
www.sculptor.bc.ca
29 September 13

Ladies and Gentlemen,

Since 1956 I'm a Canadian citizen from Europe. I have lived in Ontario, Alberta and in BC. I have travelled to most parts of Canada during the last 63 years. My conclusion is that NAFTA has had only marginal success. In brief, NAFTA has been very successful in "TRADE" and commerce while almost totally neglecting the most important source of our human existence "THE WORLD ENVIRONMENT". I'm in fear that the same will be happening once the Pacific International Trade Treaty is going to be implemented. I feel very strongly that, as a "civilized world society" we will have to resolve the problem of "Fossil Fuels and Petrochemicals" pollution of our atmosphere and the oceans immediately not later, if we are hoping for our survival as society. In the last few years the Canadian Government (Harper's Government) has undermined if not eliminated many of the most important legal protection to the Canadian environment. This was done for one and only one reason: "to enhance the trade/sale of Canadian raw-resources in the interest of international corporations". Repeatedly the world biggest corporations and all governments use as their rational of "increased employment" for their short-sighted projects. Most of these projects have/will lead to long-term harmful impact on the local if not the world environment. Further the NAFTA treaty has been used by large corporations on numerous occasions to crush local opposition because they expressed their rightful social and/or environmental concerns to the projects. This brings me to the matter of "Economics vs. Environment". I firmly believe that the "World Climate" will dictate our long-term survival - it will not be the economical parameters laid down in some abstract, legal treaty of trade that will solve our problems. Therefore, it is high time that all world governments take the necessary actions to mitigate the looming destructions we face from increased floods, heat-waves, Tornados, Hurricanes, Typhoons, changing of the "oceans ecology" and the rising sea-levels which are caused primarily by the increased Greenhouse Gasses in the atmosphere. This means that we have to reduce the production, transportation and consumptions of all fossil-fuels/products through-out the world: 1). We cannot risk a further melting of the ice capes in Greenland, Arctic/Antarctic and elsewhere. 2). We must immediately avoid further releases of methane gas/hydrate from the permafrost areas and/or from the oceans. 3). We must stop further acidification/pollution of the oceans which is resulting in the destabilization of the ecological systems of the oceans (destruction of the planktons etc). I suggest that the three North American Nations become the leaders in the UN and other International Organizations in providing

constructive proposals leading to an immediate reduction and ultimate elimination of the emission of all Greenhouse Gases and Petrochemical products. Your group should advocate to industry and the Governments the following: 1) An international agreement by all Fossil Fuel producers leading to a world-wide rationing system of all Fossil fuel products. 2) An international agreement on the distribution method of all fossil fuels products while considering the vital needs of the individual countries. Any receiving country or country using fossil fuels products will have to guarantee a conversion to renewable alternative energy/products within a certain time limits 3) An international agreement of the distribution of fossil fuels raw materials that are used for petro-chemical products which are not used for the consumptions/production of energy. 4) Establish research facilities that will lead to the elimination of petrochemical products (plastics), which presently cause irreparable harm to all "Chordates" by leaching an Estrogen mimicking product into the environment. 5) An international court of settlement be established which will deal with disagreements and/or non-compliance. Penalties must be imposed on Governments, corporations and/or individuals for non-conformance. The court should operate under the auspice of the UN like the International Court of War Crimes. There is no question that the world is not ready to adjust to a total ban on "fossil fuel sourced energy" immediately, but as part of the world society we will have to get to this point sooner rather than later. I hope that any future international climate conferences does not fail again because of the vested interest of the fossil fuel industry or because of some political idiosyncrasy by one or another government – the old tobacco type of lobbying has to stop! In the meantime the anticipated dislocations in the financial sector, the labour-force deployment and the socio-economic aspects in general could be minimize by Governments and industry if they re-directed their attention and investment strategies into a new and different economic paradigms such as: 1. Research/development and production of alternative energy in solar, wind, wave power, geothermal etc... 2. Electric power storage, batteries "Reverse Flow" water storage etc. 3. Harvesting of tidal-power energy (Discovery passage etc.) 4. Electrification of all public transportation systems as well as bullet-trains in heavy populated areas to minimize air-travel. 5. Electrifications of the entire motor-vehicle industry. 6. Development of battery exchange in all present gas-stations and a recharge system. 7. Development of the improvements in the building industry leading to energy saving and the development of "energy collecting" surfaces for on-site consumption and/or sale to the public-grit. 8. Development of nano-energy technology. 9. As an interim solution there should be the construction of small power plants/refineries near fossil-fuel resources which convert the energy into electricity at the respective extraction site. The energy can then be transported via an electrical grid to the consumer rather than by pipe or train. We cannot tolerate any longer the tacit resistance if not direct opposition to the "New Economics". The present opposition by the coal/oil/gas industry and their direct or indirect pay-outs to officials has to stop. Please recognize that the "alternative energy sector" provides the opportunity for major employment and could be the source for huge tax-returns for Governments and large profits for industry. Therefore, Governments have to exercise new policies independent from their "Corporate-masters". - What actions will you take? Chris Rose

Ciiakap Fraser
[<mailto:ciiakap@outlook.com>]
September 24, 2013

To: CEC Advisory Committee

Thank you for your invitation. I have considered your request. I believe at this time it would be beneficial to our countries to focus on Indigenous Rights, Practices and Inherent Ancestral Laws. I believe that it is the "States" responsibility to promote these rights and adhere to Indigenous Laws and Practices in their traditional territories. I can not advise this committee as the "States" must be seeking agreements with individual Nations. Sovereignty continues to be an issue on-going and acknowledging rights, laws and practices of Indigenous Peoples. This is the only advice I can offer you at this time. Implementing and promoting peoples human rights is the best approach. The "States" have a responsibility as duty bearers and hope that they will work on Nation to Nation basis with Indigenous Peoples. Continuous efforts have been made by "States" to ignore Indigenous Nations with right to withhold consent and implement/accommodate their rights. There are still many concerns about lowered environmental standards and assessments. I look forward to "States" moving towards their responsibilities of Indigenous Rights to Nationhood and hope this occurs. There appears to be serious issues still in conflict.

Regards,
Ciiakap

Kathy and Rick Dahl Canada Email address: kathysdahlhouse@gmail.com

What is Canada doing to fulfill its commitments to North American Agreement on Environmental Cooperation?

The NAAEC commits all three governments to maintaining and building strong environmental laws. It seeks to “promote transparency and public participation in the development of environmental laws, regulations and policies...” and to avoid weakened environmental laws that “create trade distortions or new trade barriers.”

August 18, 2013

jpac@cec.org

Joint Public Advisory Committee
Commission for Environmental Cooperation
Montreal, Quebec

RE: Public Review of the First Twenty Years of the NAAEC

Dear Members of the Committee:

I appreciate the opportunity to provide my comments to the JPAC. I will leave more detailed evaluations and analyses to those who are more expert in the work of the Council on Environmental Cooperation (CEC) and the Commission than I. My brief remarks are confined to two critical challenges to the implementation process, the lack of proper financial support for the CEC and the reluctance of the NAFTA Parties to support the work of the Commission and allow the NAAEC to function as originally intended and written.

1. Funding

It is highly unfortunate that the Commission's budget remains at approximately \$9 million, the same amount as was provided in 1994, without any adjustment for inflation (with a corresponding reduction in buying power of more than 55%). In contrast, the budget for the Environmental Cooperation Agreement under CAFTA-DR has been more than twice as much (\$19.3 million in 2007). This lack of resources available to the Commission has made it difficult or impossible for the Commission to carry out its mandate, from compiling factual records to providing annual reports. (The 2009 Annual Report was published in August 2013, more than three years late, perhaps because of the lack of adequate staffing.)

2. Lack of Full Cooperation by the NAFTA Parties

The members of the CEC, presumably at the direction of the NAFTA governments, have consistently refused to cooperate with and support the work of the Commission where citizen submissions are involved. In the Ecojustice petition, for example, the Council delayed acting on the citizen submission under NAAEC Article 14 for more than four years after it was submitted and more or less arbitrarily directed that the scope of the investigation of threatened species be narrowed from 197 to only 11, prompting Ecojustice to withdraw the petition in disgust. As Chris Wold has observed, the citizen complaint process is still being treated "as an adversarial, rather than a cooperative, process." So long as this attitude prevails—and it prevails among all three of the NAFTA governments—the citizen submission process will not function effectively.

Delays in responses by governments to the Commission's requests for information, in some instances outright refusals to provide information, continue to hamstring the process.

In closing, I note that the governments (and some NGOs) are fond of blaming deficiencies in NAFTA and/or the NAAEC for the shortcomings in the work of the Commission. There are undoubtedly many ways in which the text of the NAFTA and NAAEC could be improved with regard to environmental matters. For example, the Parties could agree on a more effective process for arbitration and enforcement and broader jurisdiction over the Parties' environmentally unsound measures. However, such modifications are inconceivable in the present political climate. Nor would the process likely be improved if, as President Obama and Senator Clinton both advocated during the 2008 presidential campaign, the key NAAEC environmental obligations were to be incorporated in a revised and amended NAFTA. Arbitration under NAFTA's flawed Chapter 20 procedures has not been utilized *for any issue* in more than twelve years (since *Cross-Border Trucking Services*), and there is little reason to believe it would be used more frequently if jurisdiction extended to the limited environmental obligations now provided under the NAAEC.

In my view, the problem with the NAAEC is in the implementation, or lack of same, in significant part because of the two issues discussed above. What is needed is a political decision by the Parties to provide the commission with proper funding (about \$14,200,000 simply to adjust for nineteen years of inflation) and a willingness to cooperate in the Commission's responses to citizen submissions rather than to thwart them.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. A. Gantz', with a large, stylized circular flourish at the end.

David A. Gantz
Samuel M. Fegtly Professor and Director,
International Trade Law Program

David Kramer

US

Email: david.kramer@rmbo.org

28 August, 2013

Comments: From extensive work, travel, and living across the borders of North America, I have heard praise and complaint for NAFTA. I am not sufficiently informed on the complexities of the agreement, but most of the negative responses to it come from Mexico. There people say the fruits of the agreement are only enjoyed by the owners of large companies at the expense of the campesinos. There has been land degradation as people struggle to adopt industrial land management practices in ill-advised ways to compete with US exports. This is not protecting the biodiversity, national heritage, or wild lands that I believe we should prioritize. Perhaps the exportation of nationally-subsidized goods should not be permitted. I understand that many crops are subsidized in the USA in the name of national defense; keep food production within the borders. I find it rather sinister then that we then export these crops to other countries and undermine the 'national defense' they may have themselves. Additionally, and at the risk of sounding audacious, I posit that the root of our environmental struggles is an ever-expanding population. If our intention is to 'develop' a 'developing' nation such as Mexico, I believe we need to do so keeping in mind the population boom that industrialization brings through more available resources and health care. Perhaps a more holistic 'development' should be offered with this in mind: professional incentives for women; appropriate sex/health education; free, widely-available contraceptives... Just a few thoughts. Thanks for your time!

David Markell
Academia
Florida State Univ. College of Law
US
Email: dmarkell@law.fsu.edu

Comments: I have published several articles as well as a book on the CEC. Hopefully that work will be of some value to you as you do the 20th year review. Some of the work, including a book for Stanford Univ. Press, was an effort to offer a 10-year review of the CEC. We included chapters from leading scholars, NGOs and others from throughout North America in the book. Please go to my faculty website and you can find the book and articles on my CV. I'm happy to send you pdfs if that would be helpful. thanks. Dave Markell

The CEC has been a catalyst for bringing stakeholders together in broad efforts to facilitate cumulative conservation strategies. The threats and scale of environmental issues have changed since the agreements were implemented. Disruptions of ecological services has far outpaced the investments to restore services, curtail losses, and protect species. Though the CEC has had a strong positive impact, losses continue to accumulate. For example, national policies and commodity prices have made the opportunity cost grassland conservation management decision a poor second or even third best use. It is no wonder migratory species that connect countries and habitats are continuing to decline (for most). Accelerated efforts especially in the identification of key migratory habitats that are facing the greatest losses and those at greatest risk combined with level of use by species will help focus the limited resources so they impact the most important habitats and have the greatest outcomes in terms of delaying the loss of biodiversity.

The second key direction is to understand and articulate the value of these important habitats and biodiversity. What are the costs species and habitat loss?

Third, focus on species and habitats that transcend countries borders. Such as grasslands which face similar and distinctly different threats in each country yet service MANY shared species between the countries. This has two justifications for a commerce perspective; first don't pillage your own natural capital unfairly to get a market advantage over the other signatories, and second, don't stimulate actions that reduce the capacity and population stability of shared species just because it serves one countries economic advantage or purpose.

Edda Fernández Luiselli
Coordinadora de Asesores del C. Subsecretario
Subsecretaría de Fomento y Normatividad Ambiental
Mexico
Email: edda.fernandez@semarnat.gob.mx
28 August, 2013

- **¿Cuáles han sido los logros ambientales del ACAAN y el TLCAN? ¿En qué se han quedado cortas las disposiciones de estos convenios? Y en ese caso, ¿está el problema en los acuerdos mismos o en su implementación?**

Los socios del TLCAN negociaron un acuerdo paralelo sobre cooperación ambiental, el Acuerdo de Cooperación Ambiental de América del Norte (ACAAN). A través del ACAAN los países socios del Tratado se comprometen a trabajar juntos para crear conciencia y mejorar la protección del medio ambiente. El Acuerdo exige que cada miembro del TLCAN haga cumplir eficazmente sus propias leyes ambientales.

Mediante el trabajo de la Comisión para la Cooperación Ambiental, establecida en virtud del ACAAN, se han producido mejoras concretas en la gestión de cuestiones ambientales en América del Norte. Con un presupuesto anual de US\$9 millones de dólares, entre algunas de las iniciativas de esta Comisión se incluyen:

- El desarrollo de mejores prácticas para el manejo de químicos tóxicos en América del Norte;
- El establecimiento del primer inventario nacional de emisiones en México; y
- La implementación de la Iniciativa de Conservación de Aves en América del Norte, que provee recursos para programas de conservación de las aves en los tres países;
- Promueve las mejores prácticas para abordar la interacción entre el medio ambiente, la economía y el comercio.

Asimismo, con la entrada en vigor del TLCAN, Estados Unidos y México crearon dos instituciones binacionales. La Comisión de Cooperación Ecológica Fronteriza proporciona apoyo técnico para el desarrollo de proyectos de infraestructura ambiental en la región fronteriza de ambos países. El Banco de Desarrollo de América del Norte ayuda a financiar estos proyectos. Hasta la fecha, estas instituciones han proporcionado casi US\$1,000 millones de dólares para 135 proyectos de infraestructura ambiental con un costo total calculado de US\$2,890 millones de dólares; asimismo, han asignado US\$33.5 millones de dólares en apoyos y US\$21.6 millones de dólares en becas para más de 450 proyectos ambientales a lo largo de la frontera. El gobierno mexicano también ha hecho importantes inversiones en protección ambiental, aumentando el presupuesto federal para el sector ambiental en un 81% entre 2003 y 2008.

- **¿Ha logrado la CCA los objetivos para los cuales fue creada? ¿Son dichos objetivos adecuados ante los retos ambientales a los que hoy se enfrenta América del Norte?**

¿Ha logrado la CCA los objetivos para los cuales fue creada?

La Comisión para la Cooperación Ambiental (CCA) ha logrado cumplir el objetivo que le dio origen, el cual fue apoyar la cooperación entre los tres socios comerciales del Tratado de Libre Comercio de América del Norte (TLCAN): México, Estados Unidos y Canadá.

La CCA ha aportado un sin número de beneficios relacionados con cuestiones ambientales en la Región de América del Norte y que han sido ampliamente documentados.

¿Son dichos objetivos adecuados ante los retos ambientales a los que hoy se enfrenta América del Norte?

Sin duda, la situación que guarda el medio ambiente en América del Norte no es el mismo de cuando se originó la CCA hace 20 años. Uno de los retos apremiantes en la actualidad es el cambio climático y cómo enfrentar sus efectos.

México, Estados Unidos y Canadá tienen que trabajar en esquemas que fomenten la reducción de emisiones de gases de efecto invernadero (GEI). Un camino a explorar aún es la compensación de emisiones GEI, para lo cual es necesario crear un mercado de bonos de carbono. Dicho instrumento debiera establecer metodologías y reglas de operación que hagan accesible dicho mercado para los tres países.

Afianzar el intercambio de experiencias en la región de acciones emprendidas para enfrentar el Cambio Climático en cada uno de los países. Las acciones pueden ir desde la elaboración de nueva regulación en la materia; instrumentos económicos como incentivos fiscales; presentación del tema ante el legislativo; fondos de financiamiento; creación de capacidades en los gobiernos locales; intercambio e innovación tecnológica; diseño de atlas de riesgo; integración de grupos de trabajo interministeriales, académicos, del sector productivo, y/o de organizaciones de la sociedad civil.

Por otro lado, hay retos que han sido subsanados y que no se miran más como desafíos. Tal es el caso de los fines por los cuales fue creada la Comisión de Cooperación Ecológica Fronteriza (COCEF) y el Banco de Desarrollo de América del Norte (BDAN) en 1993, en el marco del Tratado de Libre Comercio de América del Norte (TLCAN). La COCEF y el BDAN se enfocan a mejorar las condiciones ambientales de la región fronteriza entre México y Estados Unidos y fomentar el bienestar de los habitantes de ambas naciones.

Tras casi 20 años de trabajo, las condiciones ambientales de la frontera han mejorado, más en áreas de agua potable, alcantarillado y tratamiento de aguas residuales, y pavimentación de vialidades. Sin embargo, es necesario revisar o rediseñar los lineamientos de la CoCEF de los proyectos que son sujetos a apoyo técnico y de financiamiento, ajustándolos a los retos que hoy en día enfrenta esta región: desarrollo urbano sustentable; efectos al cambio climático; mercados de aprovechamiento de residuos; proyectos de energía renovable a pequeña y mediana escala.

- **¿Han el ACAAN y las disposiciones ambientales del TLCAN encarado adecuadamente los asuntos ambientales relacionados con el libre comercio en América del Norte?**

La firma del ACAAN y la creación de la Comisión para la Cooperación Ambiental obedecieron a la preocupación de que el libre comercio pudiera perjudicar el medio ambiente al alentar el surgimiento de refugios para la contaminación merced a normas ambientales laxas o a una inefectiva aplicación de la legislación ambiental.

El Acuerdo de Cooperación Ambiental de América del Norte señala que cada uno de los países firmantes, “garantizará que sus leyes y reglamentos prevean altos niveles de protección ambiental y se esforzará por mejorar dichas disposiciones”. También establece que cada una de las Partes “aplicará de manera efectiva sus leyes y reglamentos ambientales”. La CCA desempeña un papel importante tanto al informar sobre el grado en que los gobiernos del TLC están acatando sus compromisos ambientales, como al ayudarlos a mejorar la aplicación de sus leyes en esa materia.

El TLC cuando se trata el medio ambiente, tuvo en cuenta sobre todo el fortalecimiento de las leyes ambientales, asegurando que así no provocaría la creación de los llamados refugios de contaminación o una “carrera al naufragio” en general para las normas ambientales.

El ACAAN, está bien constituido, el problema es que cada estado tiene su propia Ley con la que se protegen de cualquier reclamo que se les haga respecto al Medio Ambiente, en donde un ejemplo claro, es donde los ciudadanos presentan todas las pruebas y argumentos posibles para demostrar “la violación” a las Leyes del Medio Ambiente, sin embargo la respuestas del Gobierno, son “argumentaciones”, a la falta de pruebas de las cuales provocan dicho daño al ambiente. Este acuerdo debería ser integrado en las Leyes Locales de cada una de la partes, para que sea cumplido sin problema alguno y así evitar el incumplimiento de dicho acuerdo firmado, con la intención de proteger al Medio Ambiente.

- **¿Cómo se podría mejorar la implementación del ACAAN y las disposiciones ambientales del TLCAN?**

Los contextos y las capacidades de los tres países son muy distintos. A pesar de que los retos hay que afrontarlos como región los medios de los cuales dispone cada una de las partes varían de manera importante. Por lo anterior es de suma importancia que se logre la estandarización de criterios y lograr una conceptualización conjunta para que los distintos términos no queden a interpretación de cada país.

Aunado a esto se debe de hacer más fuerte la legislación en materia ambiental y dicha legislación debe de ser vinculante para que se pueda asegurar el cumplimiento de ésta.

- **¿Hay algún tema importante que la CCA no haya abordado en los últimos 20 años?**

La CCA ha sido muy precisa en base a los temas que se abordan, incluyendo la protección y mejoramiento del medio ambiente de los territorios. Promoviendo el desarrollo sustentable en apoyo a políticas ambientales y a la economía.

Está encaminada a proteger y conservar incluyendo la flora y fauna silvestre fortaleciendo la cooperación para elaborar y mejorar las leyes y reglamentos mejorando su observancia y aplicación.

- **A la luz de los últimos 20 años, ¿cuáles deberían ser las prioridades de la CCA para la próxima década y allende?**

Los últimos 20 años de trabajo de la CCA han sido muy favorables para el cuidado y conservación del medio ambiente de la zona fronteriza México – Estados Unidos. Sin embargo, hay mucho camino por recorrer, por lo que es muy importante aprender de los éxitos y fracasos del camino andado para poder lograr incrementar la colaboración entre los tres países que forman parte de la misma.

La CCA, representa la continuidad de un esfuerzo *trinacional* que pretende dar respuesta a los diferentes retos y desafíos que enfrenta la región en materia ambiental. Por ello, se sugiere que la CCA trabaje, entre otras, en las siguientes prioridades para los próximos años:

- Economía verde.
- Producción y consumo sustentable.
- Manejo integral y disposición final ambientalmente adecuada de los residuos.
- Evitar la entrada ilegal en la frontera de residuos de manejo especial, tales como residuos electrónicos y llantas de desecho.
- Reducir la contaminación al aire derivada de los tiempos de espera en los puntos de entrada de la frontera.

- Fortalecer el intercambio de tecnologías que permitan contar con una eficiencia energética en los tres países.
- Mitigar los efectos del cambio climático, a través de la reducción de las emisiones de gases de efecto invernadero.
- Adaptación al cambio climático en comunidades indígenas, a través de acciones concretas que permitan a las comunidades enfrentar los efectos del cambio climático y adaptarse a ellos.
- Remediación de suelos contaminados.
- Contar con un inventario de emisiones de gases de efecto invernadero homologado en los tres países.
- Estandarización de las metodologías para los reportes de emisiones de gases de efecto invernadero a la atmósfera.
- Prevención y atención a incendios forestales.
- Conservación de la biodiversidad, ya que la pérdida de la biodiversidad van en aumento, afectando la capacidad de los ecosistemas para prestar servicios.
- Protección de fauna y vida silvestre en zonas fronterizas.
- Aplicación efectiva de la legislación ambiental en la frontera.
- Desarrollar fuentes de datos ambientales actualizadas y mejoradas a fin de que sirvan como herramientas para la toma de decisiones.
- Fortalecer la cultura ambiental en la región, a fin de que la población se vuelva más participativa y ayude en el cuidado y conservación del medio ambiente.
- Generar información puntual para que la población conozca los impactos de malas prácticas, tales como la quema de llantas a cielo abierto, la quema y el uso de plaguicidas; la disposición inadecuada de residuos químicos y sólidos; entre otros.
- Fomentar la participación de los gobiernos federales, estatales y municipales, así como de la iniciativa privada, para contar con objetivos comunes y desarrollar un trabajo en equipo que permita obtener mejores resultados y un mejor uso de los recursos.
- Atención a desastres naturales.

Ms. Erin Youngberg
Rocky Mountain Bird Observatory
USA
Email: erin.youngberg@rmbo.org
23 August, 2013

Comments: I'd like to see the CEC focus on Biodiversity Conservation, particularly for migratory species and shared ecosystems like Grasslands in the next 10 years. Grasslands are the most quickly vanishing habitat in North America, as are the species of birds associated with them.

Esther Tapia
XVI Regiduría Naucaalpan
Mexico
Email: tey.tapia@yahoo.com.mx

En aras de fortalecer el estudio del medio ambiente, así como aplicar y generar las políticas públicas que México necesita, se requiere un trabajo vinculatorio en México dado que los crímenes medioambientales que se llevan a cabo en mi país, no cuentan con un contrapeso proveniente de los Estados Unidos ni de Canadá, y sugiero se lleve a cabo un estudio particular al respecto para que México se encamine cuanto antes a una política de protección ambiental como nuestros vecinos del norte.

Fawn Knox Email: fawnfknox@gmail.com
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28 August 2013

Attn. Joint Public Advisory Committee

To the Commission on Environmental Cooperation:

Re: Public input on NAAEC successes and failures
Canada's weakened environmental laws and what NAAEC can do

Thank you for this opportunity. Although I am not directly addressing the successes or failures of the NAAEC, I am looking at the role Canada has played as one of the signatories of this agreement.

I appreciate your request for public input on a topic that often polarizes communities when major industrial projects are made public; the protection of our environment is a mounting concern among Canadian citizens. Today our environment and our health appear to be secondary against the dominant backdrop of jobs and the economy. Although I don't speak for all, there is a feeling among my closest Canadian acquaintances that democracy, public involvement and independent critical voices are under attack. The current government has embarked upon a system to downgrade government science and to impede bringing forward scientific evidence into the public debate. Most of the defunding and many of the reductions and policy changes related to environmental protection and enhancement were made with the passing of the 2012 Omnibus Bills C-38 and C45 that have seriously weakened our environment laws and dismantled our research facilities and subsequently, I believe, will lead to an adverse impact on both our health and socio-economic well-being.

The following are examples of diminishing environmental protection and impeding further scientific research and technology within Canada:

- decisions to close major natural and social science research institutions such as the world-renowned Experimental Lakes Area, the National Council of Welfare and the First Nations Statistical Institute;
- closing of The Polar Environment Atmospheric Research Laboratory (PEARL) in Eureka, Nunavut;
- major budget reductions to research programs at Environment Canada, Fisheries and Oceans Canada, Library and Archives Canada, the National Research Council Canada, and the Natural Sciences and Engineering Research Council of Canada;

- shutting down the National Round Table in Environment and Economy (NRTEE) - an arm's length advisory body providing independent advice on environmental protection and economic development.
- gutting the Fisheries Act - severely reducing the protection of fish habitat
- curtailing the protection of the large number of navigable waters
- cutting the Institut Maurice-Lamontagne-the only francophone research centre at Fisheries and Oceans;
- eliminating the water resources strategy group at Environment Canada;
- ending groundwater modelling;
- National Energy Board's recommendations with respect to oil pipeline approvals are now allowed to be overridden by cabinet
- critical habitat of species at risk and many pipeline waterway crossings are no longer under the purview of the NEB
- Kyoto Protocol Implementation Act has been repealed-the only climate change legislation that existed in Canada
- government scientists have been effectively gagged from speaking about peer-reviewed research- sometimes even after its publication in prestigious international journals.
- Canada-China Foreign Investment Promotion and Protection Act (FIPA) will allow foreign corporations the right to sue Canadian governments for legislating in the public interest and protecting our environment, if this agreement is signed. (numerous other trade agreements are in progress-CETA)

In my opinion, Canada has not upheld its commitments as a signatory to this agreement.

While I am grateful that the North American Agreement on Environmental Cooperation (NAAEC or NAFTA Environmental Side Agreement) and the Commission for Environmental Cooperation (CEC) were created in response to the concerns raised that free trade may harm the environment through lax environmental standards or ineffective environmental law enforcement, I am now led to believe that Canada was neither as cooperative as it could have been to maintain the integrity of this agreement nor willing to contribute to its advancement. With the gutting of the national environmental laws, Canada now is at risk of becoming a "pollution haven" for large international corporations.

I read that Canada's specific commitments include:

- to "ensure that its laws and regulations provide for high levels of environmental protection and shall to continue to improve those laws and regulations";
- to "assess, as appropriate, environmental impacts"; and
- to "further scientific research and technology development in respect of environmental matter".

The current laws and regulations no longer reflect these commitments. The current government is not in sync with the objectives set out by the NAAEC and I believe there needs to be a sincere renewal of your mandate and a review to bring Canada back on board with the objectives and obligations set out by this agreement. To accomplish such a task will involve convincing the current government and the industrial corporation counterpart that "*commitments to maintain strong environmental laws, to promote science, to ensure public process*" are to the benefit of all. The undertaking of industrial projects can be less adversarial when these commitments are in place.

When Canadians are assured that the environmental assessment procedures are independent and thorough, that research is respected and funded and that public participation in the development of environmental laws, regulations and policies is restored, then the CEC can state with confidence that Canada is contributing to achieving the goals for which CEC was created.

I wish the best outcome for your organization. We were concerned in 1994 about the protection of our environment; our concerns have been heightened almost 20 years later with diminishing environmental laws and rising environmental violations within Canada.

Sincerely, Fawn Knox

1 West Coast Environmental Law August 14, 2013 letter to NAAEC and CEC
from Andrew Gage and Anna Johnson, staff lawyers

cc Prime Minister's Office
West Coast Environmental Law
Aglukkaq MP Minister of Environment
Tom Mulcair MP NDP Leader of the Opposition
Elizabeth May, MP Leader of the Green Party

Gertrud Konings-Dudin, PhD
Assistant Professor of Biology
El Paso Community College
US
email: gkonings@epcc.edu
19 July, 2013

Subject: Opportunity to provide comments on The first 20 years of NAFTA and the North American Agreement on Environmental Cooperation: Call for information and comments

Hi Irasema. Wie geht es Dir? I hope the summer reached you up there by now. We just enjoyed a few days of real nice drizzling rain and cooler temperatures. I talked to our group about your message and we would respond, but are a little lost about how we should do this. The feeling is that concerning our environment we had to deal only with local and state offices and never felt that there was any NAFTA help or involvement available. As you know we fought the extension of the loop over the mountains through the park - it looks horrific. We are still fighting to at least get an underpass for traffic to and from the park to make access safer and also wildlife friendlier - very frustrating so far. Then the Orogrande mountains will soon come up for the California guy to just "remove" them and ship them to China. No official word about special, rare plants there. If it was archaeologically of interest, we could have a chance. So we really do not know how NAFTA impacted us or could help us in the future. I guess the visibility of the organization in environmental aspects here are zero. We have so little space left in our area to recharge the river with water and the air with oxygen. And this affects not only El Paso, but also Juarez.

But could you give us some guidelines, how we could structure a response?
Hope to get a chance to see you sometimes soon again. Gertrud

MDIE. Gina Jaqueline Prado Carrera

Master en Derecho Internacional Económico por la
Université de Paris 1 Panthéon-Sorbonne, Profesora
Investigadora
Centro de Investigación en Tecnología Jurídica y
Criminológica de la Facultad de Derecho y Criminología
de la Universidad Autónoma de Nuevo León.
Email: gjaquelineprado@yahoo.com.mx

***Resolución de Controversias Ambientales conforme a la V Parte (Artículo 28) del
Acuerdo de Cooperación Ambiental para América del Norte
Gina Jaqueline Prado Carrera****

En la práctica cotidiana, podemos observar como hasta nuestros días la efectiva aplicación de este medio para resolver controversias de orden ambiental y comercial¹ sigue subsistiendo sólo como un adorno que viene a reafirmar en la teoría el nombre que por dicho acuerdo paralelo se ha ganado el Tratado de Libre Comercio para América del Norte y ya por todos conocidos como « *el más verde de los acuerdos comerciales existentes* ». Sin embargo podemos constatar como en la práctica esto ha quedado rebasado, ya que con el sólo hecho de visitar la página de la Comisión de Cooperación Ambiental para el TLCAN² podemos encontrar que hasta la fecha los casos³ que se han presentado bajo el amparo del referido acuerdo paralelo al TLCAN en materia ambiental, la Comisión de Cooperación Ambiental ha resuelto sólo a manera de recomendaciones las peticiones que se han ventilado bajo el mismo⁴.

Es decir, la recomendación efectuada por la CCA del TLCAN sólo, como su nombre lo indica, realiza una sugerencia (que conocemos como RECOMENDACIÓN) al país que incumplió la aplicación de su legislación ambiental a su interior, o bien al que no observó dicha legislación, siempre que se trate de alguna cuestión de implicación

*Master en Derecho Internacional Económico por la Université de Paris 1 Panthéon-Sorbonne, Profesora Investigadora de tiempo completo y coordinadora de la Línea de Derecho Internacional y del Medio Ambiente, responsable del Cuerpo Académico de Derecho Internacional y Sustentabilidad del Centro de Investigación en Tecnología Jurídica y Criminológica de la Facultad de Derecho y Criminología de la Universidad Autónoma de Nuevo León.

¹ Amparada bajo el supuesto del Acuerdo paralelo en materia ambiental(ACAAN).

² www.cec.org

³ Desde la entrada en vigor del TLCAN.

⁴ Las que se han presentado de conformidad con lo estipulado en el Artículo 14 del ACCAN.

comercial y ambiental a la vez en relación a un inversionista de algún país miembro de dicho acuerdo comercial.

En razón a lo anterior, encontramos que la Comisión de Cooperación Ambiental (CCA) para el TLCAN no ha logrado hasta la fecha la aplicación efectiva de dicho acuerdo paralelo⁵, ello en virtud de que desde la entrada en vigor del TLCAN y de su acuerdo paralelo encontramos incompleto este, en lo que respecta a la solución de controversias del mismo.

En efecto, de la simple lectura que efectuemos a dicho acuerdo paralelo, podemos observar claramente como en el mismo se contempla en su artículo 28, referente a la Quinta Parte, sobre las Consultas y Solución de Controversias del mismo que:

“El Consejo establecerá Reglas Modelo de Procedimiento. Los procedimientos garantizarán:..” .

De la simple lectura a dicho artículo se desprende claramente **que el Consejo de la CCA “establecerá Reglas Modelos de Procedimiento”**, situación que hasta la fecha no se ha llevado a cabo o **no se ha completado por el Consejo de la CCA**; situación que considero no ha pasado desapercibida por las Partes integrantes del TLCAN, sino más bien que resulta ésta laguna una oportunidad de alivio favorable para la continuidad de las actividades comerciales en la zona comercial en comento, sin tener por supuesto la oportunidad de hacer valer la totalidad del referido acuerdo paralelo en perjuicio de los países que lo integran. Así es, de ello resulta la ventaja para los comerciantes que realizan sus actividades comerciales de conformidad con el TLCAN; toda vez que mientras no esté completado dicho precepto no podrán imponérseles ninguna de las sanciones económicas derivadas del acuerdo paralelo, ni mucho menos

⁵ Por medio de una Resolución, la cual puede ir desde la sanción económica en forma de multa, hasta la suspensión de la actividad comercial ya sea parcial o total, en forma temporal o hasta definitiva, de la actividad comercial que está afectando al medio ambiente, en el país que se esté omitiendo la aplicación de la legislación ambiental dentro de su territorio.

suspenderse las actividades comerciales⁶ (parcial o totalmente) en el lugar donde se está cometiendo la violación de la legislación ambiental.

Con lo anterior constatamos ampliamente que resulta imposible asimismo aplicar lo señalado en el artículo 39, fracción 3, relativo a la Sexta Parte, Disposiciones Generales de dicho acuerdo, ya que éste remite a las referidas reglas de procedimiento establecidas conforme al artículo 28 y que aún no está completado.

Ahora bien sería inminente, para que en la práctica pueda hacerse valer este acuerdo paralelo, que el Consejo de la CCA, que es integrado por los representantes de las Partes a nivel Secretaría de Estado o su equivalente, o por las personas a quienes éstos designen; completen lo estipulado en el artículo 28, referente a la Quinta Parte, sobre las Consultas y Solución de Controversias del mismo. Pero esta situación no puede darse porque a todas luces predomina la ventaja comercial sobre la protección ambiental por parte de los países que integran dicha Comisión. En efecto, esta situación queda ampliamente reafirmada al encontrar que la CCA para el TLCAN integró un Comité⁷ para la revisión y evaluación del decenio del TLCAN en lo concerniente al acuerdo paralelo en materia ambiental (ACAAN), a fin de recomendar algunas medidas para asistir al Consejo de la CCA en la orientación para la próxima década. Y que de la lectura efectuada al informe de dicho Comité⁸, encontramos la recomendación que sus integrantes hacen a la CCA para que por otro plazo de diez años no completen dicho acuerdo y más aún señalan en su página 59⁹ *“que las partes se comprometan públicamente a abstenerse de invocar la Quinta Parte del ACCAN durante un periodo de diez años.”*

Lo anterior, nos deja claro la prominente ventaja que lleva la actividad comercial sobre la disfrazada protección ambiental que invoca nuestro TLCAN y que supuestamente

⁶ Ver Anexo 36B del ACAAN del TLCAN, que se refiere a la Suspensión de Beneficios; 1. *Cuando una Parte reclamante suspenda beneficios arancelarios derivaos del TLC de conformidad con este Acuerdo, podrá incrementar la tasa arancelaria ...etc.*

⁷ En el año 2003, conformada por seis miembros, quienes representaban a los tres países, es decir dos integrantes por cada país, asignados por los gobiernos de cada país.

⁸ Publicado en la Página de la CCA en junio del 2004.

⁹ De conclusiones y recomendaciones, ver Recomendación 11.

quiere robustecer con un acuerdo paralelo específico para la protección ambiental dentro del índole comercial en dicha zona.

Situación la anterior, que seguirá incrementando las contaminaciones en la zona comercial en la cual estamos inmersos y que no tendrá fin hasta que los países integrantes de la misma se propongan lo contrario.

Cabe señalar para concluir este punto, que en el caso de las peticiones que se han ventilado bajo el amparo del referido acuerdo paralelo (ACAAN) varias de las cuales se han concluido sin entrar al estudio de las mismas en virtud de que no reúnen los requisitos exigidos para su presentación, los cuales se contemplan en el artículo 14 del ACAAN, por lo que resulta evidente la falta de desconocimiento del acuerdo que tratamos para poder dar seguimiento a dichas denuncias bajo esta modalidad. Aunado esto a que la ciudadanía desconoce dicho acuerdo y que los países no han hecho a su interior nada por para que todo ciudadano lo conozca y pueda hacer valer denuncias en este ámbito, situación que de llevarse a cabo contribuiría enormemente a la creación de una cultura inmersa en la real lucha por la protección ambiental no sólo en el país en cuestión, sino dentro de la zona comercial del tratado.

Por otra parte, lo que si vale la pena señalar es el papel de la CCA del Tratado de Libre Comercio para América del Norte, ya que la misma tiene un sistema de información para el público a efecto de que esté al pendiente, o bien al menos conozca el resultado de las recomendaciones que la misma emite a los países involucrados en inaplicaciones de su legislación ambiental, ya que en algunos casos los exhibe públicamente (esto es si aprueba que se hagan públicos los EXPEDIENTES DE HECHOS derivados de una petición conforme al ACAAN) para procurar que el mismo ya no incurra en posteriores violaciones de su legislación. Cuestión que podemos entender como sanción moral ya sea en el orden local, regional e internacional comercial. Pero, para que esta exhibición pública se dé, debe la Comisión de Cooperación Ambiental recomendar la publicación

del expediente de hechos final en la página de la CCA y que puede ser visitada por cualquier persona por medio del Internet.



August 30, 2013

Commission for Environmental Cooperation
Joint Public Advisory Committee
393, rue St-Jacques Ouest, Bureau 200
Montreal (Quebec) Canada H2Y 1N9

RE: Commission for Environmental Cooperation Comments

Commission for Environmental Cooperation and Joint Public Advisory Committee:

As we approach the 20th Anniversary of the creation of the Commission for Environmental Cooperation (CEC), the American Trucking Associations (ATA) commends the CEC and the Joint Public Advisory Committee (JPAC) for its hard work and successes achieved over the last two decades. As the CEC and JPAC prepare to build upon its accomplishments, it is now time to map a path ahead to ensure environmental sustainability and economic growth between our three countries proceeds in a logical and coordinated manner.

ATA is the largest national trade association for the trucking industry with nearly 2,000 members. Through its federation with other trucking groups, industry-related conferences, and its 50 affiliated state trucking associations, we represent more than 37,000 members covering every type of motor carrier in the United States. ATA believes that the work of the CEC and JPAC has served a critical role in advancing better coordination in sharing data, research, resources, and funding between the United States, Canada, and Mexico. In order to continue this upward trajectory of success, ATA recommends that the CEC and JPAC work towards harmonizing truck, engine, and fuel standards, and renew its efforts to improve cross-border efficiencies throughout North America. Let us first expand upon the former.

An efficient North American transportation network leads to improved productivity, emission reductions, fuel savings, and increased profitability. As the U.S. Environmental Protection Agency (EPA) continues its efforts to reduce emissions through engine, fuel, and vehicle regulation, it is imperative that such regulations are harmonized and implemented on similar timelines in both Canada and Mexico.

To ensure competitive advantages are not recognized by fleets in neighboring countries, to achieve optimal environmental gains, and to bring more enforcement certainty for fleets traveling outside their countries of origin, the CEC and JPAC should continue to focus on efforts to harmonize engine, vehicle, fuel, and potential trailer regulations across North America. For example, the availability of ultra low-sulfur diesel fuel (ULSD) across Mexico is lagging far behind that of the United States and Canada. ULSD fuel use in 2007 and newer engines certified to United States and Canadian emission standards is critical in achieving particulate matter and nitrogen oxides emission levels. Failure to use ULSD fuel in such engines results in higher emission limits and voids



original equipment manufacturer warranties. Harmonization of fuel standards is critical in furthering the adoption of the low-emission diesel engines across north America.

Another regulatory example is EPA's adoption and implementation of first-ever greenhouse gas regulations for 2014-2018 model year vehicles and engines. While Canada has adopted equivalent truck and engine regulations for 2014 model year equipment and beyond, Mexico again lags behind a unified North American approach. As EPA and the U.S. Department of Transportation begin to develop the next round of truck greenhouse gas and fuel consumption regulations post 2018, the potential for a new trailer regulation component appear likely. Again, JPAC can serve a critical role in helping to harmonize and implement both the current and upcoming truck standards as part of its future agenda.

We are all too familiar that congestion at border crossings is projected to substantially increase in the future. ATA recognizes that there are important factors and changes that need to be considered and implemented to improve border-crossing operations: from reducing wait-times and developing new border infrastructure, to changing government regulations and business practices that inhibit the efficiency of cross-border movements. These efficiencies will evolve over time as carriers develop processes and strategies to implement these changes operationally. JPAC can serve as the conduit to uniformly expedite these necessary changes.

On the border between the United States and Mexico, there is a continued need to finalize the implementation of NAFTA's trucking provisions to reduce the need for additional motor equipment to move trailers across the border. ATA remains committed to ensuring that environmental improvements and safety on our highways remains priority one in our industry and that NAFTA's trucking provisions can be successfully implemented. We believe that the pilot program will prove this to be true and that JPAC can serve an important role in ensuring actual freight efficiency improvements are quantifiable and justified.

Again, thank you for the opportunity to submit ATA's thoughts on the path ahead for the CEC and JPAC. We commend your efforts for all that you have accomplished to date and we look forward to working with you to ensure that your future goals and objectives are achieved. If you need of any further information, please contact me at 703-838-1879 or gkedzie@trucking.org.

Sincerely,

A handwritten signature in black ink, reading "Glen P. Kedzie", is positioned above a vertical line.

Glen P. Kedzie

Vice President, Energy & Environmental Counsel

Elaine Golds Canada Email address: egolds@sfu.ca
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I am aghast by the recent changes made to important environmental legislation in Canada by the present government. The Canadian government's recent actions show that the North American Agreement on Environmental Cooperation (NAAEC) has failed to ensure that the signatories to the agreement maintain high environmental standards.



JPAC Review: The first 20 years

Case Study of Pollution Prevention: Article 13 Investigation of the Lead Battery Recycling Industry

August 29, 2013

Perry Gottesfeld and Marisa Jacott

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CEC involvement in the lead battery recycling industry

In February 2012, the Secretariat of the Commission for Environmental Cooperation (CEC) initiated an independent examination into the environmental hazards and public health issues associated with the transboundary movement and recycling of used lead batteries in North America. This investigation, which concluded with the release of the final report “Hazardous Trade?” in May 2013, demonstrates the important role that the CEC can play in highlighting an important but little understood environmental issue impacting public health in communities across North America. Moreover, to the extent that this issue also encompasses environmental consequences of trade and commerce in the NAFTA region, as well as the impact of asymmetric environmental standards among Canada, Mexico and the United States, it is all the more pertinent to consider as we approach the 20th anniversary of both the North American Free Trade agreement and its environmental co-agreement, the North American Agreement on Environmental Cooperation (NAAEC).

This investigation of the handling of used lead batteries was undertaken not as a result of any external petition, but instead under Article 13 of the NAAEC. This clause empowers CEC staff to use their own expertise and judgment to bring important issues to the fore that may not be a focus of powerful interest groups or environmental advocates. The purpose of this mechanism is to ensure that efforts are taken to remove any comparative advantage based on lower environmental standards in any jurisdiction. This provision was purposely designed to avoid a “race to the bottom” in environmental and public health protections.

The significance of lead poisoning prevention has been greatly heightened over the 20 years since the inception of the Commission as a result of ongoing research linking lower levels of exposure with adverse health outcomes. This growing concern has been highlighted by public health authorities including the World Health Organization (WHO) and the U.S. Centers for Disease Control and Prevention (CDC) who have updated their guidance on childhood lead poisoning in recent years. Despite the increase in the weight of the scientific evidence linking low-level exposures to negative health outcomes, regulations in North America have failed to keep up.

Although the U.S. updated its ambient air lead standard for lead under the Clean Air Act in 2007 for the first time in 30 years, these changes do not fully take effect until 2014. Related regulations updating standards for secondary lead smelters were introduced only in 2012 (*National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting* (“Secondary Lead Rule”), 77 Fed. Reg. 556, 559, 564 Jan. 5, 2012) and require that emissions from these plants be reduced by 90%. However, no similar regulatory initiatives have been introduced in Canada or Mexico.

By itself, the lack of action on the part of governments in North America to seek continual improvement in pollution prevention laws governing this industry as mandated under the NAAEC has the potential to create inequities that can be exploited if left unchecked. Therefore the actions on the part of the CEC in this case demonstrate the desired role of this body as envisioned in the NAAEC agreement two decades earlier.

Therefore the CEC Secretariat deserves praise for initiating this independent investigation and for conducting a thorough and timely investigation of the transboundary movement of used lead batteries. In addition, the final report should be commended for its recommendation that the Parties to the NAAEC work to improve standards to provide “equivalent levels of environmental and health protection.” Clearly this is the underlying goal in all of the Commission’s efforts but it is an especially crucial role in the context of setting standards for a hazardous, pollution-intensive industry with direct implications for public health.

Although the NAAEC also calls for cooperation on pollution prevention and continual improvement, it is difficult to prioritize areas and industrial sectors where such cooperation is most needed. In taking on this Article 13 investigation, the CEC has elevated the significance of this issue to public health and highlighted priority actions needed. The challenge now for the CEC is to follow through on the issues raised regarding the disparities in the regulatory structures identified during the Article 13 investigation.

Before the CEC initiated this investigation, the Joint Public Advisory Committee (JPAC) issued a statement in December 2011 noting the increase in transboundary shipments in used lead batteries from the U.S. to Mexico and urged the Commission to follow up on its 2007 report “Practices and Options for Environmentally Sound Management of Spent Lead-acid Batteries within North America” and to “recommend actions to promote compliance with the environmentally sound management criteria” (JPAC statement December 7, 2011). Article 16(4) of the NAAEC, states that the Joint Public Advisory Committee (JPAC) “may provide advice to Council on any matter within the scope of this agreement.” Clearly this case demonstrates the importance of the work of the JPAC in providing direction to the Commission in highlighting significant issues of environmental concern and calling for a response.

The CEC Secretariat’s final report “Hazardous Trade?” demonstrates that there has been a significant increase in used lead battery exports to Mexico from the U.S. over the past decade and that this trend has accelerated in recent years. The report acknowledges that laws in the U.S, Mexico, and Canada do not provide equal levels of environmental and public health protection. It concludes that the U.S. does have the most stringent requirements and Mexico the most lax standards for emission controls within North America. Although the investigation did not attempt to document any direct evidence that these disparities were impacting public health,

the report left no doubts that vulnerable populations, including children and workers in these industries, were not provided equal levels of protection.

The recommendations in the report outline specific opportunities for improvement and cooperation among the governments. Among these are improving information on emissions and employee exposures, closing the performance gap among lead battery recycling plants, addressing the disparity in regulatory frameworks, and fostering regional cooperation. With the release of the final report, the perception is that the CEC is now leaving the governments to fend for themselves in implementing these broad recommendations without any timeline or even any specific roadmap to accomplish these objectives. Therefore, the Commission now needs to develop a specific plan to follow up on these recommendations and to provide substantive technical assistance to see that the necessary changes are implemented.

The recently approved “2013-14 Cooperative Work Plan for the Commission for Environmental Cooperation” calls for ongoing activities to enhance “the environmentally sound management of the secondary lead processing industry.” (http://www.cec.org/Storage/151/17726_OP_High_level_doc_July10rev2e2-clean.pdf) It is clear that the CEC is not intending to end all activities focused on this sector after outlining the major technical and legal differences among the three NAFTA countries. However, with the limited reach of the Cooperative Work Plan the focus of the CEC appears to be more on keeping this industry globally competitive and creating jobs, rather than in helping governments create an equal playing field throughout the three countries.

Future efforts are needed to help the governments take practical, and readily achievable steps to follow up on these disparities and develop a comprehensive program to help balance trade and industrial practices in the lead battery recycling industry. The CEC should establish a formal mechanism to provide technical assistance or to facilitate peer-exchange between relevant government agencies to address the report’s recommendations. Left on their own, such efforts may not get the ongoing attention that they deserve and governments may respond only with ad hoc efforts. Without a more comprehensive approach and external monitoring of the situation, such efforts may falter over time as agency priorities shift.

The Article 13 lead battery investigation also identified significant disparities among the three countries in other broader environmental programs that were previously prioritized by the CEC. For example in the past the CEC with the support of the U.S. and Canadian governments had provided significant assistance to Mexico in establishing its RETC requirements for the disclosure of site-specific emissions that were intended to mirror U.S. provisions of the Toxic Release Inventory (TRI) and the Canadian National Pollutant Release Inventory (NPRI). These laws have had a significant impact in reducing emissions from a wide range of industries that were forced to confront annual data on their waste streams and explain such practices to neighboring communities. But data in Mexico on emissions even from extremely

hazardous industries, including lead battery recycling, are often incomplete, inconsistently reported, and not available in a user-friendly database.

To help avoid the potential for incomplete follow up and inconsistent responses among the three governments, the Council and the Commission must provide strategic leadership, technical assistance, and a mechanism to track progress on implementing its recommendations over time. Given the comprehensive approach followed by the CEC Secretariat in outlining very specific areas for improvement needed to address lead battery industries across North America, it is especially important that a formal mechanism be established to assist in its implementation. This would allow the CEC to monitor progress, identify ongoing deficiencies, or highlight new concerns that emerge in the future. In addition, an ongoing commitment to this activity would contribute directly to the CEC's mission to strengthen healthy communities and ecosystems, as well as to ensure that trade and environmental progress might proceed in a mutually supportive manner within the NAFTA region as envisaged by the NAAEC nearly twenty years ago.

Recommendations for improvement

In 2007 the CEC issued a report with specific recommendations for lead battery recycling in North America. However, there was no mechanism in place to follow up either by the CEC or on behalf of the three governments. Then five years later, evidence emerged that many of the problems identified in 2007 had not been resolved as the industry grew and as the transboundary shipments of used lead batteries increased exponentially. This experience demonstrates the need for formal processes to monitor developments and government initiatives, prompt specific actions, provide technical assistance where needed, and review progress over time.

To provide continuity and build on the excellent progress CEC has made in drawing attention to the environmental issues inherent in lead battery recycling throughout North America, a task force (e.g. working group or expert committee) should be established to monitor progress against the report's recommendations. Such a task force may best be approached as an advisory committee to the Joint Public Advisory Committee (JPAC) or a body that reports directly to the CEC Executive Director. In either case this body should include representatives of all three governments, experts in pollution controls, occupational health, and legal frameworks, along with representatives of NGOs with active programs in lead poisoning prevention.

This task force should meet in person at least annually and hold telephone conferences to conduct oversight, monitor progress, and report back to the CEC Secretariat. This body could also be charged with identifying obstacles that governments may be facing in implementing recommendations of the "Hazardous Trade?" report and to help design technical assistance that is appropriate for specific needs that arise. This group should be the central clearinghouse in response to the report's recommendation to "foster regional cooperation and

technical assistance” through the CEC or other venues. (“Hazardous Trade? p. 51)

Under Article 9(5)(a) of the North American Agreement on Environmental Cooperation (NAAEC) the Council has the ability to form working groups or expert committees for this purpose. This effort may also be linked to the CEC’s program on Healthy Communities and Ecosystems and the current initiative on “Improving the Economic and Environmental Performance of the North American Automotive Industry Supply Chain.” It may also be beneficial to hold joint meetings or consecutive meetings with the Auto Suppliers Partnership Ad hoc Advisory Group to facilitate dialogue and highlight possible areas of cooperation.

One of the key findings in the “Hazardous Trade?” report is that “there are gaps in the application of and compliance with the reporting requirements for lead emissions from secondary smelters under Mexico’s PRTR program, Registro de Emisiones y Transferencias de Contaminantes (RETC).” (“Hazardous Trade? p. 44) In fact over 50 percent of Mexico’s secondary lead smelters did not report lead emissions during the time period under the investigation. Ironically, one of the most successful initiatives that the CEC undertook is an integrated database of hazardous emissions for all three countries under the “Taking Stock” program. In the case of an especially hazardous industry like lead battery recycling, this type of reporting mechanism is even more important than for industrial sectors.

Based on CEC’s extensive investment in improving the data reporting, collection, and distribution under this program, efforts to close this gap in Mexico should be a priority. CEC has already highlighted this need in its recommendation to “ensure accurate and comparable information on lead emissions.” (“Hazardous Trade? p. 51) To begin, the CEC should commit to assisting Mexico to overcome this challenge. In addition, it should include a chapter in the next “Taking Stock” report and establish a web site link to specifically track and compare lead emissions from smelters in all three jurisdictions.

In addition, the CEC should support efforts to monitor community exposures and possible environmental contamination from lead emissions in populated areas near lead battery recycling facilities in Mexico. This research would fill an important gap identified by the CEC that “In Mexico, very little information is available on lead contamination near smelters.” (“Hazardous Trade? p. 40) This information would provide useful data to better understand the potential impacts and societal costs of inaction and help monitor progress over time. It would also facilitate programs to identify populations at greatest risk where interventions are needed.

As we approach this 20-year anniversary, we should remember that the core principle of the NAAEC is to foster economic growth while facilitating continuous improvement in environmental performance and effective enforcement of regulations through regional cooperation. This case study offers a clear example of hazards that are being concentrated in one jurisdiction with lower pollution and public health standards that stems from asymmetric environmental standards and

inadequate enforcement that is facilitated by free trade. With the excellent groundwork completed, the Council is now poised to take up this challenge to share experience and expertise in order to raise the bar across North America to provide equivalent levels of protection for this important, yet hazardous, industry. Herein lies a clear opportunity for the Council and Commission to demonstrate their full potential in facilitating cooperation to address the core mission and mandate of the NAAEC.

Mr. Greg Block

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7 October 2013

Comments: Attached is a link to an article written on the 10 year anniversary of NAFTA, though the observations on trade and environment remain current, by and large.

<http://digitalcommons.lmu.edu/ilr/vol26/iss3/5/#.UIMY5ayQwFE.email>

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29 August, 2013

Hi

I would like to suggest that returning to a previous vision of linking environmental impacts to Children's Health internationally would be prudent.
When addressing environmental concerns, vulnerabilities, inequality etc. the arguments get a lot stronger when children and their health are considered or used as an end point.

As environmental concerns have previously interfaced with sustainable development bringing back a child health focus into CEC deliberations and decision making could assist in dealing with critical environmental issues and dilemmas.

Happy to discuss this point of view further.

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Es necesario que se incluya en la discusión el tema del MANEJO INTEGRAL DE MARES Y COSTAS con una visión REGIONAL (Canadá, Estados Unidos y México).

Salvo los proyectos de LME (Grandes Ecosistemas Marinos) no se ha hecho ningún esfuerzo multinacional para armonizar las políticas de gestión de las zonas marinas y costeras.

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Acuerdo de Cooperación Ambiental de América del Norte (ACAAN)

- Cuáles han sido los logros ambientales del ACAAN y el TLCAN? ¿En qué se han quedado cortas las disposiciones de estos convenios? Y en ese caso, ¿está el problema en los acuerdos mismos o en su implementación?

Esta Dirección de Área no cuenta con información para dar respuesta, se exhorta la participación de la Unidad Coordinadora de Asuntos Internacionales (UCAI) de la SEMARNAT para emitir opinión al respecto, en virtud de las Reuniones de Trabajo que realiza directamente dentro del Comité Consultivo Nacional del Acuerdo de Cooperación Ambiental de América del Norte (CCN), en las cuales se consensan las actividades, reglas de operación y Programa de trabajo de dicho Comité.

- ¿Ha logrado la CCA los objetivos para los cuales fue creada? ¿Son dichos objetivos adecuados ante los retos ambientales a los que hoy se enfrenta América del Norte?

Nuevamente, se sugiere que la Unidad Coordinadora de Asuntos Internacionales (UCAI) de la SEMARNAT, sea quien realice un análisis del cumplimiento de los objetivos de la CCA, en virtud de ser representante alterno de esta Secretaría y contar con los elementos para emitir una respuesta adecuada.

- ¿Han el ACAAN y las disposiciones ambientales del TLCAN encarado adecuadamente los asuntos ambientales relacionados con el libre comercio en América del Norte?

En 1995 Canadá, Estados Unidos y México en el seno de la Comisión de Cooperación Ambiental (CCA), a través de la resolución 95-05 crearon el Grupo de Trabajo de Manejo Adecuado de Sustancias Químicas (MASQ o SMOC, por sus siglas en inglés), con el propósito de establecer los mecanismos de cooperación regional en el manejo adecuado de sustancias químicas a través de su ciclo de vida, considerando medidas de reducción en la fuente y de prevención y control de la contaminación, en especial para aquellas sustancias tóxicas y persistentes.

En cumplimiento a lo anterior, se han desarrollado Planes de Acción Regional para América del Norte (PARAN) de manejo de sustancias químicas de interés para los tres países (DDT, clordano, BPCs, mercurio y lindano) y otro combinado para dioxinas, furanos y hexaclorobenceno); por lo que desde la perspectiva del Grupo de Trabajo SMOC, del cual es parte esta Dirección de Área, podemos decir que si se ha enfrentado de manera adecuada la problemática ambiental sobre sustancias químicas; no obstante, el impulso de proyectos en el país no ha logrado consolidar hasta el momento una infraestructura adecuada.

Aun cuando en la Ley General del equilibrio Ecológico y Protección al Ambiente (LGGEPA) se menciona como principio de Política Ambiental que las autoridades ambientales tengan igualdad de circunstancias ante las demás naciones, a fin de promover la preservación y restauración del equilibrio de los ecosistemas regionales y globales; hoy por hoy es una realidad que no se ha dado continuidad a los proyectos ambientales sobre el manejo de sustancias químicas, a fin de homologarlos con Estados Unidos de América o Canadá.

- ¿Cómo se podría mejorar la implementación del ACAAN y las disposiciones ambientales del TLCAN?

Con la asignación de recursos adecuados por parte de México, ya que la agenda del Manejo Adecuado de Sustancias Químicas (MASQ) es amplia frente a los recursos que se han destinado para ello.

En este sentido es importante señalar que, en junio de 1999 a través de la resolución 99-02 la CCA estableció las directrices para desarrollar un Plan de Acción Regional de América del Norte sobre Monitoreo y Evaluación Ambiental (PARANME) que apoyara las actividades de cada uno de los Planes de Acción Regionales debido a que en nuestro país no existen programas rutinarios de monitoreo sobre sustancias tóxicas persistentes, por lo que no se tienen inventarios formales de las mismas, se desconocen los mecanismos de transporte, rutas y acumulación en los ecosistemas receptores; tampoco se tiene un conocimiento pleno sobre su exposición y riesgos implicados.

El desarrollo de un plan de monitoreo y evaluación ambiental permanente implica un enorme reto para la agenda ambiental mexicana ante la falta de programas, infraestructura, personal capacitado y recursos económicos, pues la Secretaría cuenta con poco personal para cumplir con una agenda tan extensa y no se tienen asignados recursos para la evaluación y monitoreo ambiental de sustancias tóxicas de atención prioritaria (arsénico, cadmio, mercurio, plomo, bifenilos policlorados, dioxinas, furanos, entre otras).

- ¿Hay algún tema importante que la CCA no haya abordado en los últimos 20 años?

Agroecología, Química verde, Producción y Consumo sustentable.

El tema de Química verde representa un nuevo reto para el sector privado y gubernamental debido a la ardua tarea de incentivar la sustitución de sustancias peligrosas por otras de menor peligrosidad, manteniendo o mejorando sus propiedades iniciales.

Con respecto a la Producción y Consumo sustentable, hace aproximadamente 3 meses que en la Ley General del Equilibrio Ecológico y Protección al Ambiente (LGEEPA) se adicionó como parte de los instrumentos de política ambiental de naturaleza preventiva, la identificación de los productos, bienes, insumos y servicios con menor impacto ambiental, basándose en parámetros y criterios ambientales a lo largo de su ciclo de vida, el cual deberá impulsarse de manera significativa, ya que generalmente la atención se enfoca en el manejo de los residuos peligrosos, es decir, el final del ciclo de vida de un producto.

- A la luz de los últimos 20 años, ¿cuáles deberían ser las prioridades de la CCA para la próxima década y allende?

Desde el punto de vista de esta Dirección de Área, se requiere una mayor atención a la agenda gris a fin de consolidar el manejo adecuado de las sustancias químicas y los residuos peligrosos como una prioridad en el marco de la política nacional y regional, así como una mayor trazabilidad del comercio (importación y exportación de sustancias químicas y los residuos peligrosos) en los países de la Región.

Jake Decoste

Email: jakedecoste@hotmail.com

10 September 2013

I know this is past the comment period which ended on August 30 but I wanted to write and say I am in full support of the letter sent to you by West Coast Environmental Law. Our governments attacks on environmental laws are a subsidy to the oil and gas and other industries and, as a result, we have failed to live up to our international commitments. I firmly believe that change is coming and hope that you guys are on board.

Jake



Wildlife Conservation Society comments: JPAC public review of the first 20 years of NAFTA and the North American Agreement on Environmental Cooperation

August 27, 2013

To Whom it May Concern:

The Wildlife Conservation Society (WCS) is pleased to submit comments and focus our input on a desire to see the Commission for Environmental Cooperation (CEC) place a stronger emphasis on the development and support of mechanisms to conserve transboundary wildlife over the next 10 years. WCS's mission is to save wildlife and wild places worldwide. We do this through science, conservation action, education and inspiring people to value nature. WCS is one of a few conservation organizations that works on-the-ground in Canada, the United States, and Mexico. We have number of science-based efforts that are transboundary between these countries, and ultimately to be successful will require entities in the three countries to work together to conserve wildlife and the places on which they depend. The transboundary areas in which we are currently working include:

- Arctic Beringia (Arctic Alaska through Arctic Yukon), where we focus on migratory bird and marine mammal conservation in addition to other efforts;
- Northern Boreal Mountains (mid-Alaska through southern Yukon), where we seek to protect still large and intact landscapes for species like caribou and wolverines;
- Crown of the Continent (southeastern British Columbia, northwestern Montana and southwestern Alberta), where we have identified core area and corridor refugia for species given climate change;
- Northern Appalachians (northern New York, Vermont, New Hampshire, Maine, southern Québec, New Brunswick, Nova Scotia, and Prince Edward Island) where we are promoting conservation of a network of protected areas that can be robust in response climate change; and,
- Sky Island Mountains (Sonora, Chihuahua, New Mexico, and Arizona) where our work suggests that the maintenance and restoration of core areas and connectivity is essential for the survival of species like jaguars and migratory bats.

Wildlife do not acknowledge borders. Functioning ecosystems require robust populations of wildlife to provide an array of free services ranging from filtered water and water storage to checks on vectors such as lyme disease, carbon storage and much more. One priority CEC should address more squarely is species conservation under disparate laws and lack of any mechanism to compel coordination across borders. As such, in order to conserve these ecosystems and wildlife that utilize multiple countries as part of their range, federal governments who share wildlife populations should engage in three ways:

- 1) Acknowledge that the conservation of particular wildlife in various countries often requires addressing species management across multiple countries, particularly in the face of climate change impacts.
- 2) Agree on coordinated wildlife conservation management plans for populations at risk of disappearing or being impaired in one or more countries.
- 3) Implement a coordinated management plan across these multiple boundaries for such species.

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The WCS North America Program saves wildlife and wild places in North America by understanding critical issues, crafting science-based solutions, and taking conservation actions that benefit nature and humanity · WWW.WCSNORTHAMERICA.ORG

Our experience around the world indicates that this coordination must happen both bottom-up (locally) and top-down (federally) to maximize success. In looking around the globe, transboundary efforts lacking either bottom-up or top-down mechanisms were more likely to fail (Hilty et al. 2012). Further, because of a changing climate, ensuring that we work across boundaries and enable species to be able to move to follow increasingly shifting resources is essential (Hilty et al. 2012). This challenge of conserving transboundary populations is exemplified by Bison, Lynx, Wolverine, Atlantic salmon, Bull trout, and several other species that WCS works with closely. Except for the efforts of individuals who coordinate across boundaries to assist in working to develop informal transboundary collaborations, conservation of these species is stymied by lack of federal government coordination and formal agreements or treaties.

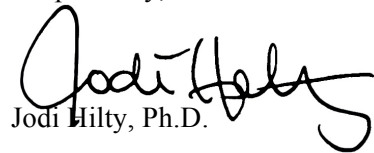
As such, we strongly request that CEC place a stronger emphasis on the development and support of mechanisms to conserve transboundary lands and wildlife populations in the next 10 years. This includes encouraging the related collaborations and agreements that are needed at multiple scales. These would enable us collectively as North American society to conserve wildlife across boundaries such that no individual country loses a key natural resources or population of a species deemed important to the country because of actions of another country. The ad hoc actions to work to conserve the natural values including wildlife of the Flathead watershed between British Columbia and Montana serve as an example of where a stronger treaty would provide a framework to address such issues in a more systematic way.

Specifically, CEC should continue to encourage transboundary communities to meet and agree upon mutual land-use and shared wildlife priorities. An example of this is the Blackfeet and First Nation people who are relatives and are seeking a larger landscape conservation vision across the boundaries of the two countries. CEC also should strengthen discussions and agreements at federal levels to support these local transboundary efforts in more formalized approaches. This effort is fully aligned with the purpose of CEC, which is “to support cooperation among the NAFTA partners to address environmental issues of continental concern.”

Finally, border issues can affect conservation of wildlife that reside well beyond international boundaries. Specifically poaching and illegal trade of wildlife poses substantial threats to some species. **As such we also recommend that CEC collaborate on efforts to combat wildlife trafficking at ports of entry and border crossings in recognition of the connection to global conservation, security, health, and economic development and in alignment with President Obama’s July 1, 2013 Executive Order “Combating Wildlife Trafficking.”**

We would greatly appreciate CEC’s increased attention to the challenge of conserving transboundary wildlife populations and illegal wildlife trafficking, and would be happy to assist in such efforts.

Respectfully,



Jodi Hilty, Ph.D.

Executive Director, North America Program

* referenced: Hilty, J.A., C.C. Chester, and M.S. Cross (eds). 2012. **Climate and Conservation: Landscape and Seascape Science, Planning, and Action.** Island Press, Washington, DC.

Jon Plaut
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3 August, 2013

The NAFTA environmental agreements and the cooperative arrangement of the CEC between the three countries remains significant and to be supported and developed because 1. it develops an environmental constituency as evidenced by the atmospheric (mapping) air programs; allows direct involvement by environmental interests, as evidenced by the process for direct challenge to state enforcement by public interests; provides for cooperation between the states, as evidenced by the yearly compilation of emissions; organizes direct meetings between the environmental ministers and their staffs, with public input and transparency; and provides for direct input on policy decisions by JPAC, and not incidentally the public. In my ten year review published by the CEC I urged focus on climate change cooperation, focusing on several doable programs, and I still urge it. Global warming from CO₂ and other gases and resultant climate change are the biggest environmental issues of this century. The CEC Ministers and the public will reward the CEC and JPAC with a badge of relevance if the CEC accomplishes a program of cooperation in this critical area. Please allow me to follow up and discuss this further with JPAC. Jon Plaut (former JPAC member - 1994 - 2002, and JPAC Chair) 908 273 4127 JP1957 psu@aol.com

Katia Villafan
Vínculo entre comercio y medio ambiente
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En 2008 tuve oportunidad de participar como observadora en el Simposio de comercio y medio ambiente organizado por esta organización en Phoenix, A.Z. Me pareció un estupendo espacio de discusión sobre temas muy enfocados a la sustentabilidad del transporte y del comercio de distintos productos. No obstante, considero que la participación de académicos no fue suficiente. Existen investigadores que trabajan temas muy específicos sobre el comercio y el medio ambiente, desde los aspectos: legal, económico, social, antropológico. Una propuesta es darle seguimiento a este simposio o crear un congreso exclusivamente académico para poder elaborar propuestas a la CCA en temas específicos. En lo particular los temas de la gestión ambiental, la responsabilidad social, los mercados verdes y justos deberían de tener cada vez más importancia en la agenda del ramo empresarial e institucional dentro de los tres países.

Mi propuesta va orientada a la creación de manuales y capacitación de empresas e instituciones en estos temas. Mayor difusión de las actividades de la CCA en los diversos sectores: academia, ONG's, empresas y sociedad civil. A 20 años de la firma del TLCAN aun existe gran desconocimiento de que dentro de este tratado existe un acuerdo del medio ambiente. Es por ello que la difusión de actividades (redes sociales, prensa, vínculo con universidades y ONG's) y documentos es esencial hoy en día.

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México D.F. a 26 de agosto de 2013

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Mitigación de los efectos del Cambio Climático

América del Norte y en consecuencia nuestro territorio cuenta con una gran variedad de paisajes, lo cual nos garantiza una vulnerabilidad del paisaje socio ecológico ante el Cambio Climático CC, situación que ha dado lugar a una gran preocupación mundial y esta situación deriva a que en la superficie del territorio nacional se presenten grandes desequilibrios y desigualdades sociales, perfil que bien podría corresponder a la distribución de los recursos naturales usufrutuados. Por ello, la migración, dispersión y concentración de la población y las condiciones de vida de la misma, nos reflejan un patrón de distribución extremoso donde coexisten entidades y regiones con profundas diferencias de desarrollo.

El elemento climático de mayor importancia en las actividades económicas de nuestro país es la lluvia y por lo tanto la disponibilidad de agua. No existe una detallada evaluación regional de la vulnerabilidad en México a las condiciones extremas en el clima. La falta o demasía de precipitaciones lleva a severas sequías o inundaciones que se traducen en desastres naturales.

Realizar estudios de vulnerabilidad conjuntos entre los tres países de América del Norte ante el Cambio Climático es de gran importancia debido a que los patrones climatológicos están influyendo en los procesos ambientales y así mismo en la toma de decisiones y de planeación: La vulnerabilidad es construida socialmente, y es susceptible de cambios como resultado de la toma de decisiones principalmente de carácter gubernamental entre Canadá, USA y México.

La vulnerabilidad en América del Norte no es ajena a los riesgos climáticos presentes y futuros por lo que se hace necesario integrar la información de Cambio Climático en la planificación del desarrollo social y económico para mejorar la gestión de riesgos relacionados al CC.

Se requieren mayor presupuesto para realizar metodologías y modelos propios y prácticos, y que tomen en cuenta la diversidad climática, social y económica de cada una de las regiones bioclimáticas de América del Norte, que se hagan análisis regionales y sectorizados de corto y largo plazo, así mismo también elaborar mapas espaciales de vulnerabilidad. Con lo anterior podemos tener herramientas para la toma de decisiones para enfrentar los efectos adversos del Cambio Climático de su variabilidad y la sensibilidad de los sistemas y su capacidad de adaptación.

ATENTAMENTE

El Planeta es Primero



Dr. Rene López Barajas

Presidente

Biogeosphere 2035 AC

Luis Enrique Ortega

México

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Sugiero que haya más apertura de la CCA para que tenga participación el sector industrial de los tres países. He asistido a algunas reuniones, y la mayoría de las personas asistentes son de ONG's, gobierno y academia; así que creo que faltan otros (como el sector privado) para tomar decisiones.

Muchas gracias

20 years of NAFTA

My name is Luz Aida Martinez, I received my PhD degree in May 2012 by the University of Vermont. My dissertation focused on international trade and environment, specifically NAFTA, therefore NAAEC and the work of the CEC.

During my research I must say that I would have liked to find a source of harmonized information regarding trade and environment in North America. When I was looking for economic, social and environmental statistical data, to be compared between the three NAFTA partners, my first impulse was to look into the CEC website. Unfortunately I did not find the information there, instead I had to look into other sources, such as the World Bank, the OECD, UN, among other international organizations. In this regard, my main proposal would be to make possible that **the CEC becomes a reliable source of harmonized statistical information from the three countries**, in terms of economic growth (i.e. imports, exports and investments, directly linked to NAFTA's assessment), social aspects (i.e. labor and income inequalities issues directly linked to trade and NAALC), and environmental performance (i.e. CO2 emissions, waste generation directly linked to trade and NAAEC). An initiative like this would bring to work together the CEC with the counterparts in NAFTA's Secretariat offices in the three countries, as well as the NAAELC's Secretariat in Washington, D.C. A database like this would benefit all countries to assess their performance not only in economic terms, but in labor and environmental terms as well. As it was intended to be NAFTA in first place. It is well known that we cannot improve what we cannot measure. Economic, social and environmental performance has to be measured and reported, in order to promote cooperation and to achieve overall improvement. One innovative statistical report would be on certified environmental goods and services exchanged between NAFTA partners (i.e. organics, energy and water saving items, certified wood, etc.) All reported data on imports and exports are under generic classification codes making no distinction if they have any environmental benefit (i.e. (00000) agricultural products, making no distinction if they are organics).

Another observation I have is regarding the objectives of NAFTA and NAAEC. There is a lack of coordination between both agreements. NAAEC states in its objective "d" to "*support the environmental goals and objectives of NAFTA*", but NAFTA does not include any objective related to the environment, its objectives are mainly economic. NAAEC is expected to support NAFTA and not to serve as a frame to avoid and reverse the environmental impacts from trade. It is worth mentioning that NAAEC includes in its objective "e" to "*avoid creating trade distortion or new trade barriers*" which highlights the preoccupation that environmental protection might harm trade, when in fact it is the opposite way: trade can harm the environment. In this regard, my recommendation is to continue the **Symposia on Assessing the Environmental Effects on Trade**. This was a great initiative that brought together scientists, government officers, civil society and others to discuss not only problems but solutions about trade and environment. The scientific information was translated into common language and recommendations were received directly by the governments. There were four symposia organized by the CEC Trade and Environment program, being the last in 2008.

Concerning also to international trade and environment, I have observed that the main actors in the CEC activities, including the JPAC initiatives, are professional individuals and government representatives. In my opinion, one important stakeholder to include are the **Multinational Companies (MNC)**, considering that trade takes place between companies and not governments. MNC are major players in the international trade dynamic, therefore their direct involvement would provide a positive impact in terms of economic, social and environmental aspects.

About **NAFTA and international environmental treaties related to trade**, NAFTA includes in its Article 104 the relation to environmental and conservation agreements, such as (1) the *Convention on International Trade in Endangered Species of Wild Flora and Fauna*; (2) the *Montreal Protocol on Substances that deplete the Ozone Layer*; and, (3) the *Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and Their Disposal*. NAFTA countries should observe all recommendations from these agreements in their trade activities. These agreements were considered because they were signed and ratified before NAFTA entered into force, nevertheless in the NAFTA text there is no article referring to future international environmental agreements. Nowadays there are two international environmental agreements related to international trade: (1) the *Rotterdam Convention*, and (2) the *Cartagena Protocol on Biosafety* that are not being considered as part of the NAFTA text. My recommendation is that the three countries agree publicly to comply with this agreements, in the frame of NAFTA, as an initiative of the CEC and the Council Meetings.

Trade and environment is the main link between NAFTA, NAAEC and therefore the CEC. The CEC program called **Greening the Economy in North America** (in the past known as *Environment, Economy and Sustainability*, or also as *Trade and Environment*) should be one of the most active with the most information to be published and discussed. There are more international cooperation agreements and initiatives in terms of climate change, ecosystems and marine protected areas, other than those at the CEC. But regarding trade and environment there is no other. CEC has full potential of becoming a leader organization in attending issues related to trade and environment in North America.

I thank you the opportunity to participate in this revision of 20 years of NAFTA and express my recommendations for the CEC future work. If you require any further detail about any of my recommendations please contact me at lamarti@gmail.com

Best regards,

Luz A. Martinez, PhD

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En el contexto del próximo 20 aniversario de la CCA y de la prospección sobre qué queremos que suceda en los siguientes 20 años, me permito compartir las siguientes consideraciones. Cabe señalar que he participado de manera sostenida y activa en varios de los programas y actividades de la CCA desde el año 1995, y que es desde esta experiencia que hago las siguientes reflexiones:

1. Creo que pese a las limitaciones que podemos encontrar en la actuación de la CCA, -y reconociendo que son en parte producto de su propio mandato y perfil-, sería deseable que se mantenga como el espacio de intercambio y de conocimiento que a lo largo de los años nos ha facilitado acercarnos y conocernos entre países y entre sectores, contribuyendo con ello a disminuir los prejuicios y a entender mejor la complejidad política, cultural, social, económica y ambiental de nuestra región.
2. Encuentro que tanto en lo concerniente a la Resolución 95-5 como al Programa RETC, al menos para México ha sido vital que la CCA mantenga la vigencia de los programas y la necesidad de actuar en ellos, a través de las diferentes administraciones. Ojalá en el futuro próximo México logre consolidar su registro y dar cabal cumplimiento al acuerdo en términos de la comparabilidad y el acceso público a la información.
3. Me parece un logro que se hayan mantenido los artículos 14 y 15, pues hubo una época en que estuvieron en riesgo, y creo que sería bueno que pudiera modificarse el ACAAN o lo que sea necesario para que tanto la integración de los expedientes de hechos como la respuesta a ellos sea expedita y tenga sentido, pues en algunos casos al ser tan lenta la gestión pierde pertinencia e interés de los promoventes.
4. Creo que en el futuro, sería deseable que se gasten mucho menos recursos en investigar tanto y se empleen mejor en tomar acciones. (Esto desde luego en particular en el tema de sustancias tóxicas).
5. Considero que tanto el trabajo de los miembros del CCPC, como muchas otras actividades de la CCA –en especial reuniones y talleres-, se beneficiarían de utilizar metodologías menos basadas en presentaciones y más centradas en ofrecer tiempos para el intercambio dinámico entre los participantes.
6. Felicito a las personas que laboran en el Secretariado, por su profesionalismo y por el empeño que ponen en mantener el difícil equilibrio entre las agendas y las indicaciones gubernamentales y los intereses y las agendas directamente ciudadanas.

7. Considero un logro enorme todo lo que la CCA ha avanzado en herramientas digitales y redes sociales, y creo que junto con el área de publicaciones, estos dos aspectos merecen un gran reconocimiento.
8. Como ciudadana de América del Norte, tengo mucho interés en seguir participando en los trabajos de la CCA. Felicidades a todos....



Faire de la CCE un véritable chien de garde de l'environnement

L'Association québécoise de lutte contre la pollution atmosphérique

Dans le cadre des
20 ans de l'Accord nord-américain de coopération dans le domaine de
l'environnement (ANACDE)

20 ans après la signature de l'ANACDE, quel bilan?

Le vendredi 30 août 2013

RÉDACTION :

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GLOSSAIRE DES SIGLES

ALE	Accord de libre-échange canado-américain
ALÉNA	Accord de libre-échange nord-américain
ANACDE	Accord nord-américain de coopération dans le domaine de l'environnement
ANACT	Accord nord-américain de coopération dans le domaine du travail
AQLPA	Association québécoise de lutte contre la pollution atmosphérique
CCE	Commission de coopération environnementale
CCNUCC	Convention-cadre des Nations Unies sur les changements climatiques
CdP	Conférence des Parties
CCPM	Comité consultatif public mixte
GES	Gaz à effet de serre
GIEC	Groupe d'experts intergouvernemental sur l'évolution du climat
OME	Organisation mondiale de l'environnement
OMS	Organisation mondiale de la santé
OMM	Organisation mondiale de la météorologie
ONU	Organisation des Nations Unies
PED	Pays en développement
PIEVA	Programme d'inspection et d'entretien des véhicules automobiles
PNUE	Programme des Nations Unies pour l'environnement
REDD	Reducing Emissions from Deforestation and Forest Degradation
RRTP	Registre de rejets et de transferts de polluants

Introduction

Il y a de cela bientôt 20 ans, le Canada signait l'Accord nord-américain de coopération dans le domaine de l'environnement (ANACDE) avec ses homologues du Mexique et des États-Unis. Il s'agissait d'une entente parallèle à l'Accord de libre-échange nord-américain (ALÉNA) signé le 17 décembre 1992 et officiellement entré en vigueur le 1^{er} janvier 1994. Auparavant, l'Accord de libre-échange canado-américain (ALÉ) entre le Canada et les États-Unis avait été conclu en 1987. L'ALÉNA a donc remplacé l'ALÉ en intégrant le Mexique dans cette vaste zone de libre-échange. La structure de l'ALÉNA consiste davantage en un traité international économique et financier qu'à une union économique et politique comme cela s'est fait en Europe. Cette façon de faire implique une plus grande souveraineté des États, mais également une moins grande flexibilité quant à l'élaboration de politiques multilatérales communes.

Il est donc manifeste que le commerce occupe une place prépondérante dans les préoccupations des dirigeants des trois pays de l'ALÉNA. À l'époque de la signature de ce traité qui constituait plus ou moins une réplique au Traité de Maastricht ayant constitué l'Union européenne (UE), les dirigeants Brian Mulroney, George H. Bush et Carlos Salinas avaient le dessein d'accroître la prospérité et le flux commercial dans une zone rassemblant quelque 470 millions d'habitants (projection de 540 millions d'ici 2030¹). Qui dit commerce international dit toutefois aussi respect des législations relatives à l'environnement et au travail. C'est pourquoi les États-Unis et les deux autres pays ont milité pour la signature de deux accords complémentaires, soit l'ANACDE et l'Accord nord-américain de coopération dans le domaine du travail (ANACT)².

L'ANACDE a formé la Commission de coopération environnementale (CCE), chargée de mener à bien l'Accord. Cet organisme trinational comporte trois éléments principaux : le Conseil des trois ministres de l'Environnement, le Comité consultatif public mixte (CCPM) et le Secrétariat basé à Montréal. Celui-ci a un budget annuel de neuf-millions de dollars US. Chaque pays membre y verse le tiers. La CCE fonctionne par consensus (article 8.2), ou aux deux-tiers si un vote est demandé (article 8.3)³. Ce consensus à trois acteurs pourrait être facile à atteindre en apparence, mais il n'en est rien puisque les positions environnementales des trois pays divergent passablement, au gré des divers gouvernements qui se succèdent dans le temps. L'objectif de l'accord était d'éviter que le libre-échange dans l'ALÉNA ne mène à un nivèlement vers le bas de la législation environnementale en Amérique du Nord. Les signataires voulaient donc bonifier les législations environnementales de chaque pays. L'ANACDE vise donc à renforcer l'application efficace des lois environnementales et à maximiser la coopération entre les trois pays signataires dans le domaine de la conservation, de la protection et de la mise en valeur de l'environnement des trois parties⁴. Par contre, la CCE n'a aucun pouvoir de punir les États fautifs, contrairement à ce qui a été décidé pour l'ALÉNA⁵. Alors, nous devons poser la question suivante : est-ce que les

1 ATTALI, Jacques, « La nouvelle surpuissance américaine », [En ligne], <http://blogs.lexpress.fr/attali/2013/07/29/la-nouvelle-surpuissance-americaine/> (Page consultée le 30 juillet 2013).

2 MARKELL, David L. et KNOX, John H., "Greening NAFTA: The North American Commission for Environmental Cooperation" I Stanford University Press, 2003, p.8. 3 COMMISSION DE COOPÉRATION ENVIRONNEMENTALE (CCE), « Règles de procédure », [En ligne], http://cec.org/Page.asp?PageID=1226&ContentID=&SiteNodeID=221&BL_ExpandID=&AA_SiteLanguageID=2

3 COMMISSION DE COOPÉRATION ENVIRONNEMENTALE (CCE), « Règles de procédure », [En ligne], http://cec.org/Page.asp?PageID=1226&ContentID=&SiteNodeID=221&BL_ExpandID=&AA_SiteLanguageID=2

4 ACTU-ENVIRONNEMENT, « ANACDE », [En ligne], http://www.actu-environnement.com/ae/dictionnaire_environnement/definition/accord_nord-americain_de_cooperation_dans_le_domaine_de_l_environnement_anacde.php4 (Page consultée le 27 juillet 2013)

5 Voir à ce sujet DUFOUR, Geneviève, "Le Cas Du Chapitre 11 De L'ALÉNA: Son Impact Sur La Capacité De L'État D'Agir Pour Le Bien Public Et De Gérer Le Risque", [En ligne], <https://papyrus.bib.umontreal.ca/xmlui/handle/1866/9418> (Page consultée le 20 août 2013)

moyens à la disposition de la CCE sont suffisants afin de mener à bien son ambitieuse mission? Les prochains paragraphes permettront d'exposer la vision de l'AQLPA, selon laquelle la CCE a besoin pour son vingtième anniversaire d'une cure de jeunesse et d'outils permettant un suivi et contrôle efficient des législations environnementales.

Présentation de l'AQLPA et préoccupations dans le dossier

Fondée en 1982, l'Association québécoise de lutte contre la pollution atmosphérique (AQLPA) est un regroupement indépendant de personnes physiques et morales travaillant activement à améliorer la qualité de l'atmosphère au Québec. Nous avons pour objectif principal de favoriser la mise en place de solutions concrètes et adaptées à la réalité des besoins des parties prenantes, par l'acquisition de connaissances, l'éducation et la sensibilisation.

Mandats de l'AQLPA

Afin de réaliser sa mission, l'AQLPA:

- Assure une veille stratégique sur les questions liées à la qualité de l'air, les changements climatiques et les polluants atmosphériques;
- Sensibilise et informe les intervenants du milieu face aux méfaits de ce type de pollution: citoyens, groupes, organismes, industrie et gouvernements;
- Fait la promotion d'idées, de stratégies et de recommandations visant la réduction des polluants;
- Mobilise les intervenants du milieu autour de projets communs et rassembleurs favorisant ainsi une concertation et des échanges constructifs;
- Représente et fait connaître les intérêts, les choix, les préoccupations ou encore les positions des intervenants du milieu auprès des décideurs;
- Collabore à des accords communs;
- Participe activement à tout mandat confié par les différents paliers de gouvernements;
- Agit activement sur le terrain;
- Élabore un centre de documentation et offre un service de conférences.

Les préoccupations environnementales à la remorque du commerce?

Il ne faut pas se méprendre sur le rôle de la CCE. Cet organisme intergouvernemental a une fonction purement consultative. Il n'a pas été mis sur pied pour dicter la voie à suivre aux États signataires de l'ANACDE. Bien que certains acteurs aimeraient le voir assumer un rôle de chien de garde en surveillant la législation environnementale en Amérique du Nord, en appliquant un programme environnemental concerté et en aidant le Mexique à rehausser ses standards environnementaux au niveau de ses voisins au nord, les 20 ans d'existence de l'ANACDE démontrent plutôt la difficulté d'harmoniser les politiques environnementales des trois pays signataires.

Qui plus est, les lois sont hétérogènes d'un pays à l'autre et la liste de polluants contrôlés diffère passablement, ce qui atteste de l'ampleur de la tâche à accomplir. De plus, le changement d'attitude des gouvernements sur certaines problématiques environnementales, par exemple le Canada avec le Protocole de Kyoto, illustre bien, selon l'AQLPA, la difficulté qu'a la CCE à favoriser la protection et l'amélioration de l'environnement de l'Amérique du Nord. Les prochains chapitres contiennent donc des réflexions de l'AQLPA pour renouveler la confiance envers la CCE.

Sommaire des recommandations

- 1. Réitérer l'intérêt de l'AQLPA envers l'institution qu'est la CCE**
- 2. Donner une véritable personnalité internationale à la CCE ou un pouvoir décisionnel autonome accru**
- 3. Renouveler l'intérêt des parties envers la CCE et lui donner une plus grande marge de manœuvre dans son intervention**
- 4. Modifier la structure du CCPM pour faire en sorte que les candidatures soient déposées au secrétariat**
- 5. Créer un comité permanent et indépendant d'évaluation des résultats**
- 6. Conférer à la CCE une plus grande capacité d'intervention dans le domaine de la qualité de l'air**
- 7. Reconnaître que la qualité de l'environnement est préalable au libre-échange, tant dans les Amériques qu'à l'échelle mondiale (militer vers la création d'une OME)**
- 8. Création de comités sur différentes thématiques récurrentes (pollution atmosphérique et problématiques comme l'exploitation du gaz et pétrole de schiste).**

1. L'intérêt de l'AQLPA dans la dynamique continentale

1.1 Des problématiques transnationales

1.1.1 Le dossier « réglé » des pluies acides

La lutte aux pluies acides a démontré la nécessité d'une action concertée entre le Canada et les États-Unis, action qui a résulté en la ratification d'un accord sur les pluies acides en 1991⁶. L'AQLPA a, dès le départ, milité pour l'adoption d'un tel traité et a contribué à faire pression sur les gouvernements Reagan et Mulroney à l'époque par l'éducation citoyenne. Pour l'AQLPA, il était clair que peu importe les actions que nous réalisons au nord de la frontière, la pollution, elle, ne s'arrêtait pas à cette délimitation arbitraire. Malgré des résultats encourageants à la suite de la signature du traité, les pluies acides continuent de miner la santé de nos plans d'eau⁷.

1.1.2 Les changements climatiques : Un enjeu local, régional et global

L'AQLPA s'intéresse également aux changements climatiques. Elle participe depuis 2005 à la Conférence des parties (CdP) instituée par la Convention-cadre des Nations Unies sur les changements climatiques (CCNUCC). L'Amérique du Nord fait piètre figure en matière de lutte aux changements climatiques. En effet, les États-Unis sont absents du Protocole de Kyoto. Le Canada s'est retiré du Protocole de Kyoto en 2012 et a d'ailleurs vu son influence diminuer. Il est même ironiquement devenu le « fossile de l'année » depuis 2011. Finalement, le poids relatif du Mexique n'aide pas le trio nord-américain. Il est essentiel que l'Amérique du Nord, à l'instar de l'Europe, fasse front commun dans la lutte et l'adaptation aux changements climatiques. En effet, les effets ressentis sont réels et toucheront l'ensemble des écosystèmes de l'Amérique du Nord. L'adaptation désormais nécessaire exigera une réponse immédiate et concertée des trois pays.

De surcroît, la zone ALÉNA constitue un joueur industriel de forte taille à l'échelle mondiale. L'Amérique du Nord a donc une responsabilité accrue face aux conséquences de cette activité économique dont les répercussions frappent de plein fouet les pays du sud dont un grand nombre a beaucoup moins contribué aux émissions de gaz à effet de serre (GES). Nous vivons à une époque de prise de conscience collective majeure des changements climatiques, ce phénomène ayant été qualifié d'un des plus grands défis auxquels l'humanité fait face lors du Forum économique de Davos⁸.

1.1.3 Stratégie énergétique « nord-américaine » et impact sur l'utilisation de ressources (pétrole, schiste, hydroélectricité, sables bitumineux)

Finalement, l'AQLPA se penche depuis longtemps sur les sources d'énergie et, plus particulièrement, sur les énergies alternatives. Le choix énergétique pour des fins de chauffage, de

6 Accord Canada-États-Unis sur la qualité de l'air, 1991, [En ligne], <http://www.ec.gc.ca/Air/default.asp?lang=Fr&n=1E841873-1> (Page consultée le 30 juillet 2013)

7 Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs (MDDEFP), « Les précipitations acides au Québec », [En ligne], http://www.mddep.gouv.qc.ca/air/pre_acid/ (Page consultée le 30 juillet 2013)

8 VAILLES, Francis, « Les vacances, les riches et le carbone », La Presse, [En ligne], <http://affaires.lapresse.ca/opinions/chroniques/francis-vailles/201307/19/01-4672503-les-vacances-les-riches-et-le-carbone.php> (Page consultée le 27 juillet 2013)

9 RADIO-CANADA, « Tragédie à Lac-Mégantic », [En ligne], <http://www.radio-canada.ca/sujet/lac-megantic> (Page consultée le 29 août 2013)

climatisation et de transport porte à se questionner sur la pertinence de certaines sources. Pourquoi privilégier les énergies issues des sables bitumineux ou du gaz et pétrole de schiste au détriment de l'utilisation de biogaz ou de biomasse? Pourquoi ne pas se tourner naturellement vers les sources abondantes d'énergies vertes tout en misant sur l'électrification des transports afin d'améliorer notre bilan GES. Cela nous permettrait de franchir un pas supplémentaire dans la réduction de notre dépendance au pétrole.

Depuis les années 1990, de nombreuses tentatives ont permis de connecter le Québec aux États de la Nouvelle-Angleterre pour le transport d'électricité. D'autres initiatives récentes, comme l'oléoduc Keystone XL, la multiplication des projets de ports méthaniers comme celui de Rabaska au Québec, l'exploitation croissante des sables bitumineux ou même l'augmentation du transport ferroviaire avec des wagons désuets ayant mené à la catastrophe du 6 juillet 2013 à Lac-Mégantic⁹ nous amènent à envisager une véritable stratégie énergétique nord-américaine.

1.2 Un accord de coopération attendu dans le domaine de l'environnement

1.2.1 Reconnaissance de l'interdépendance environnementale du continent

L'avènement de l'ANACDE a permis de mettre en relief l'interdépendance des écosystèmes en Amérique du Nord. Depuis 20 ans et par le biais de la CCE, l'objectif était de s'assurer que le respect de l'environnement demeure une priorité dans un accord de libre-échange.

1.1.2 Accord novateur : Établir un contrepoids au libre marché

L'idée de l'ANACDE était fort novatrice : signer un accord qui ferait contrepoids au libre marché. Malgré les bonnes intentions, nous constatons que les résultats ont été bien maigres au regard des avancées de la coopération dans le domaine de l'environnement et de l'évolution de l'état de l'environnement depuis la ratification de l'ANACDE.

Les observations dont il est question dans ce document sont liées à nos expériences avec la CCE, entre autres dans le cadre des séances du Registre de transfert et de rejets de polluants¹⁰ et en ce qui concerne les questions d'application. Celles-ci visent également à faire état de certains éléments que nous avons observés et à émettre des recommandations en ce sens. Il serait important qu'une analyse des retombées de l'ANACDE soit réalisée en bonne et due forme ; les remarques de l'AQLPA pourraient alors contribuer à cet effort d'améliorer la qualité de l'environnement en Amérique du Nord.

9 RADIO-CANADA, « Tragédie à Lac-Mégantic », [En ligne], <http://www.radio-canada.ca/sujet/lac-megantic> (Page consultée le 29 août 2013)

10 CCE, « Suivi des rejets et des transferts de polluants en Amérique du Nord », [En ligne], http://www.cec.org/newsletter/prtr/PRTR_Newsletter_2012_May_fr.html (Page consultée le 27 juillet 2013)¹¹ CARPENTIER, Chantal Line, "NAFTA Commission for Environmental Cooperation: Ongoing Assessment of Trade Liberalization in North America", Impact Assessment and Project Appraisal, volume 24, numéro 4, Décembre 2006, pages 259–272, [En ligne], <http://www.tandfonline.com/doi/pdf/10.3152/147154606781765048> (Page consultée le 27 juillet 2013)

10 CCE, « Suivi des rejets et des transferts de polluants en Amérique du Nord », [En ligne], http://www.cec.org/newsletter/prtr/PRTR_Newsletter_2012_May_fr.html (Page consultée le 27 juillet 2013)¹¹ CARPENTIER, Chantal Line, "NAFTA Commission for Environmental Cooperation: Ongoing Assessment of Trade Liberalization in North America", Impact Assessment and Project Appraisal, volume 24, numéro 4, Décembre 2006, pages 259–272, [En ligne], <http://www.tandfonline.com/doi/pdf/10.3152/147154606781765048> (Page consultée le 27 juillet 2013)

2. Observations sur l'application de l'ANACDE

2.1 Un projet louable...

Selon Chantal Line Carpentier, agente de développement durable au Département des affaires économique et sociale des Nations Unies et ancienne chef du programme relatif à l'environnement, à l'économie et au commerce de la CCE, l'ANACDE aura permis de jeter les bases pour établir des politiques économiques, environnementales et commerciales qui permettent un soutien mutuel entre les pays signataires. L'impact de l'ANACDE pour les 20 prochaines années dépendra ainsi de la volonté politique exprimée à travers la zone de libre-échange et de ce que le Canada, les États-Unis et le Mexique voudront bien faire de l'ALÉNA¹¹.

Le juriste Kevin W. Patton allait encore plus loin en 1994, année d'entrée en vigueur de l'ANACDE. Il affirmait que cet accord parallèle représentait l'avancée la plus remarquable de l'histoire des accords de libre-échange dans le domaine environnemental, tout en marquant une avancée exceptionnelle dans le droit de l'environnement et un incitatif au multilatéralisme pour les États signataires¹². Il s'agissait d'un précédent dans les accords de libre-échange, alors que des partenaires commerciaux internationaux examinaient les effets délétères que le commerce peut avoir sur l'environnement.

Deux décennies plus tard, l'AQLPA ne partage toutefois pas cet optimisme considérant les maigres réalisations concrètes de l'ANACDE. À notre point de vue, il n'est pas possible de déclarer que l'ANACDE a permis des progrès significatifs en termes d'amélioration tangible et quantifiable de la qualité de l'environnement en Amérique du Nord.

2.2 ... heurté à des mécanismes sclérosés

L'AQLPA a participé aux travaux de la CCE depuis plusieurs années. Celle-ci a compilé un certain nombre de constats au fil de ses interventions. Ces constats concernent le cadre général de la CCE, le registre de rejets et de transferts de polluants nord-américain et les communications de citoyens (SEM) issus de l'article 14 et 15 de l'Accord.

2.1.1. Une asymétrie entre le commerce et l'environnement au sein de la dynamique nord-américaine

L'AQLPA apprécie la possibilité d'intervenir à la CCE, car ce genre de rencontres permet de tisser un réseau avec des organisations venant de partout en Amérique du Nord. Nous reconnaissons la compétence et le professionnalisme des fonctionnaires internationaux. Toutefois,

11 CARPENTIER, Chantal Line, "NAFTA Commission for Environmental Cooperation: Ongoing Assessment of Trade Liberalization in North America", Impact Assessment and Project Appraisal, volume 24, numéro 4, Décembre 2006, pages 259–272, [En ligne], <http://www.tandfonline.com/doi/pdf/10.3152/147154606781765048> (Page consultée le 27 juillet 2013)

12 PATTON, Kevin W., (1994-1995), « Dispute Resolution Under the North American Commission on Environmental Cooperation », 5 Duke Journal of Comparative and International Law 87.

13 PATTON, Kevin W., (1994-1995), « Dispute Resolution Under the North American Commission on Environmental Cooperation », 5 Duke Journal of Comparative and International Law 87.

l'AQLPA a l'impression que la CCE a les mains liées dans son action au quotidien. Le peu de moyens à la disposition des fonctionnaires internationaux peut expliquer son impuissance dans certains dossiers chauds sur la scène environnementale. Il en est sans doute autrement pour le secrétariat de l'ALÉNA.

Dans le cas de l'ANADCE et de la CCE, la souveraineté du Canada, des États-Unis et du Mexique prime sur toute autre considération. La CCE ne peut prendre de décision que si les trois États y consentent. Dans le cas de l'ALÉNA, les investisseurs ont des recours en médiation et légaux, entre autres les chapitres 11 et 14 de l'ALÉNA permet le recours à un mécanisme d'arbitrage. Voilà une bonne illustration du déséquilibre évident entre les volets commerce et environnement; les préoccupations environnementales sont généralement incluses si et seulement si elles ne contreviennent pas aux visées commerciales. Nous l'avons constaté en 1997 dans le cas *Ethyl Corporation c. le gouvernement du Canada*¹³ lorsque le Canada a versé des millions en indemnités hors cour à une entreprise américaine enregistrée en Virginie qui commercialisait un supplément à l'essence (MMT) jugé nuisible à la santé publique par Environnement Canada. Ce cas d'arbitrage symbolise également le pouvoir des entreprises face aux États dans le cas d'accords de libre-échange qui contiennent des clauses prévues pour les investisseurs¹⁴.

L'AQLPA constate également la mainmise du politique dans les institutions de l'ANADCE. Le conseil est formé des trois ministres de l'Environnement des pays membres et en est l'organe décisionnel suprême. Le conseil nomme les gens représentant le Comité consultatif public mixte (CCPM) et détermine si les dossiers factuels peuvent être publiés.

L'institution ne peut alors agir de façon autonome, car elle est tributaire des jeux politiques propres à ce genre d'institution. Une réflexion sur l'indépendance du Secrétariat par rapport aux États membres est nécessaire afin qu'il remplisse son rôle d'améliorer l'environnement de l'Amérique du Nord. Cette institution doit être au-dessus de la mêlée.

2.1.2 Un bon départ quant à la mise à niveau des trois pays dans l'identification des rejets et transferts de polluants

L'OCDE a demandé aux pays membres de créer un Registre de rejets et de transfert de polluants (RRTP). Le RRTP a pour objectif de colliger les rejets et le transfert de polluants par les gouvernements. Toutefois, les éléments à intégrer au registre ne sont pas normalisés et ne suivent aucune ligne directrice, que ce soit la méthodologie (facteurs d'émission) utilisée pour prendre ces données, la façon dont l'industrie est interpellée, les polluants ainsi que les seuils de déclaration. Pour remédier à cela, un groupe de travail a été formé afin d'établir certaines orientations et règles de bonnes pratiques à suivre pour créer un RRTP. Les États-Unis sont les premiers à s'être dotés d'un RRTP en 1987. Le Canada a suivi peu avant l'entrée en fonction de l'ALÉNA. Le Mexique a débuté par un Registre volontaire, puis a établi un registre permanent depuis les années 2000.

¹³ Ministère des affaires étrangères et du commerce international, [En ligne], <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/ethyl.aspx?lang=fra> (Page consultée le 28 août 2013)

¹⁴ Ministère des affaires étrangères et du commerce international, [En ligne], <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/disp-diff/ethyl-08.pdf> (Page consultée le 28 août 2013)

Les paramètres des Registres pouvant différer, la CCE a dans ses mandats de faire un plan d'action pour favoriser la comparabilité des RRTP nationaux. Elle s'est donnée pour mandat de réaliser une publication annuelle intitulée « À l'heure des comptes » et de constituer une base de données des statistiques nationales. Le plan d'action actuel a pris fin en 2012. L'AQLPA est donc impatiente de consulter le prochain plan d'action. En 2010 et en 2012, l'AQLPA a participé aux rencontres du RRTP à Washington, D.C. et à Toronto. Les constats suivants relèvent principalement de ces rencontres.

Un premier constat tient à la nécessité de donner plus de moyens à l'organisation pour améliorer la comparabilité des données. L'objectif est de rendre l'acquisition, la transmission et l'analyse des données plus uniformes, et ce, le plus tôt possible. Il en tient de la crédibilité et de l'utilisation des données par les personnes concernées. Un exemple d'irritants est que chaque État a sa propre liste de polluants et ses propres seuils de déclaration. Même l'industrie convient que ça devient énergivore et crée de la confusion lorsque celle-ci possède des unités de production dans deux ou trois pays. Un deuxième constat est la volonté pour les parties prenantes de donner plus de pouvoir à la CCE pour l'utilisation des données. À l'heure actuelle, le secrétariat de la Commission est à la remorque des données des pays membres.

La communication représente un enjeu et un défi. Ces registres ne sont pas connus et il y a lieu de s'interroger sur les pratiques. Les besoins des utilisateurs doivent être mieux circonscrits afin d'adapter les outils en conséquence. Une différence de niveau est remarquable. Alors que l'agence de protection de l'environnement des États-Unis (US-EPA) est très proactive dans la conception de nouveaux outils, le Mexique fait face à certaines insatisfactions de la part de parties prenantes dans la mesure où il y a peu de consultation. Pour sa part, le Canada ne semble pas vouloir donner plus de marge de manœuvre au public canadien en leur rendant toutes les données accessibles. Pourtant, le droit d'accès à l'information doit permettre à tous les citoyens d'avoir accès à l'information pertinente dans le domaine environnemental comme ailleurs. Il semble donc que nous sommes encore au Canada dans une dynamique de déclarations volontaires - vivement critiquées par le vérificateur général d'ailleurs.

Les États membres de l'ANACDE s'entendent sur le fait qu'il faudra, pour améliorer la comparabilité des données, s'assurer que les polluants et les normes inhérentes soient les mêmes pour les trois pays. Il y a également une volonté d'accentuer les efforts de communication et de modéliser des façons de mettre en contexte les diverses données (bassins versants, aériens, événements climatiques majeurs, etc.). Par exemple, aux États-Unis, les compagnies d'extraction de pétrole ne doivent pas déclarer leurs émissions. Au Canada, la déclaration au registre canadien semble être très aléatoire et n'obéit à aucune méthodologie unique, des suggestions sont faites aux industries.

Enfin, l'AQLPA croit que la publication annuelle de la CCE devrait se pencher sur des enjeux transnationaux d'actualité. L'exemple de l'exploration et l'exploitation du gaz de schiste au Canada et aux États-Unis est assez récent, mais aussi important que l'industrie de la cimenterie. L'AQLPA est toutefois consciente qu'avec la gouvernance actuelle de la CCE, cette approche sera difficile à tenir considérant sa vulnérabilité aux forces politiques.

2.2.2 Les communications sur les questions d'application : un processus qui reste à parfaire

L'ANACDE énonce des principes et des objectifs. Les articles 14 et 15 de l'Accord déterminent les règles liées aux communications de citoyennes et citoyens. Celles et ceux qui estiment que leur gouvernement ne respecte pas sa loi environnementale peuvent s'adresser à la CCE.

S'enclenche alors un processus complexe, long et fastidieux, que l'AQLPA a expérimenté. La CCE ne peut pas émettre de recommandations, mais simplement faire un retour sur les faits juridiques, politiques et scientifiques et, donc un dossier factuel.

« Le 3 novembre 2004, l'AQLPA soumettait à la Commission une communication dans laquelle celle-ci démontrait que le gouvernement du Québec ne respectait pas ses obligations de réduction de la pollution de l'air provenant du parc automobile. Ses engagements en matière de lutte au smog et aux pluies acides exigeaient des actions concrètes comme le stipule l'Accord nord-américain sur les pluies acides. De plus, le Québec n'appliquait pas ses propres lois sur les systèmes anti-pollution des véhicules. Nous ne pouvions pas laisser passer sous silence ces manquements » indique André Bélisle, président de l'AQLPA¹⁵. »

Le dossier de l'AQLPA a trainé pendant huit ans, jusqu'en décembre 2012, ce qui est clairement inacceptable. L'urgence d'agir à l'époque aurait dû fortement inciter la CCE à prendre position. Une fois la position des parties entendue, le dépôt des dossiers du Canada et le dossier factuel préliminaire, il a fallu attendre encore un an avant que le dossier soit rendu public par le conseil.

L'AQLPA salue l'arrivée, depuis 2012, de nouvelles règles d'application pour le processus de communications de citoyennes et citoyens ainsi que d'outils pour faciliter les communications tel que les formulaires pouvant être remplis en ligne. Toutefois, l'AQLPA s'interroge sur différents aspects des questions de la population :

1. Les nouvelles règles rendront-elles le processus plus accessible à la population et aux groupes? L'AQLPA a eu recours à l'expertise d'un juriste qui œuvre entre autres dans les dossiers internationaux et environnementaux. Sans son aide, notre demande aurait fini comme celle de plusieurs groupes : rejetée. Dès lors, nous nous imaginons mal un petit groupe de personnes néophytes, concernées par une problématique précise, pouvoir mener à terme un projet de communication à la CCE.
2. Le processus sera-t-il transparent ? L'AQLPA a senti une lourdeur qui n'était pas seulement due à la recherche d'information. Les observations des pays membres sont arrivées en 2011 alors que le dossier a été rendu public à la fin 2012. Que s'est-il passé pendant cette période? Est-ce que les pressions politiques ont été fortes? Cela mine beaucoup l'intérêt et même la légitimité qu'il est possible d'accorder au processus.
3. Quel est l'objectif réel du dossier factuel? S'il est de faire la lumière sur une problématique donnée, c'est une chose. Toutefois, en l'absence d'outils de coercition, quelle est son utilité? Il semble évident que la CCE devrait avoir, dans les articles 14 et 15, des mécanismes similaires à l'arbitrage dans le cas de l'ALÉNA.

15 AQLPA, « Dossier factuel relatif aux émissions des véhicules automobiles du Québec Le Conseil de la Commission de coopération environnementale reconnaît la pertinence des interventions de l'AQLPA », Communiqué de presse, 11 décembre 2012, [En ligne], <http://www.aqlpa.com/actualites/communiqués/523-la-cce-reconnait-la-pertinence-des-interventions-de-laqlpa-en-matiere-de-pollution-automobile.html> (Page consultée le 29 août 2013).

3.Recommandations

3.1 Réitérer l'intérêt de l'AQLPA envers l'institution qu'est la CCE

Avant d'aller plus loin, l'AQLPA réitère son intérêt envers l'institution qu'est la CCE. Nous avons, en Amérique du Nord un outil qui a un énorme potentiel pour la protection de l'environnement. Toutefois, les gouvernements nationaux et la société civile doivent s'approprier cet outil et faire en sorte que la CCE devienne un véritable rempart contre les atteintes à l'environnement en Amérique du Nord.

3.2 Donner une véritable personnalité internationale à la CCE ou un pouvoir décisionnel autonome accru

La CCE gagnerait à jouir d'une personnalité internationale. Cela en ferait un organe décisionnel digne de ce nom. À l'heure actuelle, la Commission ne peut qu'émettre des avis, sans aucun pouvoir coercitif. Il faut s'en remettre au bon vouloir des États. Or, le passé nous enseigne que pour ces États, les considérations environnementales passent rarement avant les impératifs économiques ou financiers.

3.3 Renouveler l'intérêt des parties envers la CCE et lui donner une plus grande marge de manœuvre dans son intervention

Une charte « CCE + 20 » constituerait une bonne manière d'initier un renouvellement de la structure de la CCE. En la signant, les pays réitéreraient leur soutien à la protection de l'environnement au niveau continental, tout en réaffirmant les postulats qui sous-tendent la CCE.

L'AQLPA recommande également d'augmenter la portée des mécanismes pour la protection de l'environnement. Pourquoi ne pas doter le secrétariat d'une plus grande marge de manœuvre dans l'émission d'avis ou même d'un tribunal de règlement des différends qui touchent à l'environnement? Cela leur conférerait un caractère beaucoup plus significatif.

Bref, les trois pays signataires doivent absolument réitérer leur appui envers l'ANACDE malgré les maigres réalisations en 20 ans d'existence. Il est vrai que le gouvernement canadien actuel n'est pas porté naturellement vers les enceintes multilatérales vouées à l'environnement. Nous pourrions affirmer la même chose pour le gouvernement mexicain. De son côté, le gouvernement Obama a les mains liées en bonne partie par un Congrès dominé par les Républicains.

Quoi qu'il en soit, ces trois gouvernements doivent reconnaître l'urgence de certains dossiers environnementaux, accroître la coopération afin d'assurer un niveau de protection supérieur et s'assurer de la participation du public aux activités de la CCE. Enfin, il faut aussi penser à réduire les délais associés au traitement des communications de groupes citoyens. En effet, l'AQLPA a dû attendre huit ans avant que sa demande sur le PIEVA soit considérée.

3.4 Un CCPM où les candidatures seraient déposées au secrétariat

Cette proposition vise à limiter la portée politique du CCPM et à donner un portrait plus global de l'Amérique du Nord en intégrant les secteurs académique, industriel, civil, etc. En donnant le pouvoir au secrétariat d'évaluer les candidatures déposées plutôt que de s'en remettre aux États signataires, l'AQLPA soutient qu'il y aurait des nominations plus équitables. Cette proposition rejoint en quelque sorte le principe des collèges de concertation.

3.5 Un comité permanent et indépendant d'évaluation des résultats

Un comité permanent et indépendant d'évaluation des résultats pourrait être mis sur pied, à l'image du comité Johnson lors du dixième anniversaire de l'ANACDE. Il pourrait d'ailleurs être complété des vérificateurs généraux des trois pays. Cela permettrait une plus grande neutralité quant aux réelles avancées permises par l'ANACDE. Cette suggestion rejoint un peu le processus d'évaluation du Fonds vert pour le climat, mécanisme financier des Nations Unies. Il resterait toutefois à déterminer si cela fonctionne aussi bien en pratique que sur papier.

3.6 Une plus grande intervention dans le domaine de la qualité de l'air

Une collaboration trilatérale est nécessaire afin d'intervenir plus efficacement dans le domaine de la qualité de l'air. Pour y parvenir, il est essentiel de d'abord s'assurer que les trois États partagent les mêmes normes et méthodes de calcul des émissions afin d'établir une comparabilité scientifique des données. Ensemble, le Canada, les États-Unis et le Mexique émettent le quart des émissions de GES dans le monde. C'est une proportion importante et il est urgent de se doter de standards afin de bien comptabiliser notre impact continental sur la qualité de l'air. La CCE a déjà réfléchi au sujet¹⁶ et nous devons maintenant passer à l'action.

3.7 Reconnaître que la qualité de l'environnement est préalable au libre-échange, tant dans les Amériques qu'à l'échelle mondiale (militer vers une OME)

La CCE peut prêcher par l'exemple en faisant des trois États signataires des champions en environnement au niveau mondial. Les avis de la CCE peuvent refléter le fait que la qualité de l'environnement est une condition sine qua non, voire préalable, à la prospérité du commerce international. Nous pourrions même envisager une participation de la CCE aux Conférences des parties (CdP) de la CCNUCC qui ont lieu tous les ans.

Tout comme l'ALÉNA qui obéit aux normes et règles de l'OMC, il serait souhaitable que l'ANADCE mène vers la création d'une Organisation mondiale de l'environnement (OME). Cette organisation internationale aurait une vocation strictement environnementale et pourrait constituer un contrepoids à l'OMC. Toutefois, cette idée d'OME a été balayée du revers de la main par les décideurs publics à maintes reprises, ce qui n'en diminue pas la pertinence selon l'AQLPA et de nombreux organismes de la société civile.

¹⁶ CCE, « Nos travaux », [En ligne] <http://cec.org/Page.asp?PageID=1323&SiteNodeID=1229> (Page consultée le 28 août 2013)

3.3 Création de comités sur différentes thématiques récurrentes

3.3.1 Pollution atmosphérique

Enfin, il y a possibilité de créer des comités tripartites sur des thématiques cruciales comme la pollution atmosphérique par exemple. L'AQLPA souhaite réitérer que les émissions atmosphériques ne s'arrêtent pas par magie aux frontières nationales, mais qu'elles voyagent parfois très loin pour produire des dommages loin de leur source d'origine. C'est pourquoi le problème doit être pris sur une base continentale et des comités pourraient être mis sur pied afin d'asseoir tous les acteurs importants autour de la même table pour imaginer des solutions multilatérales à des problèmes atmosphériques comme les changements climatiques, le smog, les pluies acides ou l'amincissement de la couche d'ozone par exemple. Une attention particulière devrait être portée aux populations plus vulnérables : les communautés autochtones par exemple.

3.3.2 Problématiques multinationales (Gaz et pétrole de schiste)

Depuis quelques années, l'exploitation du gaz et du pétrole de schiste fait les manchettes en Amérique du Nord. Au-delà des bénéfices pour les consommateurs souvent vantés par le lobby gazier comme l'abaissement du coût de l'électricité aux États-Unis ou encore l'éventualité d'assurer son indépendance énergétique, les sources non conventionnelles de gaz et de pétrole de schiste entraînent de nombreux risques pour l'Amérique du Nord.

Comme nous venons de le mentionner, les émissions de GES outrepassent les frontières nationales. Un pays qui fait cavalier seul en décidant de se lancer dans l'exploitation des gaz de schiste par l'entremise de la fracturation hydraulique fait également encourir des risques à ses voisins, notamment en augmentant ses émissions de gaz polluants comme le méthane ou bien le rejet de substances chimiques dangereuses comme le benzène par exemple. L'AQLPA croit que ces dangers sur l'environnement, les sociétés et l'économie nord-américaine doivent être débattus au sein de comités transnationaux désignés pour mettre leur expertise au service de ces problématiques.

Conclusion

À la lumière de ces constats, l'AQLPA réitère que le bilan de l'ANACDE est mitigé après 20 ans d'existence. Plusieurs exemples démontrent que les aspects commerciaux priment sur les considérations environnementales et qu'il existe des disparités importantes entre le Canada, les États-Unis et le Mexique sur le plan de la législation environnementale.

Les changements climatiques, l'exploitation des carburants fossiles et le contrôle des polluants atmosphériques – pour n'énumérer que quelques problématiques écologiques – représentent des défis régionaux et globaux auxquels les Parties doivent s'attaquer dès maintenant. En ce sens, la CCE doit disposer d'une plus grande marge de manœuvre et d'une plus grande autonomie pour jouer un véritable rôle de chien de garde auprès des États récalcitrants en matière de respect de l'environnement, malgré les possibles divergences d'opinions des parties prenantes.

Comme nous l'avons vu lors de la dix-septième Conférence des parties (CdP) à Durban en 2011, l'action d'un État comme le Canada qui a décidé de se retirer du Protocole de Kyoto peut mettre en péril les efforts de la communauté internationale entière dans la lutte globale aux changements climatiques. Nous obtenons aussi un résultat sous-optimal pour l'ANACDE.

Il est donc urgent que les 20 ans de l'ANACDE servent à éveiller les gouvernements du Canada, des États-Unis et du Mexique. Très peu d'avancées concrètes ont été enregistrées dans le domaine de l'environnement et nous aurons besoin d'innovation, de leadership et de volonté politique pour remonter la pente à la suite de l'impact néfaste des accords de libre-échange sur les législations environnementales. Il n'est jamais trop tard pour se retrousser les manches. L'Amérique du Nord peut agir comme précurseur en matière d'environnement comme nous le constatons avec le marché du carbone instauré par la Western Climate Initiative¹⁷. De plus, l'Amérique du Nord a une responsabilité des plus importantes en ce qui concerne les questions environnementales considérant son poids industriel et économique, sans oublier l'immensité et la qualité de son territoire.

L'AQLPA croit que la CCE doit assumer un rôle de chien de garde en environnement et renforcer la gouvernance régionale en exigeant le renforcement et l'harmonisation des législations environnementales nationales.

**AQLPA
Saint-Léon-de-Standon
Le vendredi 30 août 2013**

¹⁷ Western Climate Initiative, [En ligne], <http://www.wci-inc.org/> (Page consultée le 21 août 2013)

CHRONOLOGIE

- 4 octobre 1987 : L'Accord de libre-échange canado-américain (ALE) est conclu sous la gouverne de Brian Mulroney qui en a par la suite fait un enjeu électoral pour sa réélection en 1988 avec l'ALÉNA (incluant cette fois le Mexique).
- 7 février 1992 : Signature du Traité de Maastricht en Europe.
- 1^{er} janvier 1994 : Entrée en vigueur de l'Accord de libre-échange nord-américain (ALÉNA) et de l'Accord nord-américain de coopération dans le domaine de l'environnement (ANACDE)
- 15 avril 1997 : La compagnie Ethyl Corporation enregistrée en Virginie dépose une plainte soutenant qu'une loi canadienne interdisant les exportations de l'additif MMT pour l'essence sans plomb ne respectait pas les obligations du Canada en vertu du Chapitre 11 de l'ALÉNA. Le Canada versera en 1998 une compensation hors cour de 19,5 millions de dollars canadiens à Ethyl Corporation, soit plus que le budget total d'Environnement Canada¹⁸.
- Janvier 2014 : L'ANACDE fête ses 20 ans et songe à son avenir.

¹⁸ Canadian Environmental Law Association, « How Canada Became a Shill », [En ligne], <http://www.cela.ca/article/international-trade-agreements-commentary/how-canada-became-shill-ethyl-corp> (Page consultée le 29 août 2013)

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Mario Alberto Núñez
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Un problema futuro en México, es el recurso agua, no contamos con suficientes plantas de tratamiento de agua residuales para reusar este recurso, se continua sacando agua del subsuelo, contaminamos las aguas costeras, ríos, las lagos están contaminados y sobre explotados. Las zonas costeras turísticas nacionales tiene presencia de microorganismos patógenos, plásticos, etc., etc.

México es pobre en agua potable y la poca que se tiene es utilizada deficientemente. Desde hace dos meses o más tenemos problemas por el recurso agua en el norte del estado de Sonora se tiene una disputa por el agua entre la ciudadanos de Hermosillo y ganaderos /agricultores.

Martin G. Goebel, P.Eng

Department of Environment and Conservation

ADM, Environment Branch

Department of Environment and Conservation

Government of Newfoundland and Labrador

Email: MGoebel@gov.nl.ca

Dear Mr. Angus:

Thank you for your email of July 30, 2013. I have been asked to reply on behalf of Hon. Kathy Dunderdale, Premier of Newfoundland and Labrador.

We have read through the links that were provided in your email and came to the conclusion that the CEC's role pertains primarily to the Federal Government. In turn, our interactions with the Federal Government in environmental matters has been primarily through the Canadian Council of Ministers of Environment (CCME) and various agencies such as the Canadian Environmental Protection Agency (CEPA). Over the years, many international issues such as transboundary air pollution, acid rain, waste management and water export come to mind where we hopefully were able to contribute to Canada's environmental goals.

We look forward to seeing the outcomes from your 20th anniversary discussions in Washington this fall.

Regards,

Martin G. Goebel, P.Eng

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I find the Harper government's abusive disregard for Canadian democracy and the Canadian environment extremely distressing.

It is clear that, under Harper's leadership, Canada's government is listening to industry, and ignoring both the public and its obligations to maintain high environmental standards as set out under the NAAEC.

ALSO, I find it offensively absurd that, under NAFTA, the provincial government of Quebec must tolerate being sued by American companies because it wants to respect the wishes of its citizens and assess the impacts of fracking BEFORE exposing vast swaths of fresh water and agricultural resources to serious risks of contamination and long-term damage.

We need the NAAEC to MEAN SOMETHING!!!

- Please tell the Canadian government that bringing its changes to the Fisheries Act and the Navigable Waters Protection Act into law would be a violation of the NAAEC.
- Please guarantee public involvement in major changes to environmental laws and to give the public recourse when environmental standards are weakened in order to placate industry or to gain a trade advantage.
- Please help us regain our right to participate in environmental decision-making and protect us from governments that fail to live up to the commitments made in the NAAEC.

Michael Keating
Environment Writer and Consultant
Canada
Email: michael@mikeating.com
5 August, 2013

Dear members of the JPAC,

I would like to provide some comments on the CEC's first 20 years.

During NAFTA negotiations I participated in discussions, especially about water issues. During the late 1990s, I worked for the CEC as a communications advisor.

I feel that the CEC is the only organization that provides a continental view of our environment. It has done this through such projects as pollution reports, state of the environment reports and the environmental atlas. These give us a much broader understanding of how many transboundary environmental issues play out.

The CEC's operations, including its secretariat, council, JPAC and public meetings and projects provide important fora for people from the three countries to meet, exchange ideas and learn from each other. As a Canadian, I learned a great deal about Mexico's environment. I saw a number of important projects on environmental information and technology sharing that improved environmental capacity.

When I was working for the CEC, I observed tension between the CEC secretariat and the three governments over what the secretariat would investigate and produce in terms of reports. This tension is understandable given that governments always want to exercise control. At the time, the secretariat was able to produce strong, independent reports.

I can only urge the governments to give the CEC the freedom of action to investigate and report on North American environmental issues. This will benefit public understanding and informed debate.

I hope these brief comments are of some help, and want to wish the CEC another 20 years of work.

Regards,

Onni Milne Canada Email address : onnivcn@vcn.bc.ca

I am no longer proud to say that I am Canadian. Stephen Harper's continuing repressive legislation has turned Canada into a pariah state instead of a leader among nations.

Instead of maintaining high environmental standards, as per NAAEC obligations, Harper's legislation gutted environmental standards by:

- eliminating thousands of environmental assessments and shutting the public out of environmental assessments,
- gutting Canada's Fisheries Act,
- repealing Canada's only law addressing greenhouse gas emissions,
- removing legal protection for the lakes and rivers,
- defunding and politicizing environmental science in Canada. Scientists ARE NOT ALLOWED TO SPEAK WITHOUT PRIOR PMO CLEARANCE.

The Canadian government needs to hear from you that bringing its changes to the Fisheries Act and the Navigable Waters Protection Act into law is a violation of NAAEC.

I am asking NAAEC to guarantee public involvement in major changes to environmental laws. The Harper government currently is making it difficult for citizens to participate in environmental reviews. Everyone must now fill out a nine page form to be evaluated and approved. Only those directly affected by a project will be allowed to speak. No longer are we citizens who are responsible for ensuring effective government. We are being turned into consumers who have to accept what the government gives us, no matter the cost or consequences. Who will call this "democracy".

With hope in my heart, I am asking NAAEC to give the Canadian public recourse when environmental standards are weakened to favor industry or gain a trade advantage. With hope in my heart, I am asking NAAEC to ensure that Canadian governments which fail to live up to commitments made in NAAEC will be held to account for their lack of effective governance.



DOCUMENTO DE OPINIÓN

PROFEPA

1. ¿Cuáles han sido los logros ambientales del ACAAN y el TLCAN? ¿En qué se han quedado cortas las disposiciones de estos convenios? Y en ese caso, ¿está el problema en los acuerdos mismos o en su implementación?

❖ Opinión de la Subprocuraduría de Recursos Naturales:

Logros del Acuerdo de Cooperación Ambiental de América del Norte:

- Destaca el acercamiento alcanzado entre instituciones, que más allá de protocolos diplomáticos, ha alcanzado la empatía entre personas, ideas y voluntades, para fomentar el entendimiento y la contribución a la atención de problemáticas específicas.
- Se han identificado las prioridades en materia ambiental para la región, y se trabaja mediante planes operativos con metas claras que permitan el cumplimiento de las perspectivas planteadas.
- Existen los mecanismos necesarios de cooperación trilateral para hacer frente a la problemática ambiental en América del Norte.
- Se han establecido los foros adecuados que facilitan la coordinación en la planeación, ejecución y seguimiento de programas.

- Existen los mecanismos de comunicación necesarios entre los funcionarios de los tres países, lo que facilita la coordinación y atención de los asuntos, como el formato de ecomensaje.

¿En qué se han quedado cortas las disposiciones de estos convenios?

Se considera necesario, contar con instrumentos de entendimiento específicos **actualizados** firmados entre las agencias de aplicación de la ley de los tres países, que facilite el intercambio de información de inteligencia con fines de aplicación de la ley, y donde **se incluya** el compromiso de dar cumplimiento a los Planes Operativos establecidos por la CCA en los proyectos de aplicación de la ley, de tal manera que se produzcan resultados claros y tangibles en apoyo a las prioridades ambientales fijadas por el Consejo. Por otra parte, es importante mencionar que se ha identificado la necesidad de impulsar el compromiso de las agencias de aplicación de la ley en dar cumplimiento a los acuerdos, a los Planes Operativos y las actividades operativas.

❖ Opinión de la Subprocuraduría Jurídica:

A lo largo de los primeros 20 años de cooperación ambiental, en lo concerniente a México se han experimentado diversos logros, con base en el objetivo a) del Acuerdo de Cooperación Ambiental de América del Norte (ACAAN), se alentó a la protección del medio ambiente por medio de instrumentos legales.

Desde la entrada en vigor del ACAAN, con el transcurso de los años, México ha experimentado una constante y continua transformación, publicándose diversas leyes tendientes a elevar los estándares de protección del medio ambiente, ejemplificando con los siguientes supuestos:

- Ley General de Vida Silvestre, publicada en el año 2000.
- Ley General de Desarrollo Forestal Sustentable, publicada en el año 2003.
- Ley General de Cambio Climático, publicada en el año 2012.
- Ley Federal de Responsabilidad Ambiental, publicada en el año 2013.

Con los puntos anteriores, uno de los principales logros se traduce en la implementación de legislación especializada para una mayor protección de los recursos naturales.

2. ¿Ha logrado la CCA los objetivos para los cuales fue creada? ¿Son dichos objetivos adecuados ante los retos ambientales a los que hoy se enfrenta América del Norte?

❖ Opinión de la Subprocuraduría de Recursos Naturales:

La Comisión para la Cooperación Ambiental (CCA) históricamente ha contribuido a la comunicación intergubernamental. Se ha destacado como el agente facilitador de entornos adecuados para el intercambio de información y el establecimiento de puntos de coincidencia sobre problemáticas, atribuciones y retos comunes, así como sinergias en la operación doméstica de los países parte del TLCAN para la protección de recursos naturales de distribución natural compartida.

Se identifica un área de oportunidad para la CCA, de impulsar la coordinación entre las instituciones responsables de dar cumplimiento a los acuerdos, planes operativos y demás compromisos, que genere resultados claros y tangibles en materia de aplicación de la ley.

❖ Opinión de la Subprocuraduría Jurídica:

Se han obtenido excelentes resultados ya que se han logrado los objetivos de la CCA, en vista de que se instauró legislación interna en la que se prevé un nivel alto de protección a los recursos naturales, con relación al objetivo j) del ACAAN, en el pasado mes de junio 2013, se publicó en el Diario Oficial de la Federación la Estrategia Nacional de Cambio Climático, cuyo objetivo primordial es la reducción en un 30% de los gases de efectos invernadero.

En cuanto a los objetivos, estos sí son adecuados ante los retos ambientales a los que se enfrenta América del Norte, siendo preciso señalar que: es necesario un instrumento jurídico internacional encaminado al derecho humano que tienen las personas a un medio ambiente sano para su desarrollo y bienestar, dicho instrumento internacional, debe de

alcanzar el rango de tratado internacional, con el fin y objetivo último de contar con una herramienta jurídica para la argumentación y resolución de litigios que versen sobre controversias ambientales en las que el Estado haya impuesto sanciones por infringir las disposiciones jurídicas aplicables.

3. ¿Han el ACAAN y las disposiciones ambientales del TLCAN encarado adecuadamente los asuntos ambientales relacionados con el libre comercio en América del Norte?

❖ Opinión de la Subprocuraduría de Recursos Naturales:

Se tienen avances muy significativos, sin embargo existen áreas de oportunidad en la atención a la problemática ambiental, como lo es, involucrar de manera sustantiva a otras agencias de aplicación de la ley como la Procuraduría General de la República, encargada de la investigación de los delitos de carácter ambiental en México, en el cumplimiento de las disposiciones establecidas en el ACAAN y las disposiciones ambientales del TLCAN.

❖ Opinión de la Subprocuraduría Jurídica:

Sí se han tratado adecuadamente los asuntos ambientales relacionados con el libre comercio, en virtud de que en la actualidad y recientemente se publicó la Norma Oficial Mexicana NOM-144-SEMARNAT-2012, para el control fitosanitario de conformidad con los artículos 712 y 713 del TLCAN.

4. ¿Cómo se podría mejorar la implementación del ACAAN y las disposiciones ambientales del TLCAN?

❖ Opinión de la Subprocuraduría de Recursos Naturales:

Ampliando sus atribuciones, como un organismo de arbitraje y conciliador de los diferentes intereses entre los países parte.

5. ¿Hay algún tema importante que la CCA no haya abordado en los últimos 20 años?

❖ Opinión de la Subprocuraduría de Recursos Naturales:

Se mencionan algunos: la certificación de pesquerías hacia la protección de las tortugas marinas; el re-establecimiento de la dinámica ecosistémica de la Reserva de la Biosfera Alto Golfo de California y Delta del Río Colorado a partir de sus afluentes de agua dulce; la relación entre la protección a la vaquita marina; la pesca ilegal No reglamentada y No reportada; y, el comercio internacional de pesquerías o la atención a contingencias ambientales de magnitud considerable.

6. A la luz de los últimos 20 años, ¿cuáles deberían ser las prioridades de la CCA para la próxima década y allende?

❖ Opinión de la Subprocuraduría de Recursos Naturales:

Entre los retos futuros de la CCA, como actor del panorama trilateral, se pueden señalar los siguientes:

- a) Debido a su carácter neutral, su función se limita a promover los espacios y momentos más idóneos para el alcance de acuerdos, así como al establecimiento de puntos de coincidencia; sin embargo, los compromisos se establecen a partir de los intereses internos de los países parte, lo cual siempre ha sido altamente respetado por la CCA, y en ocasiones deriva en la ejecución de mecanismos con resultados modestos.
- b) Un mayor acercamiento hacia la sensibilización de los países parte sobre problemas ambientales unilaterales, con posibilidad de contribución a su solución en forma solidaria por el conjunto trilateral; un ejemplo de esto es la Certificación de pesquerías hacia la protección de las tortugas marinas, el re-establecimiento de la dinámica ecosistémica de la Reserva de la Biosfera Alto Golfo de California y

Delta del Río Colorado a partir de sus afluentes de agua dulce, la relación entre la protección a la vaquita marina y el comercio internacional de pesquerías o la atención a contingencias ambientales de magnitud considerable.

❖ Opinión de la Subprocuraduría Jurídica:

Disponer y diversificar los recursos o aportaciones de las partes, para desarrollar proyectos regionales de conservación de los recursos naturales, en los que se dé una mayor participación con tecnologías y procesos que fomenten el uso eficiente de los recursos, así como incentivar la participación social en programas de conservación.

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Revisión Pública de los primeros 20 años del TLCAN y del ACAAN

Estimados integrantes del Comité Consultivo Público Conjunto:

Durante el último trimestre del año 2012 tuve la oportunidad de participar en el *Short Term Educational Program* del Secretariado de la Comisión para la Cooperación Ambiental (CCA) a través del cual pude colaborar con la Unidad de Peticiones Ciudadanas. Con base en esa experiencia, y atendiendo a la invitación a presentar información y comentarios para la revisión pública de los primeros 20 años del TLCAN y del ACAAN, les expongo a continuación algunas opiniones e ideas que considero podrían aportar al debate público que llevarán a cabo.

Aciertos/desaciertos de las nuevas Directrices para la Presentación de Peticiones y recomendaciones para su mejoramiento:

En julio de 2012, el Consejo de la CCA emitió las nuevas Directrices para la presentación de peticiones relativas a la aplicación efectiva de la legislación ambiental conforme a los artículos 14 y 15 del ACAAN, que sustituyeron a las Directrices emitidas en el año 2000. Si bien los cambios introducidos no fueron tan numerosos, sí se centraron en aspectos fundamentales del mecanismo de peticiones ciudadanas.

Considerando que los procesos de las peticiones, desde su presentación hasta la publicación de un expediente de hechos, han sido muy largos en algunos casos tomando incluso varios años debido a dilaciones del Secretariado como de las Partes y el Consejo, resulta a mi parecer acertado que en las Directrices se haya establecido explícitamente la duración que debe tener cada etapa del proceso y que, en aquellos casos en los que el Consejo, las Partes o el Secretariado no puedan cumplir con cualquier de los plazos que les sean aplicables, deban presentar una explicación por escrito de los motivos de la dilación, señalando fecha estimada para concluir la acción respectiva, debiendo informar a su vez al Peticionario de conformidad con la directriz 19.9.

Una vez que el Consejo haya votado instruir al Secretariado elaborar un proyecto de expediente de hechos, éste cuenta con un plazo de 180 días para concluirlo (directriz 19.5); sin embargo, tanto el ACAAN como las directrices son omisas en cuanto al plazo con que cuentan las Partes para presentar la información que, en su caso, les requiera el Secretariado para llevar a cabo dicha tarea. Si bien el artículo 21(1)(a) establece que las Partes, de conformidad con su legislación, “pondrá[n] a su disposición, sin demora, cualquier información en su poder que se le haya solicitado para la elaboración de un informe o expediente de hechos, incluso la información sobre

cumplimiento y aplicación”, sería conveniente la inclusión en las Directrices de un plazo específico al cual le sea aplicable lo previsto en la directriz 19.9. Lo anterior en interés de los ciudadanos, con el propósito de que el expediente de hechos cuente verdaderamente con la información fáctica relevante sobre la aplicación efectiva de la legislación ambiental, pues de nada serviría su entrega y publicación en tiempo por parte del Secretariado si su contenido es escaso derivado de la falta de información proporcionada por la Parte involucrada.

En lo que refiere a la publicidad del razonamiento del Secretariado, del Consejo y de las Partes en sus determinaciones, resoluciones y respuestas respectivamente, sería conveniente que debieran manifestarlo y publicarlo como regla general, y estar exceptuados sólo en circunstancias especiales, a fin de ser congruente con el objetivo del ACAAN de “promover la transparencia y la participación de la sociedad en la elaboración de leyes, reglamentos y políticas ambientales”, previsto en su artículo 1(h).

De acuerdo al Acuerdo y a las directrices actuales, el Secretariado debe exponer sus razones cuando determina que una petición cumple o no con los criterios establecidos en el artículo 14(1) del ACAAN (directrices 6.1 y 7.2), si amerita o no solicitar una respuesta de la Parte interesada (directriz 7.2), y si amerita la elaboración de un expediente de hechos (artículo 15(1)(a) del ACAAN, y directrices 9.8 y 10.1). Asimismo, las Partes en su respuesta conforme al artículo 14(2) y 14(3) del ACAAN, deben explicar por escrito por qué no están incurriendo en omisiones en la aplicación efectiva de la legislación ambiental (directriz 9.4) o si el asunto expuesto es materia de un procedimiento judicial o administrativo pendiente (directriz 9.6) (sobre este último supuesto, en las antiguas directrices el Secretariado debía exponer sus razones para dar por terminada una petición (antigua directriz 9.4), las nuevas parecieran indicar, en cambio, que se requiere del razonamiento de las Partes pero no así del Secretariado). Finalmente, ahora el Consejo debe también exponer por escrito sus razones para instruir al Secretariado sobre la elaboración de un expediente de hechos (directriz 10.4).

En todos los supuestos anteriores, la información debe hacerse pública en el Registro que establezca el Secretariado (directrices 10.2, 15(1)(f), 15(1)(g), 15(1) (h.i)(h.ii)(h.iv)(h.vi)) así como la explicación de los motivos por los que no cumplan con algún plazo aplicable (directriz 15(1)(k). Sin embargo, las Directrices no son claras respecto a si el Consejo debe también exponer sus razones cuando instruya al Secretariado no elaborar un expediente de hechos, razonamiento que definitivamente debería conocer el peticionario y los ciudadanos. Las Directrices tampoco requieren del razonamiento del Consejo en la decisión que adopte sobre publicar o no la versión final del expediente de hechos que le presente el Secretariado (directrices 13.1 y 13.2); si bien nunca ha votado para no publicarlo, sería conveniente que proporcionara su razonamiento en caso de llegar a hacerlo, y que se incorpora a su vez en el registro.

Más difusión

Antes de participar en el *STEP Program* de la CCA mi conocimiento sobre ésta, el ACAAN y el mecanismo de peticiones ciudadanas era mínimo, por no decir nulo. En las clases sobre derecho ambiental en México es poca la referencia que se hace a los mismos. No es así, en cambio,

respecto del TLCAN, acuerdo internacional ampliamente conocido y estudiado tanto dentro como fuera de las universidades. Por ello, considero que mayor difusión debe hacerse tanto del mecanismo de peticiones ciudadanas, de las respuestas de las Partes y de los expedientes de hechos – con el propósito de que sean más y mejor utilizado por los ciudadanos – como de las actividades y proyectos de la CCA. Al respecto, es importante la mayor colaboración con las universidades de los tres países, particularmente las mexicanas; la organización de más eventos con instituciones que puedan estar interesadas; así como la mayor y mejor utilización de las redes sociales para llegar a jóvenes y personas/grupos/comunidades afectadas que pudieran presentar peticiones de conformidad con los artículos 14 y 15 del ACAAN.

Evaluación de resultados

Si bien después de casi 20 años se han presentado alrededor de 80 peticiones y se han publicado casi 20 expedientes de hechos – datos que en sí mismos dicen mucho – es menester conocer también sus impactos reales en las sociedades canadiense, estadounidense y mexicana. Para ello, es importante que se realice una evaluación de las acciones – jurídicas y no jurídicas – efectuadas con la información publicada por parte de académicos, investigadores, organismos no gubernamentales, autoridades de los tres gobiernos y la sociedad en general. Esta labor puede realizarse no sólo en el contexto del mecanismo de los artículos 14 y 15 del ACAAN sino también con los demás proyectos de la CCA. Una evaluación de esta naturaleza permitiría conocer el alcance práctico y real de las acciones de la CCA así como identificar estrategias para lograr sus objetivos y generar una mayor influencia en la sociedad.

Como egresada de la Facultad de Derecho de la Universidad Nacional Autónoma de México, quisiera precisar que las opiniones aquí esgrimidas tienen el objetivo de acercar a los académicos y estudiantes, de ésta y otras universidades, con la CCA.

Espero fielmente que los comentarios expuestos aporten a la discusión que se realice de los temas planteados en la convocatoria, particularmente sobre cómo podría mejorarse la implementación del ACAAN y las disposiciones ambientales del TLCAN, así como de cuáles deberían ser las prioridades de la CCA en los próximos años.

Atentamente

Lic. Montserrat Rovalo Otero

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Ned Brooks
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Comments: Congratulations to the CEC for 20 years of important work. Since 1998, I have been fortunate to be involved with the CEC as technical expert at several CEC workshops, a contractor to CEC housed within INE/SEMARNAT for a small project in Mexico, an advisory member to a CEC Task Force and as Secretariat staff until earlier this year. During these 15 years I have participated in a variety of activities to help identify and reduce pollutants in North America, and to build this capacity in Mexico. The CEC has been effective in many areas and its joint work has undoubtedly contributed to protection and enhancement of the overall well-being of the environment, ecosystems and human health in North America. While there is certainly benefit to CEC work on these issues in the region, applying increasing limited resources to a broad range of issues may jeopardize the CEC's ability to be effective. The CEC has of course recognized this in the past through its periodic strategic planning; I offer that in the future, resources could be applied even more strategically. Building on the experience of the past 20 years in implementing the NAAEC, one way to do this could be to focus more on aspects of the NAAEC that deal with the intersection of trade and the environment. Central to this is ensuring consistency of laws and requirements and compliance with these requirements. Thank you for the opportunity to comment.

Dr. Leonardo D. Ortiz Lozano
Instituto de Ciencias Marinas y Pesquerías
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Email: ortizleo@gmail.com
23 August, 2013

A quien corresponda. Le envío mis comentarios con respecto a los 20 años de la CCA.

Si bien la CCA ha abordado el tema de transporte de personas y mercancías como un asunto importante en el último año, me queda la impresión de que este tema se centró casi exclusivamente en las emisiones de CO₂ y sus repercusiones. Sin embargo, y como parte vital del intercambio comercial y el libre comercio, la construcción de carreteras y puertos representan en México uno de los asuntos mas preocupantes, principalmente por las graves afectaciones ambientales y sociales que producen.

Me centraré en el caso de los puertos marítimos, y particularmente en el caso del Puerto de Veracruz y su proyecto de ampliación. Con el afán de contar con infraestructura para recibir embarcaciones de dimensiones tipo PANAMAX y mayores, el Gobierno Mexicano ha decidido violentar la normatividad ambiental nacional y los tratados internacionales en materia de medio ambiente para llevar a cabo este proyecto.

Esto lo ha hecho al decidir modificar un área marina protegida llamada Parque Nacional Sistema Arrecifal Veracruzano, con la finalidad de ampliar el actual puerto de Veracruz sobre la zona arrecifal. Al estar prohibido por la legislación mexicana y los tratados a los cuales México está adherido el realizar obras de gran impacto dentro de las áreas protegidas y Parques Nacionales, la autoridad eliminó esta traba modificando el polígono de protección del Sistema Arrecifal Veracruzano para con ello no "violentar" ninguna ley a la hora de construir el nuevo puerto.

Sin embargo, la comunidad científica y cientos de usuarios locales optaron por interponer un amparo legal para detener esta obra, la cual se ha documentado como una obra que generará severos problemas ambientales en la región afectando a prestadores de servicios turísticos, pescadores, propietarios costeros y a la población en general. Los usuarios han obtenido a través de canales de acceso a la información gubernamental, datos que indican que la autoridad sustenta sus decisiones en información errónea, muchas veces falsa y a toda vista la usa dolosamente. A pesar de la opinión emitida por científicos serios, quienes auguran un importante impacto ambiental negativo en la región, el gobierno mexicano ignoró las advertencias y ha manifestado su deseo de seguir con el proyecto.

En resumen, este caso de estudio representa un importante reto para la CCA, en donde existe un gobierno integrante del Tratado de Libre Comercio de Norteamérica, que está realizando acciones para favorecer el comercio internacional, pero que para ello está amenazando la integridad ambiental de la región, al pretender realizar una obra de gran

impacto en un Parque Nacional que es muy relevante en el mantenimiento de los sistemas costeros del Golfo de México.

Esta situación es un claro ejemplo del cruce entre las políticas económicas y el derecho de los ciudadanos a contar con un ambiente saludable, y considero que podría ser un tema a abordar por la CCA. El planteamiento debería incluir no solamente a los representantes de los países del NAFTA, sino el buscar estrategias para que las comunidades locales puedan emitir sus opiniones y preocupaciones ante proyectos de gran magnitud. Debería también incluir la relevancia que tiene la comunidad científica en la toma de decisiones y en la evaluación de proyectos de gran magnitud.

Si desean contar con más información sobre el caso aquí planteado, quedo a su disposición por este medio.

Atentamente

--

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**COMMENT ON COMPATIBILITY OF NORTH AMERICAN
ENVIRONMENTAL LAWS***

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August 9, 2013

* Submitted to the Commission for Environmental Cooperation on the occasion of the 20th anniversary of the North American Agreement on Environmental Cooperation.

Introduction

Assembling and promulgating information about the compatibility of environmental laws is an appropriate function of the Commission for Environmental Cooperation (CEC). The CEC could promote agreement among the three NAFTA countries by systematically supplying legal doctrinal information in a treatise for use in judicial and legislative proceedings.

One recent evaluation of the CEC considered its performance “modestly positive” in promoting conservation and publicizing environmental problems.¹ Another analyst saw varying success in CEC activities, viewing the facilitation of voluntary cooperation as most effective, with environmental enforcement, independent reporting, and the integration of trade and environment following in descending order.² The idea proposed here is that the CEC summarize the decisional and statute law of all three countries in a widely disseminated Restatement-like treatise, noting divergences and commonalities. The Commission would then be able to help resolve national disputes in which the law of other NAFTA countries is relevant, as well as those involving international litigation between them. Further, the treatise would be a resource for those participating in legislative discussions of legal and regulatory harmonization.

¹ See Stephen Zamora, *Rethinking North America: Why NAFTA's Laissez Faire Approach to Integration is Flawed, and What to Do About It*, 56 VILL. L. REV. 631, 639 (2011). The Zamora analysis echoed the multi-author, earlier assessment that the CEC's record was “generally positive” in GREENING NAFTA 310-11 (David L. Markell & John H. Knox eds. 2003).

² See Linda J. Allen, *The North American Agreement on Environmental Cooperation: Has It Fulfilled Its Promise and Potential? An Empirical Study of Policy*, 23 COLO. J. INT'L L. & POL'Y 120, 190-92 (2012).

The Compatibility Problem: A Water Law Example

A recent U.S. appellate decision, *Consejo de Desarrollo Económico de Mexicali, AC vs. United States*, exemplifies the dangers inherent in an assumption that NAFTA participants' legal systems are incompatible.³ In *Consejo*, Mexican farmers and ecosystems had depended for more than half a century on cross-border flows from an aquifer partially supplied by seepage from the All-American Canal, an earthen conveyance ditch located entirely on the U.S. side. Yet after the Bureau of Reclamation in 1994 ordered the Canal to be lined with concrete, cutting off this water source, the Ninth Circuit rejected the Mexican plaintiffs' property deprivation and environmental claims, basing its holding on mootness, lack of subject matter jurisdiction, and sovereign immunity.⁴

The court ignored the ways that Mexican civil law tradition and legislation allocating water on the basis of need might have been reconciled with the U.S. common law doctrine of absolute property rights. In fact, a need-based approach to the canal lining dispute would be entirely consistent with prior appropriation precedent in the western United States, since the *Consejo* plaintiffs had uninterruptedly drawn on the seepage for decades. By compiling information about divergent legal systems and explaining their potential compatibility, the CEC might be the perfect mechanism to provide technical assistance to courts faced with such problems.

³ 482 F. 3d 1157 (9th Cir. 2007). For a more detailed discussion of this case and its implications, see Peter L. Reich, *The Historical, Comparative, and Convergence Trifecta in International Water Law: A Mexico-U.S. Example*, 43 ENV'T'L L. REP. 10509 (2013).

⁴ 482 F. 3d at 1158, 1174.

Treatise on Coordination of National Legal Standards

The CEC has the international legitimacy and enforcement experience to supervise the production of *North American Environmental Law*, a comprehensive summary of the environmental law of the three NAFTA countries. Authorization for the CEC's researching and creating such a project can be found in the Commission's mandate to prepare independent reports on matters related to the cooperative functions of the North American Agreement on Environmental Cooperation (NAAEC).⁵ As does the American Law Institute's authoritative Restatement series, this treatise would contain detailed discussions of the historical development of doctrine, the current status of statutory and case law, and contrasting interpretations, and would be regularly updated.⁶

Obviously there will be variances among and within the three countries, just like the jurisdictional approaches noted in the Restatements. But the treatise would identify existing subject areas of commonality, and also propose harmonization where countries' laws conflict. As the Restatements have done, *North American Environmental Law* would prove a resource for courts and legislatures confronting international conflicts as well as national disputes with regional implications. The treatise could also help all three nations' legislators and regulators assess the effectiveness of their environmental regimes.

⁵ North American Agreement on Environmental Cooperation, U.S.-Can.-Mex., Sept. 14, 1993, art. 13 (1), 32 I.L.M. 1487-88 (1993).

⁶ Some earlier efforts have been made to find parallels between Mexican and U.S. environmental law, which one report found "broadly comparable." See Evaluation of Mexico's Environmental Laws, Regulations, and Standards in NAFTA AND THE ENVIRONMENT 583, 615 (Daniel Magraw ed., 1995). But nothing trilateral, comprehensive, or kept up-to-date has been produced.

Interventions in Judicial and Legislative Proceedings

Private parties, and the CEC as authorized by the NAFTA Commission, could employ the treatise in a variety of judicial and legislative interventions. In court proceedings, *amicus curiae* briefs are an appropriate vehicle for introducing material in support of foreign law compatibility. For example, the Colorado Supreme Court's 2002 holding in *Lobato v. Taylor* incorporated this author's arguments in an *amicus* brief that successors-in-interest to an 1843 Mexican land grant were entitled to grazing and other usufructuary rights on the community's former common lands, now owned by a ski resort.⁷ In the legislative context, the treatise could be useful in explaining trilateral differences and commonalities as a basis for statutory harmonization.

At the present time, interested individuals, nonprofit organizations, and government agencies would be free to utilize the treatise as a resource for these interventions. While such activity may not fall within an existing mandate allowing the CEC to take action itself, interventions could be proposed as part of its future role, depending on the political will of each country.

Conclusion

Any suggestion of an expanded role for a trilateral institution such as the CEC raises the spectre of encroachment on sovereignty, particularly among those viewing international cooperation as a threat to a national economy, society, government, and

⁷ 71 P. 3d 938, 943 (Colo. 2002). For further discussion of the case and related comparative law perspectives, see Peter L. Reich, *Litigating Property Under the Guadalupe Hidalgo Treaty: The Sangre de Cristo Land Grant Case*, 5 SCHOLAR 217 (2003).

environment.⁸ But merely presenting legal information in a convenient form for judges and legislators does not constitute a policy prescription. All three NAFTA countries have unique jurisprudence and statutes that function well, and from which the others can learn without relinquishing independent control. The advantage of the Restatement-like treatise *North American Environmental Law* is that it will clarify for jurists and policymakers which portions of the trilateral legal corpus are compatible across borders. And if the CEC's governing authorities wish to grant it a more interventionist role, it will be able to act in a knowledgeable, targeted fashion.

⁸ See ROBERT A. PASTOR, THE NORTH AMERICAN IDEA: A VISION OF A CONTINENTAL FUTURE 10-16 (2011).

Rick Lobello Rotary International US Email: ricklobello@gmail.com
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On November 7, 1998 Districts 5520 and 4110 formally dedicated Rotary's efforts towards helping to establish an International Peace Park in the Big Bend area at a ceremony that attracted over 200 Rotarians from both districts at Chamizal National Memorial in El Paso. We received letters encouraging Rotary's efforts from the Secretary of the Interior, President Clinton and President Zedillo. I can send you many relevant and historical documents relating to this effort upon request.

We need your help in putting together a new international steering committee that would continue work on this project now that both countries have shown a renewed interest in this effort as demonstrated when President Obama and former President Calderon met on May 19, 2010.

Some information including recent articles and other materials on the project including videos are included on my website at www.iloveparks.com/peaceparks

Sincerely,
Rick LoBello

Roberto Aguerrebere
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Mexico
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- Vínculos entre comercio y medio ambiente
- Evaluación de los efectos ambientales del TLCAN
- Evaluación del impacto ambiental transfronterizo(artículo 10[7] del ACAAN), son temas que requieren más atención, difusión y acción.

Saludos cordiales.

Rubén López
Grupo XXL
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26 June 2013

Prevención de la contaminación

He recorrido 18 años en el ámbito profesional y hasta el momento no puedo ver todavía que exista un real compromiso sobre esta materia en los vértices: industrial, gobierno y sociedad.

Transparencia y participación del público en asuntos ambientales

Tanto en el sector gobierno, industrial y público en general, se ve corrompido por la no transparencia y cochupos para dar fe de irregularidades que se vean como dentro de normatividad.

Observancia y aplicación de las leyes y políticas ambientales

Trabaje mucho tiempo en la industria de embotellado de bebidas gaseosas y desde el rubro de descargas de aguas residuales hasta la perforación de pozos clandestinos y sin dejar a un lado la recuperación de agua y falta de equipos para lavado de gases al medio ambiente, es uno de muchos aspectos de falta de efectividad en es renglón.

Acceso privado a recursos y garantías procesales

Participe en proyecto de fabricación de composta en la delegación política miguel hidalgo y por situaciones netamente de interés político y partidario se hecho por la borda la posibilidad de tener mayor capacidad y número de plantas para incluso disminuir los volúmenes de recolección y confinación de los desechos de parques y jardines, escamocha y otros desechos que a su vez forman parte del mejoramiento de los terrenos de labor, jardinería fruticultura etc.

CSM

Chemical Sensitivities Manitoba

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July 30, 2013

TOPIC: Topics for consideration by the Commission for Environmental Cooperation (CEC) in the next 10 years.

The Commission for Environmental Cooperation (CEC) celebrates its 20th anniversary this year and considering its budgetary restraints, many of its goals have been successfully accomplished. With changes in the economy for all three countries, differences in political wills with respect to the environment, the increasing pressure for a more sustainable environment and the impacts of climate change, the CEC now has challenges that were not as apparent at the time of its inception.

If not already under consideration, the CEC may need to revisit its projects and possibly make some revisions so that these projects adequately address the current and common environmental needs of all three parties. Although the CEC projects are diverse in nature, consideration should also be given to new and emerging environmental issues that are of concern and relevant to all parties.

The following are some comments and recommendations for the Joint Public Advisory Committee (JPAC) for consideration as the CEC looks towards future planning in the years ahead.

Comments and recommendations:

- **CEC visibility and outreach**

The projects and publications by the CEC are very relevant to many people in the environmental and health communities and also, the general public. As a result, the awareness of this valuable work needs to reach a broader audience as it would appear that this is not happening.

For example, the recent “Framework Document to Improve Environmental Health of Vulnerable Communities across N.A.” is a meaningful approach to identifying and qualifying vulnerable populations and suggesting practical solutions or ways by which these populations can improve their environmental health. While this document has its merits, its dissemination to the appropriate organizations is

important. This is where the CEC has to consider how to effectively target groups or individuals who would have an interest in delivering the message.

More outreach with the community-at-large, possibly at public environmental events, could improve the awareness and work of the CEC. The concept of the three countries working together on environmental issues of common interest is a relevant and strong message for communities.

The awareness and importance of the submissions on the environmental enforcement process also need to be increased – the merits of such a system should be outlined.

While there is some outreach through webinars, the posting of reports online, and online participation for public meetings, a more concerted effort for further engagement through different channels/media is required. This should not be viewed as lobbying but rather, a way to educate, engage and improve awareness of environmental issues that affect the three nations.

Recommendation: The CEC should work at increasing its visibility through existing networks that are relevant to the project.

Recommendation: Increase outreach and visibility at universities and colleges that have strong and well known environmental programs that are compatible with the current objectives of the CEC.

Recommendation: The participation of the CEC at some select, public events so that its work could be highlighted.

▪ **CEC funding**

The current funding for the CEC by each government is inadequate as public outreach and the capacity of some of its projects require expanding. Also, additional funding would be required if new projects are initiated.

Increased funding would also allow the CEC to increase its capacity to work with other organizations, including NGOs, on some projects because of common goals.

Recommendation: All countries should consider an increase in funding for the CEC as this would result in improving the effectiveness and outreach capabilities of the organization.

- **Viable energy source**

With emphasis on Mexico, the introduction of solar power could potentially improve education resources for children in rural areas, and in particular, if there is no power source. This proposal is aimed at simple projects like introducing limited power supplies for small rural schools where computers could be used as complementary teaching aids. Solar energy could also supply energy for water pumps and lighting in schools.

This type of project could be accomplished by working together with local organizations. There are similar projects in some parts of Africa.

Recommendation: The CEC to consider how small rural villages with schools in Mexico, could benefit from the introduction of solar power.

- **Climate change preparedness**

This takes into consideration what communities have to do in order to be better prepared for extreme weather events as well as being prepared for the raising of water levels along coastal areas.

Mexico and the United States share the Gulf of Mexico and some communities around the Gulf have similar environmental issues such as coastline erosion resulting from the rising of water levels. This has the potential to affect towns and cities not only on the coastline but also inland, depending on topography. The effects of over-development in coastal areas by the removal of swamps and mangrove whether for tourism, oil exploration, or other developments, have also put some coastal areas at risk for intense flooding.

The CEC is in a position to monitor a few very vulnerable locations and with the help of local governments, educate communities on the need for emergency preparedness plans. This also relates to the issue of building sustainable communities with respect to the environment - how can local governments ensure that new development is not at the cost of the environment.

Recommendation: The CEC to determine a few locations around the Gulf of Mexico that are extremely vulnerable with respect to flooding and work with local officials to ensure that there are emergency preparedness plans.

- **Smart management of chemicals**

There has been work on chemicals of mutual concern for all three countries (e.g. lindane, DDT, mercury, dioxins, furans and flame retardants (polybrominated diphenyl ethers – PBDEs). With some of these chemicals falling under

international agreements for worldwide chemical reduction and phase out, there could be increased efforts for the three countries to investigate and initiate plans for chemicals like flame retardants – how they contaminate shared waste streams or re-enter the consumer market through the recycle stream. For example, recycled foam containing PBDEs are being used in consumer products while PBDEs are being phased out.¹ PBDEs are found in older furniture and other consumer products and are generally present in house dust but possibly at higher concentrations in dwellings of the lower income population.

Another group of chemicals that should be of concern to all three countries is perfluorinated compounds. These chemicals are relatively pervasive in our environment and can be found in many consumer and industrial products. Because of their environmental persistence and potential to do harm to human health, some consideration could be given to the identification of the most commonly used perfluorinated compounds in Mexico and where they are most likely to be found. This should be followed by biomonitoring and environmental monitoring for the identified perfluorinated compounds.

Recommendation: The CEC should consider the expansion of its works on PBDEs to include the investigation, quantification of PBDEs in the recycle stream of products and in shared waste streams and based on the data obtained, make recommendations so that the presence of PBDEs in waste streams and recycled products would be eliminated or reduced.

Recommendation: Consideration to be given to the identification and monitoring of the most commonly used perfluorinated compounds used in Mexico.

▪ **Webinars**

The CEC webinars are excellent in communicating environmental issues and/or data to the public. They have been informative and not lengthy in duration so that are appropriate form of engagement for many. However, they should not be the alternative for longer public face-to-face meetings.

Recommendation: The CEC should continue the webinars with topics that are relevant to the public. Depending on resources and the availability of presenters, the number of webinars could be increased.

¹ DiGangi, J., Stravoka, J. International POPs Elimination Network. A Survey of PBDEs in recycling carpet padding. 2011.

- **NGO participation in meetings**

NGOs want to participate in the public meetings and possibly attend some of the public sessions. However, many NGOs require funding, and in particular the small organizations, who want to actively participate in the CEC activities but do not have the resources to do so. There is concern that the short time for booking airline tickets, prior to departure, for a meeting, possibly does not result in the most efficient use of the limited available financial resources. Although the public can participate in these meetings by webinar, face-to-face participation is preferred in some cases.

Recommendation: The CEC should allow sufficient time to make travel arrangements for meetings so that cheaper transport fares could be used. This can be partially achieved by decreasing the registration time for applicants.

- **NGO representation on JPAC**

At present, public interest groups, including non-governmental organizations, are not represented on JPAC (all three countries). This does not represent a truly balanced committee considering the role of the JPAC is a liaison to the public and the environmental agenda of the CEC.

Recommendation: Consideration should be given to the inclusion of a NGO from each country on JPAC.

Sandra Madray

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My own opinion, and this is not necessarily that of my colleagues, is that the CEC and the CLC should be mandated to harmonize regulations in North America using a NAFTA label equivalent to the EU's CE designation. The side agreements were originally set up to act as watchdogs to make sure each country enforced their own regulations, but now after 20 years, we need to take our North American relationship to the next level. We need to talk about a common external tariff, about labour mobility, about standard and regulatory harmonization and/or mutual recognition.

We can't save "our environment" without talking about who "we" are and about how we relate to the world. We need institutions to help us.

Dream big!

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12 August, 2013

1. I won't dwell on the past. Given very limited resources and strict control by the three governments, I think the CEC has not done badly.
2. Looking ahead, however, significant changes must be made:
 - a. CEC (or some follow-on body) must be more independent and gain access to greater resources. It is time for a group of North American environmental leaders to propose how to do this to the three national governments.
 - b. The main reason is that environmental issues – particularly climate change – will become more and more urgent in the next years. Climate change does not stop at the 49th parallel or the Rio Grande – the CEC.mark2 (or a successor organization) must look at these issues with a continental perspective – not three side-by-side national perspectives. Similarly it must be much more aggressive with work on energy and transportation infrastructure – again, in a continental perspective.
 - c. The organization must work harder to develop networks among North American environmental organizations but also universities – and in professional schools (transportation, journalism, etc) as well.
3. Finally, what should be a fairly simple task that could be done without a major restructuring of the Council: Many reports on all aspects of environmental issues cross our desks. But many (most) look at these issues from a national perspective. Many would have significantly greater value if the work were framed in comparative perspective – and achieve a much greater bang for the buck. For example:

Each year, as mandated by the Global Change Research Act, the US Global Change Research Program, produces a “National Climate Assessment”, a report to inform the President, the Congress, and the American people about the current state of scientific knowledge regarding climate change effects on US regions and key sectors, now and in the coming decades (<http://www.globalchange.gov/what-we-do/assessment>). The National Research Council, with members drawn from the councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine, has issued an evaluation of this report. The review asks “Are there any critical content areas missing from the report?”

One element of the response states: “There is a clear need for more international context in the discussion of energy use and mitigation efforts, and in understanding U.S. vulnerabilities that stem from impacts occurring elsewhere in the world.” (A Review of the Draft 2013 National Climate Assessment, http://www.nap.edu/catalog.php?record_id=18322, p. 15) There is no sense that climate change in the US might (must?) be viewed in the context of the impact of climate change on the North American continent or to suggest that this investigation ought to be carried out jointly by the three North American governments.

Here's another, from the US DOE:

U.S. ENERGY SECTOR VULNERABILITIES TO CLIMATE CHANGE AND EXTREME WEATHER Given the increasingly continental structure of our energy industries, wouldn't this be much more useful if it looked at this in a North American framework? More negatively, what's the value of doing this in an entirely US framework?

<http://energy.gov/sites/prod/files/2013/07/f2/20130710-Energy-Sector-Vulnerabilities-Report.pdf>

One more: “A Road Map to Climate Friendly Cars”: This comprehensive state-by-state analysis of the climate impacts of the electric car, plug-in hybrid electrics, and high-mileage, gas-powered hybrid cars takes both of these factors into account – the source of energy for the power grid and carbon emissions from vehicle manufacturing. Why not add Mexican states and Canadian provinces to this analysis? http://assets.climatecentral.org/pdfs/ClimateFriendlyCarsReport_Final.pdf

Could the CEC help create a network among directors of research organizations in the three countries to communicate about up-coming projects and to encourage comparative analysis?

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The Commission for Environmental Cooperation as a model for promoting sustainable development in the Americas

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Abstract: The North American Commission for Environmental Cooperation (CEC) has been touted as a regional model for strengthening environmental cooperation and sustainable development related to free trade regimes. This study reviews CEC's development since 1994 in the context of its ambitious North American Free Trade Agreement related mandate. Drawing on its own documents, government records and scholarly assessments, the study traces the CEC's steady decline in response to limited support by its member governments. The CEC has nevertheless gained a valuable niche in North American environmental management, spotlighting problems, strengthening public participation and building capacity for environmental cooperation in critical areas of regional environmental importance. Thus we argue the CEC is at least a partial template for building environmental protection into free trade agreements in the hemisphere. Future agreements should be informed by the CEC's shortcomings as well as its successes if they wish to strengthen trade-related environmental protection in the Americas.

Keywords: Commission for Environmental Cooperation; North American Agreement for Environmental Cooperation; NAFTA; North American Free Trade Agreement; sustainable development.

Reference to this paper should be made as follows: Mumme, S.P. and Lybecker, D. (2011) 'The Commission for Environmental Cooperation as a model for promoting sustainable development in the Americas', *Int. J. Sustainable Society*, Vol. 3, No. 2, pp.151–173.

Biographical notes: Stephen P. Mumme is a Professor in the Department of Political Science at the Colorado State University, Fort Collins, CO, where he specialises in the area of transboundary resources management in North America and comparative environmental policy.

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1 Introduction

The North American Commission for Environmental Cooperation, better known by its acronym, CEC, is a stepchild of the North American Free Trade Agreement (NAFTA) that entered into force on 1 January 1994. The CEC is something of an institutional Cinderella. Born of civic concern with free trade's potential to erode environmental standards region wide, it has been held up as a regional model for holding governments more accountable to their public in trade-related environmental matters and as a useful mechanism for strengthening bilateral and multilateral cooperation for environmental protection and sustainable development. On the other hand, over its 16-year institutional life, it has been starved by its member governments and shunned by some environmental organisations whose protests and lobbying in the run-up to NAFTA were seminal to its creation.

While the CEC is not the only trade-related institutional model for advancing international environmental cooperation, it is the first to have the region's dominant trading partner, the Americas, as a member, and the organisation with the longest track record in this policy domain. This alone ensures that CEC is subject to considerable scrutiny as advocacy groups and politicians move to strengthen the environmental conditions attached to trade agreement approvals within the hemisphere.

This paper offers both an overview and a critique of the CEC's achievements and considers its utility as an institutional model for harnessing trade to sustainable development in Americas. We review the CEC's role and achievements in the context of its foundational expectations as well as the much more restricted scope of its present work that reflects its adaptation to the expectations of its member governments. It is our view that any serious consideration of the CEC's relevance for advancing sustainable development in the US hemisphere must be gauged against these twin sets of ambitions for its role as a constituent part of the evolving regime for environmental management in the region.

This paper proceeds chronologically, first describing the CEC's formation and its formal mandate, followed by an account of its development and contraction in the face of the institutional limits imposed by its member governments and public criticism. It then reviews the CEC's accomplishments within this more restricted frame of policy reference, focusing first on its enforcement functions and second on its substantive programme objectives for tri-national environmental cooperation. This paper concludes by reflecting on those aspects of CEC's structure and functions that may well be worth emulating or incorporating in future binational or multilateral agreements related to mitigating trade's adverse effects on environmental protection within the hemisphere.

A qualitative methodology is used in developing this assessment. Our account and interpretation of the CEC's work is predicated on a thorough canvass of the scholarly literature and journalistic and advocacy group commentary on the CEC over a decade and half. We also review the CEC's own extensive reports and the internal documents produced by its citizen's advisory committees and other government documents and

reports that comment on its mission and performance. This study builds on earlier scholarly assessments of the CEC by reporting on the CEC's institutional changes and modified programme of work since 2004 and considering its relevance as a model for future trade-environment agreements as trade liberalisation advances in the US hemisphere.

2 Greening NAFTA: CEC's impossible mandate

The CEC, like NAFTA itself, may be characterised as a policy outcome of an epic clash between two sets of normative values, those associated with free-market growth and those associated with sustainable development (Audley, 1995, p.333). The NAFTA debate, waged over two-and-a-half years and culminating in the historic November 1993 agreement, not only pitted environmentalists against traders, but also opposed environmentalists against themselves. This fractured coalition weakened the thrust of environmental advocacy at the time and ensured that any policy solution supported by the accommodationist wing of the environmental movement, those favoured by the Clinton administration and key actors in the US Congress, would confront a highly sceptical advocacy community once the deal was done.

Without reviewing the historic coalition politics that produced the North American Agreement on Environmental Cooperation (NAAEC) and the CEC – that story is well told elsewhere (Audley, 1995, 1997; Grayson, 1995; Johnson and Beaulieu, 1996; Mayer, 2002; Torres, 2002), the CEC's mandate remains an extraordinary achievement that at once captures both the aspirations of environmentalists at the time as well as their political weaknesses. To begin, the NAAEC created a tripartite institutional structure: a Council of Ministers (the environmental ministries of Canada, the Americas and Mexico), the CEC and a Joint Public Advisory Council (JPAC) consisting of business, government and environmental representatives from the three countries. Second, the mandate as set out in Parts I–III of the Agreement – particularly in Articles 1–7 referring to the responsibilities of the Parties and Article 10 referring to the functions of CEC's governing body, the Council – touches upon practically every conceivable aspect of what might reasonably fall within the realm of sustainable development policy for North America. Reflecting the Rio Declaration and Agenda 21, the Agreement's objectives as set out in Article 1 are to:

- foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations
- promote sustainable development based on cooperation and mutually supportive environmental and economic policies
- increase cooperation between the Parties to better conserve, protect and enhance the environment, including wild flora and fauna
- support the environmental goals and objectives of NAFTA
- avoid creating trade distortions or new trade barriers
- strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices

- enhance compliance with, and enforcement of, environmental laws and regulations
- promote transparency and public participation in the development of environmental laws, regulations and policies
- promote economically efficient and effective environmental measures
- promote pollution prevention policies and practices.

Part II, Article 2, which stipulates the 'general commitments' of the Parties in NAAEC's section on 'Obligations', specifies that each member country within its own territorial jurisdiction shall:

- periodically prepare and make available reports on the state of the environment
- develop and review environmental emergency preparedness measures
- promote education in environmental matters, including environmental law
- further scientific research and technology development in respect of environmental matters
- assess, as appropriate, environmental impacts
- promote the use of economic instruments for the efficient achievement of environmental goals.

It further appeals to the Parties to consider implementing in law any recommendations developed by the Council under Article 10 (5) (b) of the Agreement promoting public access to government environmental information and the development of appropriate limits for specific pollutants, and it further appeals to the Parties to consider prohibiting the export of any pesticide or toxic substance whose use is prohibited within a Party's territory. Articles 3–7 of Part II refer to levels of protection, publication of laws, regulations and rulings applicable to the Agreement, government enforcement action, private access to remedies and procedural guarantees.

Under Part III, d 10(2) of the Agreement, the governing Council was authorised to consider and develop recommendations on an exceptionally broad range of matters including:

- comparability of techniques and methodologies for data gathering and analysis, data management and electronic data communications on matters covered by this agreement
- pollution prevention techniques and strategies
- approaches and common indicators for reporting on the state of the environment
- the use of economic instruments for the pursuit of domestic and international agreed environmental objectives
- scientific research and technology development in respect of environmental matters
- promotion of public awareness regarding the environment
- transboundary and border environmental issues, such as the long-range transport of air and marine pollutants

- exotic species that may be harmful
- the conservation and protection of wild flora and fauna and their habitat, and specifically protected natural areas
- the protection of endangered and threatened species
- environmental emergency preparedness and response activities
- environmental matters as they relate to economic development
- the environmental implications of goods throughout their life cycles
- human resource training and development in the environmental field
- the exchange of environmental scientists and officials
- approaches to environmental compliance and enforcement
- ecologically sensitive national accounts
- eco-labelling
- other matters as it may decide.

An astute reader of this mandate will quickly adduce that its breadth and scope in matters of environmental cooperation is at once both its strength and its weakness. From the very beginning NAAEC's designers intended that the agreement provide symbolic assurance to NAFTA's many environmental critics while allowing its member governments almost unlimited discretion as to its substance (see Block's comments, 2003, p.26). Astute readers will also quite fairly surmise that the laundry list of mandate values and potential functions, apart from expressing a theology of good intentions, reflected to a substantial degree what the governments were already doing at the bilateral or multilateral levels (Charnovitz, 1994, pp.273–274). What was new about NAAEC was simply that it took those particular extant commitments and their underlying statutory and diplomatic structures and placed them in a new formal framework encompassing the North American region. Furthermore, it loosely justified this new structure for trilateral environmental cooperation on the basis of the expected intensification of regional trade, though NAAEC's trade role and the CEC's institutional authority in this aspect were slender at best. There was little in NAAEC that really bound the governments as such or compelled any particular regulatory outcome in tri-national environmental affairs. This was plain to environmental critics at the outset (Carlsen and Salazar, 2002, p.222).

There are, however, several exceptions to this broad and somewhat critical characterisation of NAAEC. Responding to the very real concerns in the advocacy community and fear the mechanism would lack legitimacy absent some sort of compelling force, the agreement's drafters wrote in provisions for independent investigations, including citizen initiated investigations of non-enforcement of environmental laws, and a quasi-judicial provision for arbitration and sanction in the instance of a Party's non-compliance with an arbitral decision. These provisions were fairly soft enforcement procedures, based more on cooperation than confrontation (McFadyen, 1998, p.1). In Part III of the Agreement, Article 13 provides that the Secretariat – CEC's administrative body subject to the authority of Council – may prepare a report on any matter within the scope of work of the annual programme as well

as on any matter it deems necessary provided it so informs the Council and provided that two-thirds of the Council fails to object within 30 days of notification. Articles 14 and 15 authorise the Secretariat to consider citizen-initiated claims that a Party is failing to enforce its environmental laws. The Secretariat may initiate an investigation on the basis of such claims when it believes it may be warranted and if authorised by two-thirds of the Council, proceed with a factual record investigation. The findings may be made public if two of the three Council members consent. In addition, under Part V, Articles 22–36, should prior consultation fail, the Council by a two-thirds vote may establish an arbitral panel to consider the matter “where the alleged persistent pattern of failure by the Party to effectively enforce its environmental law relates to a situation involving workplaces, firms, companies, or sectors that produce goods or provide services” (NAAEC, Article 24 in CEC (1998, p.26)). If the panel’s final report upholds the allegation of persistent failure to enforce and if the offending Party refuses to agree to or abide by an action plan to remedy the problem, a monetary enforcement assessment may be imposed by the arbitral panel. If refused, the other Parties may elect to deny NAFTA benefits to the offending Party up to but not exceeding the monetary amount of the fine (NAAEC, Article 36 in CEC (1998, p.34)).

These enforcement measures remain the most controversial part of the CEC’s portfolio of responsibilities. While NAAEC’s dispute resolution and arbitration provisions have yet to be used and have been characterised as ‘soft teeth in the back of the mouth’ with respect to NAFTA related environmental disputes (DiMento and Doughman, 1998), they have bolstered NAAEC’s credibility. They provide at least one avenue for holding governments accountable for enforcing their environmental laws. The CEC’s investigative functions, as weak as they are in compelling administrative action, rank among its most visible and influential mechanisms for directing attention to environmental enforcement problems in North America (DiMento and Doughman, 1998, p.681).

In sum, the CEC was designed to embody the aspirations of environmental concern without conceding much at all in matters of sovereignty and national commitment to trade and environmental affairs. As is true of many multilateral bodies, its role and functions are almost completely determined by its member governments. Public involvement in CEC’s agenda and its work is mostly indirect, as the governments remain its principal stakeholders and dominant constituency. The historic division among leading environmental advocacy groups at the time of the NAFTA debate had the unfortunate effect of weakening the advocacy community as a potential body of stakeholders invested in CEC’s activities, further empowering the governments in CEC’s affairs. It is not too much a stretch to argue that while CEC was created to fill a very visible hole in the North American environmental regime, it has been relegated to an institutional purgatory by the governments since its inception. To better understand this predicament, it is useful to review the scholarly criticisms levelled at the agency since it came into being and how it has responded to these criticisms over time.

3 In search of a role: criticism and transition at the CEC

After opening its doors in January 1994, the CEC struggled to find its place in the North American environmental policy regime. Although most scholars agree it has found a niche (Hufbauer et al., 2000; Knox and Markell, 2003, p.13), the CEC accomplished this

by incrementally scaling back its work programme, particularly in response to its respective four-year and 10-year reviews (CEC, 2004a,b).

From the outset the CEC drew criticism. Critics pointed to its comprehensive yet non-imperative mandate, its limited role in trade administration and the frailty of its regulatory authority. Environmentalists, faulting CEC's design, held low expectations. Their concerns hit on all three parts of CEC's operations: its exceptionally expansive mandate; how the Articles 13–15 procedures would work in holding the Parties accountable for enforcing their environmental laws and how the Secretariat would perform in response to citizen-initiated complaints; and whether CEC would be able to carve out a role in regulating the environmental aspects of NAFTA trade. Many environmentalists doubted the governments would support the institution financially.

The CEC's former Executive Director, Greg Block, recalls the organisation's first three years as posing a special challenge in priority setting (Block, 2003, p.27). Attempting to steer a path between the advices of those who counselled CEC to focus on a few non-controversial service functions and do them well and those who wanted it to carve out an influential role in the regulatory arena, the CEC's 1995 work programme contained seven programme areas incorporating more than 30 initiatives. Erring on the side of ambition, the CEC's Secretariat's 'creative experimentation', as Block describes it, aimed to maximise the number of policy opportunities that might be available in the complex context of trilateral, largely intra-governmental, negotiations concerning its role and functions. The Secretariat's efforts ran aground, however, on the twin shoals of its financial constraints and the unwillingness of the three governments to cooperate in developing key initiatives (Block, 2003, p.29).

The problem of weak financial support surfaced early in CEC's development and persists to the present day. NAAEC's Article 43 provides that each country will contribute equally to the Commission's budget and "No Party shall be obligated to pay more than any other Party in respect to an annual budget" (CEC, 1998, p.36). At the time of its founding, the expectation was that each country would contribute a minimum of US\$5 million to the Commission, but this never materialised. From the outset, the CEC had to survive on a per-country contribution of US\$3 million, for a total annual base of \$9 million dollars. This remains unchanged. The several flaws in the funding formula included ensuring that CEC's budget would be held hostage to the lowest common denominator among the Parties in terms of willingness to pay (Hufbauer et al., 2000, p.21), and failing to adjust for national differentials in economic capacity. The result was a severe constriction of its financial capacity which has grown more acute in real dollar terms over time, particularly after 2003 when the appreciation of the Canadian Looney against the dollar hurt the Commission (CEC, 2004a,b, p.8).

In view of these inter-Party divisions concerning CEC's role and functions and financing, the problem of tri-national cooperation on a common regional environmental programme was addressed by shrinking CEC's work. This contraction came about after a highly critical independent review of NAAEC performance commissioned by the Parties in 1998. The review called CEC to task for overextension, a lack of focus and failure to engage in long-term programme planning. The CEC's subsequent 'Shared Agenda for Action', released in June 1998, downsized radically around the twin themes of promoting 'Environmental Sustainability in Open Markets' and 'Stewardship of the North American Environment'. These programmes were to be implemented and evaluated on a rolling three-year basis (CEC, 1998, p.7).

By 1998, the CEC was retreating from the broader aspirations associated with the NAFTA debates and the early expectations of many in the environmental community. The merits of its more focused approach were certainly arguable, even persuasive given its resource constraints and the accountability practices of government units in Canada and the Americas. That said, CEC's retreat did little to alter the scepticism concerning its potential among environmental advocacy organisations.

The Commission's subsequent work programme centred on environmental cooperation in four programme areas located in the twin overarching domains of environmental sustainability in open markets and stewardship of the North American environment: environment, economy and trade, conservation of biodiversity, pollutants and health, and law and policy. The 25 specific programmes across these four programme fields for the 1999–2001 three-year period are presented in Table 1. This agenda remained fairly constant until 2003 when the number of programmes was cut to 20, dropping or combining at least five programmes, two of these in the area of pollutants and health/North American air quality issues and at least one programme in each of the other major programme areas (CEC, 2003, p.3). One of the Commission's more visible capacity-building mechanisms, a small seed-grant programme, the fund for environmental cooperation (NAFEC), was also abandoned at this time (Silvan, 2004).

Table 1 CEC's programmes, 1999–2001

<i>Environment, economy and trade</i>
Understanding linkages between environment, economy and trade
1 Emerging trends in North America
2 NAFTA environmental effects
Green goods and services
3 Sustainable use of primary natural resources: agriculture
4 Facilitating conservation of biodiversity as it relates to trade in wildlife species
5 Sustainable tourism in natural areas
<i>Conservation of biodiversity</i>
North American biodiversity conservation strategies
1 Strategic directions for the conservation of biodiversity
2 Ecosystem monitoring initiative
Stewardship for shared terrestrial and marine ecosystems and transboundary species
3 Cooperation on the protection of marine and coastal ecosystems
4 Mapping marine and estuarine ecosystems of North America
5 North American marine-protected areas' network
6 North American biodiversity conservation mechanisms
Improving information on North American biodiversity
7 North American biodiversity information network
<i>Pollutants and health</i>
Cooperation on North American air quality issues
1 Facilitating tri-national coordination in air quality management
2 Developing technical and strategic tools for improved air quality in North America
3 Environmental cooperation in the NAFTA transportation corridors
4 Regional cooperation towards improved understanding
5 Eventual implementation of the clean development mechanism and joint implementation

Table 1 CEC's programmes, 1999–2001 (continued)

Sound management of chemicals programme
6 Sound management of chemicals
North American pollutant release and transfer register programme
7 North American pollutant release and transfer register
Pollution prevention
8 Shared approaches to by-product synergy
9 Capacity building for pollution prevention
<i>Law and policy</i>
Environmental standards and performance
1 Cooperation between environmental laboratories
Enforcement cooperation
2 North American regional enforcement forum
3 Enforcement and compliance capacity building
4 Indicators of effective environmental enforcement

Source: CEC (1999, p.i).

This shrinkage proved a portent of even further programme contraction with the release of the CEC's Ten-Year Review (CEC, 2004a,b). While the tri-national Ten-Year Review and Assessment Committee (TRAC) praised the Commission for a number of highly significant achievements over its ten years of operations, it flagged a number of key concerns that, in its view, had constrained the Commission from realising 'its full potential' (CEC, 2004a,b, p.5). As outlined by TRAC, the five leading concerns were:

- 1 after ten years, the main CEC stakeholders, including the Parties, the Secretariat and the JPAC, have not been able to develop a common vision about the CEC mandate or their respective roles, causing considerable friction
- 2 the NAAEC's most innovative public participation mechanism, the citizen submissions process, has become mired in controversy
- 3 the CEC work programme is spread thinly and its results are not always clear
- 4 the links to, and influence on, trade institutions and mechanisms remains weak
- 5 the CEC has not reached out sufficiently to business and indigenous groups.

More specifically, the Committee noted:

- 1 the need to engage more fully the environmental ministers of the three countries
- 2 the need to clarify the roles and responsibilities of the CEC's three main bodies
- 3 the need for more effective outreach to key stakeholders and the mobilisation of the CEC's diverse constituency across the three countries
- 4 the need for a sharper programming focus reflecting the CEC's priorities, its financial resources and increased demands for demonstrated results
- 5 the need to establishing an adequate funding base for the future

- 6 the need for integrating capacity building into the CEC's activities with an emphasis on helping Mexican government institutions and private organisations strengthen the implementation of environmental law and policies.

In response to TRAC's criticisms, the CEC, in 2004, adopted major changes to its operational plan. These changes were based on a 'goals > objectives > strategies > targets' approach intended to facilitate better review and assessment of its activities and achieve greater operational efficiencies within the constraints of its budget. The new orientation, announced in the CEC's June 2004 Puebla Declaration, laid out a decade-long vision for the CEC centred around the notions that the CEC would: serve as a catalyst for change in partnership with other governmental entities and stakeholders within the North American region; function as a forum to facilitate regional action; generate concrete policy results based on rigorous analysis and policy recommendations in specific programme areas; and provide high-quality compatible data at a North American scale to support sound environmental science (CEC, 2005).

To implement this new leaner, more efficient vision of the CEC's role, a further paring of its priorities and programmes was undertaken in 2005, folding activities in the cooperative work programme around three new overarching priorities:

- 1 information for decision-making
- 2 capacity building
- 3 trade and environment (CEC, 2005, p.9).

This streamlining resulted in 15 such project initiatives – counting just the initiatives in each of the three prioritised areas of work (Table 2).

Finally, facing another period of transition in 2010, the CEC again modified its priorities and programmes. Although its new strategic vision is to be refined throughout 2010 – culminating in the adoption of a new 2010–2015 Strategic Plan – the new strategic focus 'broadly defined by the CEC Council' includes: healthy communities and ecosystems, climate change – low-carbon economy and greening the North American economy (CEC, 2010a, p.3). Changes to the cooperative work programmes increased these:

- 1 environmental information
- 2 environment, economy and sustainability
- 3 enforcement and compliance
- 4 pollutants and health
- 5 biodiversity conservation.

Table 2 CEC's cooperative work programme's programme, 2007–2009

<i>Priority 1</i>	<i>Information for decision-making</i>
Project 1	Monitoring and assessing pollutants across North America
Project 2	Tracking pollutant releases and transfers in North America
Project 3	Enhancing North American air quality management
Project 4	Mapping North American environmental issues
Project 5	Reporting on the state of the North American environment
<i>Priority 2</i>	<i>Capacity building</i>
Project 6	Strengthening wildlife enforcement capacity
Project 7	Improving private and public sector environmental performance
Project 8	Building local capacity for integrated ecosystem management and to conserve critical species and spaces
Project 9	Sound management of chemicals
<i>Priority 3</i>	<i>Trade and environment</i>
Project 10	Promoting the North American renewable energy market
Project 11	Encouraging green purchasing
Project 12	Harnessing market forces for sustainability
Project 13	Trade and the enforcement of environmental laws
Project 14	Guidelines for risk assessment of invasive alien species and their pathways
Project 15	Ongoing environmental assessment of NAFTA

Source: CEC (2007, p.3).

Despite an increase in work programmes, the number of projects held constant at 15, some projects were eliminated while others were spliced into more than one project (Table 3).

Mere enumeration of these initiatives, of course, fails to capture real synergies and efficiencies gained by keener prioritising and belt-tightening, or shifts in emphasis within and across issue areas and across regions and countries, or gains in stakeholder support and partnerships emerging from these reforms. The CEC, particularly its Secretariat, has climbed the upside of a steep learning curve in attempting to establish its relevance for each and all of its member countries. But it is also true that the Parties' decision requiring the CEC to pare its programmes and perform them more effectively despite a shrinking budget means, at the end of the day, simply doing less – widening the gap between NAAEC's mandate and its actualities. Among the programmes left by the wayside are NAFEC, monitoring the environmental effects of trade, various programmes related to biodiversity and marine ecosystems, its focus on important transboundary issues and others. CEC's flirt with 'creative experimentation', as Greg Block put it, may well be past.

Table 3 CEC's 2010 cooperative work programme

<i>Environmental information</i>
1 Mapping North American environmental issues
2 State of the environment reporting
<i>Environment, economy and sustainability</i>
3 Environmental assessment of NAFTA
4 Supporting the growth of green building
5 Trade flows of North American used electronics
<i>Enforcement and compliance</i>
6 Trade and the enforcement of environmental laws
7 Strengthening wildlife enforcement
<i>Pollutants and health</i>
8 Sound management of chemicals
9 Monitoring and assessing pollutants across North America
10 Enhancing North America's air quality management
11 Tracking pollutant releases and transfers in North America
<i>Biodiversity conservation</i>
12 Conserving marine species and spaces of common concern
13 Conserving the monarch butterfly and promoting sustainable livelihoods
14 Protecting priority conservation areas from alien invasive species
15 Conserving North American grasslands

Source: CEC (2010, p.6).

4 Enforcement: citizen submissions, dispute resolution and legitimacy

Just as the CEC has backed away from programme commitments in regional environmental cooperation, it has likewise retreated from earlier enforcement ambitions. The Commission's Part III, Articles 13–15, investigative mandate and its Part V, Articles 22–36, mandate for dispute resolution were controversial from the beginning but considered by many as the Parties' most serious commitment to resisting a regulatory race to the bottom in environmental protection among the three countries. Opening NAAEC to citizen submissions – requests for formal investigations of alleged failures to enforce national environmental laws – was and is viewed as the acid test of commitment to promoting the values of public participation and transparency in environmental protection for North America (Tollefson, 2002, p.169). As David Markell, who led CEC's legal office early on put it, citizens submissions are intended to shine an 'international spotlight' on the domestic environmental enforcement practices of the countries (Markell, 2003, p.274). At this writing (August 2010), the CEC has received 75 submissions, 62 of which are closed, 13 remain open and commissioned 16 factual records detailing the formal investigation of a party (www.cec.org) (Table 4).

Both the 1998 Independent Review Committee and TRAC noted the governments' resistance to a more expansive citizen-led process of investigation (CEC, 2004a,b, p.43). Even as the Secretariat sought to be even handed and rigorous in vetting Article 14

complaints, the governments have often seen it as exceeding its mandate by failing to demand that complainants exhaust local remedies or provide irrefutable evidence of harm before proceeding with a factual investigation (CEC, 2004a,b, p.43). They also regard it as a potentially costly diversion of administrative resources which may come at the expense of other regulatory needs, a consideration that is particularly acute in Mexico where environmental protection is hard pressed for resources. The Secretariat's occasional public comments on rationale for proceeding with a factual study or in reporting findings in advance of Council approval have also been viewed as meddlesome. The Secretariat, on the other hand, supported by leading environmental groups, argues that NAAEC confers on it a degree of quasi-sovereign autonomy in this area that is essential if the governments are to be held accountable for enforcing environmental regulations.

Table 4 Citizen submissions made to the CEC from 1995 to July 2010

<i>Year</i>	<i>No. of submissions: (closed records)</i>	<i>No. of factual records publically released</i>	<i>No. of submissions where Council voted not to instruct Secretariat NOT to prepare factual records</i>	<i>No. of submissions (active records by CS date file open records)</i>	<i>No. of open cases where Secretariat considers submission warrants development of factual record</i>
1995	2 (US-2)	0		0	
1996	4 (C-2, US-1, M-1)	1		0	
1997	8 (C-5, M-3)	3	1 (Canada)	0	
1998	6 (C-1, US-1, M-4)	3		0	
1999	2 (US-2)	1		0	
2000	6 (C-1, US-2, M-3)	3		0	
2001	3 (C-1, M-2)	0	1 (Mexico)	0	
2002	5 (C-2, M-3)	2		0	
2003	6 (C-12, M-4)	2		1 (M-1)	1 (M-1)
2004	7 (C-3, US-1, M-3)	1		2 (C-1, US-1)	2 (C-1, US-1)
2005	3 (M-3)	0		1 (M-1)	1 (M-1)
2006	7 (C-2, US-1, M-4)	0		3 (C-1, M-2)	3 (C-1, M-2)
2007	5 (C-3, M-2)	0			
2008	3 (C-1, M-2)	0			
2009	5 (C-2, M-3)	0		4 (C-1, M-3)	
2010 (January – August)	3 (C-2, M-1)	0		2 (C-2)	
Total	75 (C-17, US-10, M-25)	16		13 (C-5, US-1, M-7)	7 (C-2, US-1, M-4)

Source: CEC (2010b).

While the Council had reservations from the outset concerning Articles 14 and 15 procedures and moved to limit the scope of factual investigations, it became more resistive after a procedural review of the process by CEC's JPAC, completed in 2001. The JPAC's 'Lessons learned' report was critical of the Council's actions in this area (CEC, 2001, pp.14–18). While the Council implemented a few of JPAC's recommendations, it failed to embrace much of the document and continued to question the Secretariat's handling of matters. As noted by TRAC in 2004, the Council's actions to limit the reach of factual investigations include (CEC, 2004a,b, p.45):

- disallowing examinations of allegations of a broad pattern of ineffective enforcement in several factual records
- limiting the scope of factual records
- questioning the sufficiency of information required for the Secretariat to recommend the preparation of a factual record.

In the minds of many observers, the Council acted outside both the spirit and the letter of NAAEC's mandate, weakening the Secretariat and damaging public confidence in Articles 14 and 15 procedures (Kirton, 2002, p.91). Markell (2003, p.284), a sharp critic, notes, "while the Council retains the authority to veto shining the spotlight in particular directions, the Council cannot decide where the spotlight should shine". These issues endure (Markell, 2005, p.784), although the fact that the last submission where the Council voted to instruct the Secretariat not to prepare factual records occurred in 2001 appears to be a positive sign. Despite this, these issues remain a source of contention, deflecting attention from CEC's accomplishments within the cooperative programme, causing some critics to counsel de-emphasising citizen submissions and abandoning Part V dispute resolution altogether.

The Council has been more generous with the Secretariat in supporting its Article 13 investigations. The Secretariat's capacity to independently initiate investigations was characterised as 'unusual power for an intergovernmental secretariat' (CEC, 2004a,b, p.33). To date, the CEC has initiated five such investigations. While several of these were laced with controversy, advocacy organisations and stakeholders largely agree that this 'spotlight' role has been successful. The Article 13 studies allow the Secretariat to delve into the effectiveness of existing environmental laws and agreements in a way that goes beyond the specifics of enforcement. This 'catalytic' role enables CEC to be proactive in monitoring regional environmental conditions. Critics note, however, that casting a spotlight on important issues, even when that spotlight is based on rigorous science, may lack immediate impact on the governments without strong civic mobilisation behind those findings (Tarlock and Thorson, 2003, pp.230–231). Controversial reports also risk antagonising the governments, as the CEC's investigation of transgenic maize demonstrated in 2004 (EcoAmericas, 2004, p.9). The need for an independent auditor to report on problems of regional environmental import, however, is generally conceded by most commentators (Hufbauer, 2005, p.179).

5 CEC's accomplishments: filling a small space in a large niche

After 16 years and considerable operating retrenchment, even critics tend to agree CEC has achieved a great deal, filling important gaps in North American environmental management, forging and strengthening intergovernmental ties for environmental protection and opening new avenues for public participation in environmental affairs within the tri-national region. CEC's most touted accomplishments were needed and likely would not have been tackled by individual governments in CEC's absence, even though most of the capacity for tri-national environmental initiatives and enforcement rests with member governments. There is little dispute that CEC exerted a catalytic influence on North American regional cooperation in this issue area, building on existing national, bilateral and regional practices.

A persuasive argument can be made, however, that the niche for regional environmental cooperation is much larger than CEC's current operational activities suggest and is much closer to the original scope of its 'creative experimentation' than recent official and quasi-official assessments suggest. The TRAC report and JPAC's assessments were heavily influenced by financial constraints placed on the Commission and often seem to take the form of a quiet and constructive self-censorship aimed at mollifying the governments – the Council in particular – rather than taking a broad view of what is needed in North American regional environmental cooperation. They are also influenced by data and argument suggesting that some of the original rationales for NAAEC's creation, namely, the possible deterioration of environmental standards and the emergence of regional pollution havens, have not materialised in any significant way (CEC, 2002a, pp.13–14, 22; Knox and Markell, 2003, pp.310–311). Such arguments undergird the greater emphasis on the cooperative side of CEC's mandate by the Council and Secretariat.

While much debate over the CEC's performance and role over the past decade centred on the Articles 14–15 process, few dispute that the heart of CEC's role as a regional institution centres on its cooperative programme. This reality has a strong foundation in NAAEC's Article 1 'Objectives' promoting 'sustainable development based on cooperation and mutually supportive economic policies', strengthening 'cooperation among the Parties to better protect, and enhance the environment', strengthening 'cooperation on the development and improvement of environmental laws, regulations, procedures, policies, and practices' and promoting 'transparency and public participation' values in improving North American environmental practices (NAAEC, Article 1, subsections b, c, f and h). As seen above, since 2005 and until 2010 the Council focused CEC's operations for regional environmental cooperation on three broad priorities:

- 1 information for decision-making
- 2 capacity building
- 3 trade and the environment (CEC, 2005, p.9).

The crucial link between each of these priorities is the intent to strengthen civil society and governments, enabling both to better advance sustainable development in North America. A brief discussion of recent operations in these areas is warranted to better appreciate CEC's approach and achievements in advancing its cooperative programme.

5.1 Improving environmental decision making

The CEC's focus on environmental decision making is twofold: the Commission aims to improve decisions affecting regional environmental conditions, assuring that they are scientifically sound, and it works to ensure that decisions respond to public needs and civic interests in and across the member countries. This second element, an obligation to provide all countries' public with open access to information has drawn the most attention and is frequently identified as CEC's crowning achievement (CEC, 2004a,b, p.39).

Public participation is undertaken through both the JPAC and the Secretariat. The JPAC holds public discussions of CEC's direction and priorities and takes these comments to the CEC's Council of Ministers. The meetings, although not as effective as many would like, are unique in their efforts to include the public's concerns in the decision-making process (CEC, 2006; Wirth, 2003). The Secretariat reviews petitions submitted by citizens or organisations and gives the public advice on finding technical expertise on environmental matters. The dissemination of information, in English, French and Spanish, is another achievement of the CEC. The CEC was one of the first international organisations to address public outreach through the World Wide Web and hypertext transfer protocol (http) technologies, supplementing traditional methods of information dissemination.

Other tools, CEC, have created to support public participation include its summary of environmental law in North America, its North American state of the environment report, the North American integrated information system and a newly released programme that tracks pollution via Google Earth. These databases provide an ecosystem wide base, combining biological, political, economic and social data to further inform the public.

In sum, though the CEC's data gathering and information activities may not always influence the decision-making process, the CEC is uniquely mandated to facilitate public participation and to serve the public in this way. The amount of information the CEC provides the public is substantial,¹ and remains a key achievement.

5.2 Building capacity

In the area of capacity building, the CEC has generated numerous mechanisms facilitating collaboration among the countries, non-governmental organisations (NGOs) and industry. Opportunities for collaboration derive from the Commission's public information mandate as well as from discrete programmes aimed at addressing environmental issues of common concern. Two of the most notable are the tri-national biodiversity conservation programme and the addition of Mexico's Register of Emissions and Pollutant Transfers (RETC) to the Canadian and US programmes which require industries to make public pollution emissions information. The CEC was a critical advocate for Mexico's RETC; without the CEC's encouragement, Mexican industries would likely not be held responsible for reporting polluting emissions. In addition to these programmes, the CEC set up funding and technical support allowing Mexican NGOs and indigenous people to obtain and exchange information and technical expertise among themselves and with NGOs from the Americas and Canada. Controversially, NAFEC, a part of this programme which supplied grants for 109 non-profit community

organisations from 1996 to 2003, was discontinued in 2003. Its discontinuation is viewed by some as evidence of a weakening of the CEC's capabilities (Silvan, 2004, p.3). Overall, the CEC does appear to be attempting to improve their capacity building – such programmes are slated for greater funding in CEC's latest budget.

5.3 Advancing environment and trade

The CEC's work on environment and trade remains controversial. Supporters believe the Commission has been a critical asset in dealing with specific environmental problems related to the economic integration of NAFTA. Critics suggest the Commission has been ineffective mainly due to the fact the CEC is subordinated to the economic elements of NAFTA. Some go so far as to suggest the CEC has indirectly legitimised the environmental deficiencies embedded in NAFTA's trade and investment clauses, and that it has failed to establish a real commitment to the environment and sustainable development.

While the CEC's efforts in this area are disappointing to many observers, most agree its problems are structural and to some extent a function of an overly narrow emphasis on trade as opposed to the more secular complex of economic factors associated more broadly with economic growth. The CEC has never had a strong policy link to NAFTA's trade secretariat and decision-making process, diminishing its ability to gain the attention of the governments for trade-related environmental concerns. It has had modest success on the analytical level, crafting a sophisticated framework to assess trade effects on the North American environment that has been generally well received in the advocacy community if not by the governments (Kelly and Reed, 2003, p.102; Whitehouse, 2006, p.252). CEC sponsored research, utilising this approach, identified a number of regional trade-related problems, particularly in the area of transportation and transportation corridors, energy and hazardous waste exports. The intermingling of trade effects with other economic variables, however, exposes even rigorous research in this area to criticism. More recently, the CEC has sought to refocus efforts in this area towards promoting green consumption and other less controversial grassroots measures (fair trade, energy efficient, eco-building solutions, etc.) that are trade compatible and a good deal less controversial than exposing trade practices to government regulation.

6 CEC as a model: extracting lessons for the hemisphere

As analysts have persuasively argued, the CEC's post-1994 record and its uniqueness as the first regional institution devoted exclusively to the promotion of international environmental cooperation make it a model for consideration as other countries enter into bilateral and multilateral trade agreements with the Americas, Canada and each other. The real issue is not whether CEC is a model – certain features were incorporated into the Dominican Republic–Central America Free Trade Agreement of 2005 (DR-CAFTA) – but whether it is an attractive model from which to draw in addressing the trade-environment policy nexus and which aspects of its achievements and its difficulties should be taken into consideration in crafting new regional trade and environment deals. From an environmental advocacy point of view, there is clearly much to admire as well as despair in CEC's story even when seen from a pragmatic, less ideologically driven point of view.

Most worthy of emulation, certainly in our view, are CEC's comprehensive mandate for advancing environmental protection and sustainable development in the region, its strong emphasis on promoting administrative transparency and public participation in environmental affairs in the North American region, the relative independence of its Secretariat and its ability to 'spotlight' enforcement problems through the citizen submissions process, the independence of its citizen advisory board, JPAC and its ability to capitalise on a very limited budget to realise significant advances in environmental cooperation in important issue areas of regional scale. These goals, institutional bodies, procedures and substantive achievements have garnered well-deserved praise from the environmental community and are the features most frequently singled out for commendation by independent audits.

No international organisation can hope to satisfy all interested constituencies, however, and none is without flaws. After 16 years of operations, a number of CEC's persistent institutional flaws and operational shortcomings are now evident. First and foremost is the funding formula and the Parties' respective willingness to support CEC's Secretariat with sufficient funds to manage both its substantial cooperative agenda and a growing utilisation of its citizen submission process (Hufbauer and Schott, 2004, p.178). Funding is central to the effectiveness of any international organisation and often its most visible constraint. Funding is also highly political. What is notable about the CEC funding formula is that it is based on parity, which has clear symbolic value from a diplomatic perspective. Parity, however, is quite arguably an inadequate model for supporting a regional institutional mandate for environmental protection in the context of significant variation in development levels among the parties and consequent variation in the capacity to pay. Where significant development differentials exist among the participating parties, some compensatory funding mechanism will almost certainly be an improvement in assuring adequate funding of an institution's mandated functions.

As seen above, the CEC has also run-up against various governance challenges, particularly in the area of citizen-based investigations. The TRAC's conclusions concerning a need for renewal of commitment to the CEC at executive levels of the three member countries and the need to clarify the roles and responsibilities of CEC constituent bodies as they relate to its mandate should certainly be heeded. The Secretariat's independent role in vetting citizen's allegations of 'failure to enforce' should be insulated from political meddling by the ministers. The Secretariat itself should be better endowed with the capacity to offer technical assistance in developing citizen allegations that appear to have merit in initial review.

Perhaps CEC's greatest failure, at least in certain quarters, is its limited impact on trade practice in North America. A number of specialists argue the failure to include an environmental chapter in NAFTA either incorporating CEC or directly linking CEC to NAFTA implementation virtually ensured CEC's marginalisation in this area. There is certainly a near consensus among analysts that the NAFTA/NAAEC lesson is that some environmental provisions should be incorporated in all future trade agreements and that NAFTA's environmental provisions could be improved upon, to include tightening normative language and provisions for production and processing standards and greater care with investment rules (Deere and Esty, 2002, pp.334–335).

The CEC's effort to assess trade-related environmental effects has had mixed results. Where the Secretariat has identified trade effects, as in the case of its 2004 report on 'Maize and Biodiversity', it has been sharply criticised (EcoAmericas, 2004, p.9; USTR, 2004) – despite the report's application of the CEC's well-respected methodology for

examining trade's effects on the environment (CEC, 2002b; Kelly and Reed, 2003, p.101). On the other hand, the CEC's efforts to rigorously examine this relationship have stimulated and helped refine trade assessment methodology by other international organisations (CEC, 2004a,b, p.27). The CEC has also generated data and insights that have opened further space for public participation in environmental policy within the tri-national region (Antal, 2006, p.188).

The difficulty in establishing scientifically rigorous relationships between trade practices and environmental conditions is well established but is not in itself a sufficient reason to abandon this aspect of CEC's mandate (Gibson and Walker, 2001, p.453). Nor does the fact that environmental standards and conditions have improved in some areas in the absence of evidence of a downward spiral in environmental practices provide a sufficient argument for its abandonment. While this area of the Commission's work will continue to be controversial, both the analysis itself and the ability to bring credibly documented adverse effects to the attention of the governments is vital, particularly where trade agreements engage nations at varying levels of economic complexity and public sector development.

At the level of the cooperative programme, the need for sustained and broadened outreach is also clear. Outreach is key to effective mobilisation of citizen participation in CEC's various substantive programmes. Both JPAC and TRAC have identified indigenous peoples, business organisations and academia as stakeholder groups warranting greater attention from the Secretariat. Reaching out to stakeholders, however, is not simply a matter of inviting them to table; it often requires active support and capacity building, an area where the CEC has retreated in recent years. Such action is fully consistent with recent recommendations urging that CEC augment its capacity-building efforts with an emphasis on Mexican government institutions and civil society organisations (CEC, 2004a,b).

As future trade agreements are being drawn up, they should certainly take these lessons into consideration. Recent initiatives suggest, however, that while some of the more benign elements of CEC's experience are being adapted in agreements like DR-CAFTA,² US-Panama, US-Colombia and US-Peru, US trade negotiators have been much less willing to consider NAAEC's weaknesses and build in compensatory reforms.

The 2005 DR-CAFTA agreement is a case in point. Proponents of the accord, to include the US Trade Representative (USTR) and corporate advocates such as the Business Roundtable, are quick to argue that DR-CAFTA was a 'groundbreaking' agreement, the first trade accord to incorporate comprehensive environmental protections directly into the Agreement's text (Business Roundtable, 2005; USTR, 2004). Also touted were its citizen submissions process, voluntary mechanisms, to include market-based incentives for environmental improvement, its capacity-building commitments, and formal recognition of obligations under other multilateral agreements for environmental protection and conservation (Business Roundtable, 2005, p.1). These advocates argue the Central American regional Environmental Cooperation Agreement (ECA), signed in February 2005 under the auspices of the Organisation of American States and linked directly to DR-CAFTA, should reinforce the cooperative elements of the DR-CAFTA environment regime.

The Agreement's critics, including a veritable A list of leading environmental advocacy organisations (CIEL, 2004), point to the fact that in the environmental chapter alone, Chapter 17, there is no express provision that a country maintain or effectively enforce environmental laws, no stipulation of enforceable standards of corporate

responsibility, nor any commitment of the governments – through DR–CAFTA’s ECA’s Environmental Cooperation Commission – to follow up or enforce factual findings or recommendations by the Secretariat. They also note that neither the Council nor the Secretariat is truly independent of the Trade Commission, that financial support for Chapter 17 remains largely unspecified, that its Secretariat structure was left unspecified (it has since been constituted as an quasi-independent unit within the Secretariat for Central American Economic Integration (SIECA)), and that there is no mandate whatsoever to examine or report on trade effects on the environment of its member states (CIEL, 2004; DR–CAFTA, 2005; Global Exchange, 2005; SIECA, 2006; USDS, 2005).

The secular drift of these recent trade-environment agreements in the hemisphere, with the Americas playing a guiding role, is clearly to play down the challenging and costly elements of environmental administration in favour of the less controversial aspects of environmental cooperation. Even the CEC has been headed in this direction, with its recent operational plans stressing its roles as a catalyst of needed regional environmental initiatives, as a convener and forum for dialogue on regional environmental affairs, and as coordinator of regional scale networking among governments and civil society with the goal of building capacity for environmental protection (CEC, 2004a,b, p.6). Such roles are attractive in an environment of resource scarcity and governmental contention over its roles and functions. Yet as Block put it so well in 2003 (p.35), to shunt CEC off as a “mere forum for discussion and coordination”, or “primarily a tool to gather and exchange information ... would be a mistake”. If this is true of the CEC in North America, it is even more true to trade-environment arrangements where the development differentials are even more pronounced than those among these three card-carrying members of the OECD. As the trade-environment debate moves on to Panama, Columbia, and a possible free trade zone for the Americas, it behooves civil society and the governments to press forward with a more demanding agenda for sustainable development and the environment (Zepeda et al., 2009, p.18).

7 Conclusion

This analysis reveals the CEC as an international organisation endowed with an ambitious mandate to promote environmental cooperation in North America and guard against lax enforcement of environmental law but one which has suffered from the tepid support of its member governments since its inception. The Parties reluctance to finance the CEC led it to sharply restrict its scope of work within a decade of its formation. Within this restricted functional domain, however, the CEC has made real contributions in spotlighting regional environment and conservation problems, strengthening the basis for regional environmental decision making, enhancing governmental capacity for environmental enforcement, and promoting eco-friendly trade practices.

A number of lessons may be gleaned from the CEC’s development that should be considered in crafting environmental protections in future agreements aimed at mitigated the environmental effects of trade. We argue that the CEC’s broad mandate in the environmental area, the partial independence of its secretariat in conducting certain types of environmental investigations and spotlighting environmental problems, the autonomy of its citizen advisory committee, its commitment to advancing public participation in environmental decision making and its ability to catalyse instances of tri-national environmental cooperation are all worthy of emulation. On the other hand, the CEC’s

parity-based funding formula, the Secretariat's limited financial and regulatory autonomy in relation to its member governments, its weak statutory link to trade regulation and limited capacity for stakeholder outreach hamper its capacity to promote sustainable development and environmental improvement in North America. As future trade-environment accords are crafted in the Americas, their drafters are encouraged to draw on CEC's institutional strengths, not its weaknesses, in their design.

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Notes

¹In 2004, it was reported that due to the pressure from the US Government, the CEC did not publish a report (i.e. did not make the information public) until after the November 2004 Presidential elections in the Americas. The suggestion is that releasing the data would have meant fewer votes for the Bush campaign from the grain and Hispanic sectors (Alanis, 2005).

²Subscribing parties include Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and the Americas. A separate agreement has been negotiated with Panama and is now under consideration by the US Congress.

Rafe Sunshine Canada Email address: rsunshyn@telus.net
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As a proud Canadian taxpayer and citizen of British Columbia I find the Canadian government's recent actions show that the North American Agreement on Environmental Cooperation (NAAEC) has failed to ensure that the signatories to the agreement maintain high environmental standards.



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August 8, 2013

David Angus
Chair, Joint Public Advisory Commission
Commission for Environmental Cooperation
c/o The Winnipeg Chamber of Commerce
259 Portage Avenue
Winnipeg, Manitoba

Dear Mr. Angus:

RSR Corporation (RSR) appreciates the opportunity to comment on the Joint Public Advisory Committee's (JPAC) call for information and comments on the first 20 years of NAFTA. I would also like to take this opportunity to seek JPAC's involvement in the Commission for Environmental Cooperation's (CEC) project, *Environmentally Sound Management of Selected End-of-Life Vehicle Batteries, Including Spent Lead Acid Batteries (SLABs), in North America*.

As the operator of the most environmentally advanced secondary lead smelters in the U.S., RSR supports CEC's efforts to strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices in North America. To that end, I urge JPAC to include an agenda item on spent lead-acid battery exports during its forum in Washington, DC, on October 17-18, 2013. As the CEC and other organizations have reported, weak regulatory standards in Mexico covering the emissions of lead from and the protection of workers at secondary lead smelters have resulted in a surge in spent battery exports to Mexico. These reports indicate that batteries are being exported to Mexico primarily to avoid strict environmental and worker safety laws in the U.S. This trend of increasing exports is making it increasingly difficult for U.S. and Canadian recyclers to obtain used batteries. This undermines U.S. and Canadian economic productivity and endangers workers, communities and the environment in Mexico. Moreover, it is precisely the "race to the bottom" situation that NAFTA was crafted to avoid.

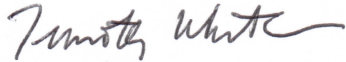
Inclusion of this battery export issue on the agenda logically builds on the CEC's recent decision to fund a multi-year project to promote the environmentally sound management of spent lead-acid batteries in North America. According to the CEC, "the guidelines to be developed under this project will identify best management practices at the operational level concerning the environmentally sound management of batteries and the recovery of materials, which will enhance the occupational health and safety conditions of workers in this industry and support the creation of green jobs."

In addition to including this issue on the agenda of the October forum, I request that JPAC remain involved in the CEC's spent battery project. For example, it would be useful for JPAC to hold a public workshop that focuses on air emission issues common in the recycling industries in North America. Topics could include the known dangers of lead, arsenic and other heavy metals in air emissions from recycling batteries, electronics and other products; air quality monitoring programs that detect and quantify these emissions; the public's access to health and exposure data from these emissions; innovative control technologies, processes and management practices to control air emissions; and the

laws and regulations that cover air emissions in the three countries. We believe that such a workshop would help support public involvement in the CEC's project, as well as a number of other CEC programs, and that it would help inform the development of the CEC's best management practices guidelines.

Thank you for your attention to my comments. Please do not hesitate to call me if you would like to discuss this matter further.

Sincerely,

A handwritten signature in dark ink, appearing to read "Timothy Whitehouse", with a stylized, flowing script.

Timothy Whitehouse, Consultant
RSR Corporation

cc: Marcela Orozco, JPAC Liaison Officer

Val Marmillion
America's WETLAND Foundation
US
Email: lnoble@americaswetland.com
26 August, 2013

Comments: The America's WETLAND Foundation (AWF) released "Beyond Unintended Consequences: Adaptation for Gulf Coast Resiliency and Sustainability" in late 2012. The Report offers 30 recommendations for Gulf Coast sustainability based on research and testimony from a series of leadership forums held in 11 communities from Texas to Florida during a 14-month period in 2011 and 2012. You can download a copy of the report from here:

http://www.futureofthegulfcoast.org/AmericasWETLANDFoundation_Beyond.pdf

William David
Executive Director
Indigenous Rights Centre
Canada
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21 August, 2013

August 21, 2013

Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques Street, NW
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To the members of the Joint Public Advisory Committee,

The Indigenous Rights Center is a non-profit, indigenous controlled corporation, which engages in strategic advocacy to advance the rights of indigenous peoples in Canada and internationally.

The effects of trade on environmental protection and the recognition and affirmation of indigenous rights continues to be a matter of great concern for indigenous peoples in Canada and elsewhere. Whereas government and industry often portray enhanced international trade in terms of greater economic opportunities, indigenous peoples are often more concerned with the potential impacts of international trade on traditional economies, occupations and livelihoods.

The IRC would like to take this opportunity to raise three issues with the Joint Public Advisory Committee (JPAC) regarding the upcoming 20th anniversary of the North American Free Trade Agreement and the North American Agreement on Environmental Cooperation. These issues are:

- Human rights and environment
- Citizen Submissions
- Article 3 obligations

Human Rights and Environment

The Preamble of the NAAEC recognizes both the Rio Declaration and the Stockholm Declaration. The Stockholm Declaration makes an explicit link between Environment, Development and Human Rights.¹ The Parties are aware of the connection between

¹ United Nations, *Declaration of the United Nations Conference on the Human Environment* (16 June 1972) [Stockholm Declaration].

environmental protection and promotion of human rights. This is an important consideration because the NAAEC is not an international instrument which exists separate and apart from other international environmental instruments or from international human rights instruments. The NAAEC is part of a body of international law and must be interpreted and implemented to complement other relevant instruments.

Similarly, the Rio Declaration builds upon and expands the principles of the Stockholm Declaration. The Rio Declaration articulates connections between international trade and environmental protection and expressly notes the importance of indigenous peoples in sustainable development.² The Rio Declaration, and the overall framework of sustainable development law, recognizes the importance of trade to sustainable development.³

The overall objectives of the NAAEC and the NAFTA are consistent with implementation of the Rio Declaration, particularly Principles 12 and 16. However, implementation of the NAAEC should be consistent with all Principles of the Rio Declaration, including Principle 22.⁴ Principle 22 states, “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

The Principles of the Rio Declaration have influenced the development of international environmental law. The *Convention on Biological Diversity*, ratified by Canada and Mexico, recognizes the importance of supporting indigenous customary and sustainable uses of biological resources as a matter of international environmental law.⁵ Pursuit of traditional occupations also receives protection under international human rights law, through the *Discrimination (Employment and Occupation) Convention*.⁶

The Human Rights Council, through various independent experts, has also noted the importance of connections between human rights, the environment and international trade. For example, the United Nations Special Rapporteur on the Right to Food issued Guiding Principles on human rights impact assessments and international trade

² United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development* (14 June 1992) [Rio Declaration]. The recognition of the connection between indigenous peoples and sustainable development is now widely recognized in international law. For example, the Preamble of the United Nations Declaration on the Rights of Indigenous Peoples recognizes “that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment”.

³³ Rio Declaration at Principle 12 and Principle 16. Principle 12 reads in part, “States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”

⁴ We note, for example, that West Coast Environmental Law has raised issues consistent with Principle 10 of the Rio Declaration.

⁵ *Convention on Biological Diversity*, 1760 UNTS 79, Article 10(c). Note that the Parties to the CBD are currently developing a programme of work to implement Article 10(c) of the Convention.

⁶ *Discrimination (Employment and Occupation) Convention* (ILO No. 111), 362 UNTS 31 (15 June 1960).

agreements in 2011.⁷ The Guiding Principles suggest that human rights are relevant to international trade agreements, such as the NAFTA, as well as related agreements such as the NAAEC.

In 2012, the Human Rights Council created a new mandate for an Independent Expert on Human Rights and the Environment. The role of the Independent Expert is to study human rights obligations which are connected to environmental protection, as well as to promote best practices on connections between protection of environmental resources and human rights.

Indigenous rights are often framed as human rights. This is because indigenous peoples rely on environmental resources for life (food security and water security), pursuit of traditional occupations, preservation and promotion of culture and other human rights. As a consequence, implementation of Principle 22 requires knowledge and sensitivity to human rights, particularly human rights which are relevant to environmental protection.

The United Nations Declaration on the Rights of Indigenous Peoples, endorsed by all three Parties to the NAAEC, represents an articulation of the human rights and other international law obligations of states towards indigenous peoples. Article 29(1) of the UNDRIP states, “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.” Each of the Parties to the NAAEC has considerable experience in this area, and each has considerable room for improvement.

The human rights of indigenous peoples can be threatened by environmental laws in two ways. First, overzealous implementation of environmental laws can threaten the continued sustainable use of resources, particularly harvesting practices by indigenous peoples.⁸ Second, failure to enforce environmental laws may threaten key environmental resources upon which indigenous peoples rely.⁹

When international human rights considerations are not integrated into a program of work, it is common for states to ignore the rights, interests and aspirations of indigenous peoples with respect to that program of work. Yet, the rights, interests and aspirations of indigenous peoples are often directly and seriously impacted by bilateral and multi-lateral environmental conventions and their implementation.¹⁰

⁷ Olivier de Schutter, UN Special Rapporteur on the Right to Food, *Guiding Principles on human rights impact assessments and international trade agreements*, A/HRC/19/59/Add.5 (19 December 2011).

⁸ See, for example, *Inuit Tapiriit Kanatami and others v. European Commission*, Judgment of General Court (Seventh Chamber) (25 April 2013).

⁹ See *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247.

¹⁰ For example, the *Convention on the International Trade in Endangered Species of Wild Flora and Fauna*, 993 UNTS 443, or the *Convention between the United States and the United Kingdom for the protection of migratory birds in the United States and Canada* (1916) and the *Protocol between the Government of the United States and the Government of Canada amending the 1916 Convention between*

International trade agreements, including some currently under negotiation, impact indigenous rights and the human rights of indigenous peoples. For example, the Hupacaseth First Nation claims the effects of the proposed and signed *Canada-China Foreign Investment Protection and Promotion Agreement* trigger a duty to consult and accommodate the First Nation on the terms of the treaty.¹¹

International trade law and International Environmental law do not displace the human rights obligations of Parties. Rather, international trade law, international environmental law and international human rights law are mutually supportive and reinforcing bodies of law. As a result international trade instruments, international environmental instruments and international human rights instruments should be mutually supportive.

The IRC encourages the Parties to continue implementation of the NAAEC in a fashion which encourages continued customary and sustainable uses of environmental resources and supports the human rights of indigenous peoples to continue pursuit of traditional occupations, such as wildlife harvesting and fishing. The CEC should make explicit connections between vulnerable populations, environmental degradation and discrimination (environmental justice) as a human rights issue.

The IRC encourages the CEC to enhance implementation of the NAAEC in a fashion which mutually reinforces human rights, international trade and environmental protection. While the IRC identifies some issues with the NAAEC and with the conduct of the Parties, implementation of the NAAEC has been undertaken in a generally mutually supportive manner. This is a credit to various compositions of the JPAC, the Secretariat and the Council itself over the first 20 years of the NAFTA.

The IRC recommends the CEC:

- Continue active engagement with indigenous peoples on issues of customary uses, traditional occupations, application of traditional knowledge and worldviews and indigenous rights.
- Continue work on vulnerable ecosystems, adopting an ecosystem approach which prioritizes vulnerable populations and vulnerable ecosystems
- Sponsor one or more public meetings with the Independent Expert on Human Rights and Environment to discuss North American Environmental Cooperation
- Develop of a broad vision of sustainable development for North America, which includes human rights and with specific emphasis on indigenous rights, interests and aspirations, as well as the rights, interests and aspirations of other vulnerable groups.

the United Kingdom and the United States for the protection of migratory birds in Canada and the United States (1995).

¹¹ Similar terms are contained in the more comprehensive proposed *Canada Europe Trade Agreement*, though the IRC is not aware of any current challenges to that, or any other international trade agreement currently under negotiation.

Citizen Submissions

The IRC adopts the recommendation of West Coast Environmental Law, and likely many others, that the citizen submission procedure should be strengthened. The IRC also raises an issue with the citizen submission procedure that is particular to indigenous peoples.

In terms of the citizen submission procedure of the NAAEC, the Agreement creates an explicit division between environmental laws and First Nations uses of resources. This creates a disturbing precedent and runs contrary to Principle 22 of the Rio Declaration, as well as the principles of complementarity outlined above. As a result, the enforcement provisions and citizen submission provisions of the NAAEC are of limited value to indigenous peoples.

Article 45(2) of the NAAEC states:

For greater certainty, the term “**environmental law**” does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

Article 45(2) excludes consideration of laws which are directed at supporting aboriginal harvesting from the citizen submission procedure of the NAAEC.

The NAAEC is an attempt to reconcile the potential effects of development with environmental protection. To put it another way, the NAAEC represents a rejection of the ‘environment v development’ paradigm and a commitment by the Parties to pursue a regime of sustainable development through cooperation. As a consequence, omitting consideration of laws which are directed at sustainable uses of resources from the citizen submission procedure is both baffling and troubling.

Since the term ‘sustainable development’ was coined, and even prior to that, indigenous peoples have rejected the notion that conservation must equate to prohibiting uses of resources. Rather, conservation and sustainable development is about sustainably developing resources, not enjoining their use altogether.

Indigenous peoples have been engaged in the sustainable use of resources since time immemorial. Most modern recognized forms of indigenous rights involve continuing uses of resources. Divorcing customary uses of resources by indigenous peoples, as well as uses of resources by others, such as recreational users, suggests an irrational division between environmental laws which support sustainable development (i.e. sustainable uses of resources) and those which exist for any number of other reasons.

In Canada, consideration of aboriginal rights is central to a range of environmental policy-making processes. Where aboriginal rights, particularly aboriginal harvesting rights, are ignored by governments, courts can issue orders compelling consultation with rights holders.¹² Consultation with indigenous peoples is also a requirement under US

¹² *Adam v. Canada (Environment)*, 2011 FC 962.

law¹³ and under Mexican law.¹⁴ While the specifics of the duty to consult in each of the Parties, as well as the mechanisms for implementation may vary, there is little doubt that the reason consultation is a universally recognized obligation in North America is that each Party recognizes the importance of natural resources to indigenous peoples.

The IRC strongly urges the Parties to reconsider the Article 45 exception to aboriginal harvesting rights. This exception prevents resource users from raising issues of implementation of treaties, modern claims agreements and common law rights to support environmental protection and conservation initiatives.¹⁵ The existence of this exception in Article 45 generates a considerable hindrance to examination of the direct application of aboriginal rights to support conservation and protection initiatives and undermines the close connections between indigenous harvesting activities and environmental law and policy in each of the Parties.

Failing this, the IRC strongly recommends the Council continue to accept communications under the citizen submission procedure which involve implementation of an 'environmental law' as defined under Article 45 and which nonetheless implicate implementation of indigenous rights, particularly harvesting rights. Further, the IRC notes that whether a Party has complied with its obligation to secure free, prior and informed consent, to consult, or to accommodate is often centrally important to whether a Party is properly implementing its environmental laws. In other words, whether a Party has complied with its obligations in such matters should already be considered admissible for the purposes of the CEC citizen submission procedure.

For its part, the Council, the Secretariat and the JPAC have been remarkably accommodating in recognizing and supporting the role of indigenous peoples in the CEC over the past 20 years. However, the continuing exclusion of laws which support sustainable uses from the definition of 'environmental law' in the NAAEC needs to be revisited.¹⁶

The Indigenous Rights Centre recommends that the JPAC:

¹³ See Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (6 November 2000) online: <http://ceq.hss.doe.gov/nepa/regs/eos/eo13175.html>.

¹⁴ *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, 28 ILM 1382 (1989) [ILO 169].

¹⁵ One example is the increasing practice of indigenous peoples asserting inherent land rights in order to develop indigenous protected areas or 'tribal parks'.

¹⁶ For example, section 5(c) of the *Canadian Environmental Assessment Act, 2012* states that 'environmental effects' include a range of uses, including aboriginal uses of environmental resources. A restrictive reading of the NAAEC would suggest that s. 5(c) may not fall within the definition of an 'environmental law' under the NAAEC because the primary purpose of s. 5(c), it could be argued, is to support aboriginal harvesting rights. The IRC considers this an absurd and discriminatory interpretation as the CEAA 2012. Absurd because the CEAA 2012 is clearly an 'environmental law' and discriminatory because such an interpretation would exclude consideration of environmental effects related to aboriginal peoples, but allow examination of environmental effects on the general population (defined elsewhere in CEAA 2012).

- Recommend the Parties amend Article 45 to delete the omission or issue an interpretation directive to the Secretariat to allow complaints regarding aboriginal uses to proceed through the citizen submission process
- Strengthen the citizen submission process to provide greater accessibility; by reducing admissibility requirements
- Encourage the Secretariat to consider submissions regarding consultation with indigenous peoples on actions taken pursuant to environmental legislation and regulations as directly related to implementation of 'environmental laws' for the purposes of the citizen submission procedure

Article 3 obligations

One of the concerns which was prevalent at the time NAFTA was negotiated and signed by each of the Parties was the likelihood of 'regulatory backsliding' of environmental laws. In essence, this means that a North American trade agreement could initiate a 'race to the bottom' in terms of environmental regulation, as each Party would compete for international investment flows by reducing the extent that each protects the natural environment.

One of the objectives of the NAAEC, in the view of the Indigenous Rights Centre, is to prevent such a 'race to the bottom' in terms of environmental legislation. Thus, NAAEC Article 3 of the NAAEC requires each Party to "strive to continue to improve those laws and regulations." In the opinion of the Indigenous Rights Centre, Canada has breached its obligation under Article 3 of the NAAEC by reforming its environmental laws and regulations to weaken protections for the environment.

The purpose of Canada's Responsible Resource Development Plan is clear – to streamline environmental legislation in order to attract both foreign and domestic direct investment in Canada's expansive natural resource extraction sector.¹⁷ This objective is not itself incompatible with increased environmental protection so long as legislative and regulatory reforms are focused on reducing duplication in the regulatory process.

Yet Canada's new *Canadian Environmental Assessment Act, 2012* is regressive in many ways. Many of the changes introduced make protection of the environment an issue to be guided by political considerations, rather than by evidentiary considerations. The IRC will focus on only one example of such a change, the introduction of a two step process to determine whether environmental assessments are necessary under Canadian law. This change directly affects the ability of indigenous peoples to participate in environmental

¹⁷ Natural Resources Canada, *Responsible Resource Development and related legislative, regulatory and policy improvements to modernize the regulatory system for project reviews*, Online: <http://www.nrcan.gc.ca/environmental-assessment/regulatory-system/6297> (last accessed 20 August 2013). The description notes the purpose of the Plan is, "To fully capture the benefits of Canada's natural resources sector for all Canadians, this suite of actions will create a modern regulatory system to support economic growth and investment while protecting the environment and ensuring socially-responsible development."

review processes and raise issues related to environmental impacts on harvesting rights or valuable cultural resources.

Under the *CEAA 2012*, a project cannot be subjected to an environmental assessment unless the project is specifically listed by regulation, or unless the Minister elects to make an assessment mandatory. The latter, Ministerial designation under s. 14(2) of the *CEAA 2012*, is an exercise of political authority by the Minister.

If a project is listed under regulation as eligible for an environmental assessment, the *CEAA 2012* requires a screening process to be completed within 45 days of receipt of a project description. The Act provides only 20 days for the public to comment on a proposed project.¹⁸ This substantially limits public participation in reviews of large, complex projects, leaving regulators to work mainly with documents provided by the proponent. Based on this information, the government must decide whether an environmental assessment is warranted.

In the case of First Nations, section 9(c) may not even be constitutional. Under Canada's Constitution, the Crown is required to consult and accommodate First Nations whenever conduct is contemplated which might adversely affect claimed First Nations rights.¹⁹ Even at the lowest end of the duty to consult and accommodate, there is a "duty on the Crown may be to give notice, disclose information, and discuss any issues raised in response to the notice."²⁰ Providing notice means providing information directly to First Nations, Inuit or Metis peoples with actual or claimed rights may be impacted. Simply placing information on a website is insufficient to meet the bare minimum requirements of notice to rights holders.²¹

The screening process also poses a threat to foreign investors. Providing such levels of discretion to the Minister (and in other contexts, particularly with respect to approvals for major projects and pipelines, to the federal Cabinet) means that Canadian reforms to environmental legislation will likely result in decisions based on amorphous political calculations, rather than evidence related to environmental impacts.

As many resource decisions under *CEAA 2012* will be made under the cloak of Cabinet secrecy, it is highly unlikely that indigenous peoples, environmental groups or industry interests will be able to secure the evidence they need in order to determine how Cabinet came to a decision to approve or reject a major project on environmental grounds.

It is extremely likely that section 14(2), the screening process to determine whether an environmental assessment is necessary, and other provisions of Canada's environmental

¹⁸ *CEAA 2012*, s. 9(c).

¹⁹ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511 at para 37.

²⁰ *Haida Nation* at para 43.

²¹ This is particularly the case for rights holders, which do not have access to internet resources. Perhaps ironically, this issue could be addressed through a policy requiring the Crown to provide notice directly to First Nations, Inuit or Metis peoples that a project is being screened which might affect their actual or claimed rights. However, the IRC is not aware that any such policy exists, nor does the government appear particularly interested in addressing this shortcoming of the *CEAA 2012*.

legislation could be used to peremptorily enjoin projects advanced by foreign investors under the guise of ‘environmental considerations’. The challenges of obtaining information on such decisions due to Cabinet secrecy issues outlined above means the ability for indigenous peoples, environmental groups and foreign investors²² to seek legal remedies may be remarkably limited under CEAA 2012.

Under the NAAEC, Parties are required to continuously improve environmental legislation. In implementation of its Responsible Resource Development Plan, and through other budgetary measures, Canada has substantially weakened protection of the environment. Moreover, Canada’s reforms to environmental legislation may provide Canada to discriminate against foreign investors, while at the same time making challenges under Chapter 11 more difficult.

The Indigenous Rights Centre recommends:

- Parties should report to the Council how they are implementing Article three on an annual basis, and invite comments on such reports from the public, through the JPAC.

The challenges of reconciling indigenous rights, international trade obligations and sound environmental stewardship are greater today as they were in 1994. The IRC makes these recommendations in the hope that the Parties to the NAAEC seek not only to reflect on the progress of the last 20 years, but to seek a renewal of the Agreement – one which integrates human rights considerations, one which is inclusive of indigenous peoples and one which is capable of dealing with major continental and global environmental issues.

Sincerely,

William David
Executive Director
Indigenous Rights Centre

²² In this case through Chapter 11 of the NAFTA. It may be difficult for a foreign investor to demonstrate discrimination if the investor cannot access information about whether a decision was made for legitimate environmental reasons or as a bar to a particular foreign investment.

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Re: The First 20 Years of NAFTA & the NAAEC: JPAC Meeting in Washington

I most appreciated receiving an invitation to the upcoming JPAC meeting in Washington and regret that scheduling conflicts prevent my attending.

That said, this is an important meeting and I hope your Committee and others present might have some interest in what I might have said. To that end I attach a couple of papers/presentations that touch on globalization, trade and related social and ecological issues.

Note that my concerns are not the usual ones, but rather the contribution of globalization/trade to ecosystems degradation, resource scarcity and geopolitical instability simply by doing what it is intended to do -- increase global economic growth through the efficiency gains associated with freer markets, deregulation, greater economic integration and intense competition.

Globalization/trade does indeed help to stimulate growth, but in the process generates several ecologically significant impacts beyond relaxed pollution standards. In particular, by exposing increasingly scarce pockets of quality resources to ever-larger, richer markets, unmanaged trade increases consumption (energy and material 'throughput') which, in turn, accelerates natural capital depletion and biodiversity loss (e.g., the collapse of the North Atlantic cod stocks in 1992 was the result of over-fishing largely to satisfy export markets; half of Canada's prairie crops are exported which accounts for a proportional share of irreversible soil and biodiversity degradation).

Unfortunately, people who are accustomed to living on imports from afar become spatially and psychologically insulated from any distant negative impacts of their consumption. This reduces their subjective incentive to conserve resources and may accelerate the depletion of distant stocks of the very natural capital upon which they have become dependent (particularly if competition among exporters so reduces producer surpluses that there are insufficient reserves for sound resource management at source.) In the meantime, open access to extra-territorial resources creates a disincentive for countries to develop population or family-planning policies and enables the unconstrained import-dependent populations to exceed their domestic carrying capacities with short-term impunity. Regrettably, this invites potentially serious long-term consequences in an increasingly uncertain world of rapid global change.

The probability of long-term regrets is enhanced if trade-dependence has had a negative impact on *domestic* natural capital. For example, urban populations who import cheap food from afar undervalue local farmland and are inclined to pave it over. Urban sprawl, usually the conversion of arable land to 'higher and better use' (in short-term economic terms) is accelerated, irreversibly destroying productive farmland (think Metro Toronto and Metro Vancouver much of whose territories wastefully occupy some of the best farmlands in Canada). Such land conversion, seemingly 'rational' today, may come to be regretted as climate change and other global forces negatively affect entrenched production and trade patterns.

The risk of long-term trade-induced material insecurity may seem fanciful but is an emergent reality. Most of the world's countries now survive largely or in part on food and fibre imported from 'elsewhere', an unprecedented degree of international interdependence made possible by regional and global trade agreements such as NAFTA and the WTO. Again, however, import-dependent nations that have exceeded their long-term domestic carrying capacities are in a state of increasingly perilous 'overshoot'. Long rejected by economists as irrelevant to humans, the concepts of carrying capacity and resource limits are beginning to influence international relations and long term geopolitics. For example, with the recent rapid rise and fluctuations in food and other resource prices, various dependent governments are losing confidence in trade and global markets as the means of acquiring secure supplies of food, energy and other vital resources. In the past decade, this has fostered the potentially destabilizing phenomenon of 'land-grabbing' by which relatively rich countries buy up or long-term lease the productive lands of (usually poorer) countries to provide food and fibre for the rich countries' domestic populations. Various reports show that as many as 227 million hectares of land – an area the size of Western Europe – had been sold or leased in developing countries since 2001 (this is enough to feed a billion people, roughly the number of currently calorically undernourished people on the planet). This latest expression of egregious inequality in an increasingly fractious resource-poor world is likely to foster civil unrest and exacerbate geopolitical conflict in coming years.

Details and documentation of these concerns can be found in the attached documents. I do hope that JPAC will find time to consider some of the longer term implications of globalization and trade in general and NAFTA in particular in this and future deliberations.

My sincere thanks for your attention.

Respectfully,

William E. Rees, PhD, FRSC

Carrying Capacity, Globalisation, and the Unsustainable Entanglement of Nations

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Introduction: The Precarious State of the Planet

H. sapiens is the dominant species on Earth and the major geological force changing the face of the planet. The basic science of human-induced global change is undeniable – climate change, ocean acidification, fisheries collapses, land/soil degradation, desertification, tropical deforestation and biodiversity loss are just a few symptoms of wide-spread ecosystems degradation resulting from human activities.

The starting point for this article is that all such macro-ecological trends, whether characteristic of truly global systems (e.g., climate change, ocean acidification) or merely occurring simultaneously in ecosystems on several continents (e.g., desertification, biodiversity loss) are indicators that humans and their economies have exceeded the long term carrying capacity of Earth. The human enterprise is in a state of ‘overshoot.’

This is not just another routine milestone along the road in the extended human journey. Overshoot is potentially catastrophic because systems science makes clear that: a) the behavior of ecosystems under stress is dominated by the complex interplay of positive and negative feedback and is typically non-linear and unpredictable; b) like other complex systems, ecosystems have multiple equilibrium states or stability regimes many of which may not be compatible with human purposes or survival; c) ever-increasing rates of exploitation will eventually force typical ecosystems over some previously unknown threshold (i.e., a ‘tipping point’) beyond which key components or the entire system may ‘flip’ into an unfamiliar stability regime; d) there is increasing evidence that such critical transitions or ‘state shifts’ can (and have) occurred at the planetary scale and; e) once such a shift has occurred it may be difficult or impossible to return the system from its new, potentially hostile stability regime to its previous human-compatible state (Holling 2001, Kay & Regier. 2001, Walker & Salt 2006).

Most significantly, Barnosky *et al.* (2012) argue that human population growth and rising material consumption, habitat transformation/fragmentation, energy production and consumption and climate change constitute global forcing mechanisms that all exceed in rate and magnitude, the forcings apparently responsible for the most recent ‘natural’ global-scale state shift, the last glacial–interglacial transition. Given the number and intensity of these forcings, they argue that “another global-scale state shift is highly plausible within decades to centuries, if it has not already been initiated” (Barnosky *et al.* 2012, p.57). In other words, human impacts on the ecosphere may well be sufficient to precipitate a whole-system transition that, in turn, could trigger the collapse of global civilization. Techno-industrial society would then suffer on a *global* scale what many earlier societies have brought upon themselves at the regional scale (Tainter 1988, Diamond 2005).

Humanity need not continue living under such a threat. Modern society has the scientific data, technological means and adequate resources to turn things around. These factors, combined with humanity’s high intelligence and unique capacity for forward planning should be sufficient for the world community to implement a globally coordinated campaign to rescue civilization from ignominious chaotic collapse.

Is there intelligent life on Earth?

Remarkably, however, nothing of the kind is on the horizon. The world community seems chronically unable to act decisively to employ humanity’s unique abilities in the collective interests of our species. On the contrary, the United Nations’ Rio+20 Earth

Summit (the biggest UN conference ever) ended in June of 2012 with a vapid statement on *The Future We Want* containing little more than a bland renewal of commitment to ‘sustainable development’ and endless reassurances of international rededication to previously failed initiatives. The statement commits no national government to specific actions or targets on anything and repeatedly equates ‘sustainable development’ to ‘sustained economic growth’ (see UN 2012). Environmental journalist George Monbiot accused participating governments of concentrating “not on defending the living Earth from destruction, but on defending the machine that is destroying it.” Accordingly, Monbiot declared Rio+20 to be “perhaps, the greatest failure of collective leadership since the first world war” (Monbiot 2012).

The primary drivers of the contemporary economic “machine”, designed to deliver “sustained economic growth”, are globalization, market liberalization and deregulation (especially environmental). The purpose of this paper, therefore, is to make the case that the integration of the global economy and so-called free trade are also instrumental in the destruction of the planet. Using ecological footprint analysis, we can show that: a) globalization and trade enable individual countries vastly to exceed their domestic carrying capacities; b) the aggregate human eco-footprint is excessive by half and; c) material trade is producing an increasingly unsustainable and destabilizing material entanglement of nations. Restructuring this system is essential if the world community is to avoid precipitating a global ‘state shift’ that could destroy human civilization.

Carrying capacity and does it matter?

“Carrying capacity is the fundamental basis for demographic accounting” (Hardin 1991).

‘Carrying capacity’ (CC) is the term employed by wildlife and range managers to denote *the average maximum population of a given species that can occupy a particular habitat without permanently impairing the productive capacity of that habitat.*¹ Despite Hardin’s confident assertion above, analysts have long contested whether the concept applies to *H. sapiens*.

The Reverend (and economist) Thomas Malthus opened the modern debate on human carrying capacity late in the 18th Century with his famous essay *On the Principle of Population*. Malthus’ concern was based on elementary arithmetic. He observed that “population, when unchecked, increases in a geometric ratio, subsistence increases only in an arithmetic ratio” (Malthus 1798). Today we would say: ‘population increases exponentially (like compound interest) while food production increases only linearly (in constant increments).’ Clearly, Malthus thought humanity would forever be pressing up against the earth’s limited ‘carrying capacity’, bringing misery to millions.

While his theory seemed incontrovertible at the time, Malthus’ warning was effectively squelched by the growing optimism of the dawning industrial age and the fact that there were whole new continents to be peopled. Those who did remember Malthus would come to dismiss his ‘dismal theorem’ on grounds that he had not anticipated the ability of technology to keep food production expanding a step ahead of population growth.

¹ We say “average maximum” here to recognize that the instantaneous carrying capacity of a habitat constantly fluctuates with the weather/climate, water availability and other factors that affect the productivity of the ecosystem.

And, for a while, the optimists seemed to be right. The good Reverend's geometric multiplier continued to grind away but it was not until the 1960s that the 'Malthusian spectre' remerged in popular discourse (see Ehrlich 1968). It had taken until 1930 – more than a century after Malthus' death – for the human population to grow from one to two billion. But the third billion was added by 1960 in just 30 years and the fourth in a mere 14 years! By the end of the century, the human population had topped six billion, having doubled since 1960. It had taken two million years for the human population to reach three billion; the second three billion were added in just four decades! (and we have since added the seventh billion – see UNFPA 2011). Such is the power of exponential growth.² Meanwhile, the economy had been expanding even faster than population. During the 20th century, energy consumption increased 16 fold, fish-catches 35 times, industrial output by about 40 fold and average per capita consumption grew by a factor of 10 or more (Arrow *et al.* 2002, citing McNeill 2000). By the 1960s, anxiety about urban, industrial, and agricultural pollution, and even resource scarcity, had spawned the so-called 'environmental movement' and added a new dimension to the question of human carrying capacity. Catton (1980) accordingly redefined *human* carrying capacity as the environment's "maximum persistently sustainable load".

The combined impact of the population and industrial juggernauts were predictable on a finite planet. By the early 21st Century, humans had: transformed half of the land on Earth – the most productive half – to suit human purposes; were using half the planet's accessible fresh water; contaminated virtually every eco-system; fully- or over-exploited up to three quarters of the world's major fisheries; and accelerated biodiversity loss to hundreds or thousands of times the background rate, all to the detriment of our supportive ecosystems. Meanwhile, to provision our seven billions, humans fix and inject as much atmospheric nitrogen into terrestrial ecosystems as do all natural processes combined (Vitousek *et al.* 1997); land clearing, industrial agriculture and burning fossil energy to keep the human enterprise going has inflated atmospheric carbon-dioxide levels from a pre-industrial 280 to 395 parts per million (40%), the highest level in at least 800,000 and perhaps as much as 15 million years) (CSIRO 2012); in response, mean global temperatures have reached record highs for modern times and many places around the world are being pummelled by more frequent and violent extreme weather events.³ By 1992, things looked threatening enough that 1,700 of the world's top scientists (including most science Nobel Laureates) issued *The World Scientists' Warning to Humanity* which concluded: "A great change in our stewardship of the Earth and the life on it is required if vast human misery is to be avoided and our global home on this planet is not to be irretrievably mutilated" (UCS 1992) More than a decade later, the authors of the Millennium Ecosystem Assessment echoed this earlier warning, asserting that "[h]uman activity is putting such a strain on the natural functions of the Earth that the ability of the planet's ecosystems to sustain future generations can no longer be taken for granted" (MEA 2005). Clearly the consensus among natural scientists is that *H. sapiens* is near, or has breached, long-term global carrying capacity and is in danger of crossing a catastrophic tipping-point. They recognize it is physically impossible to sustain the

² It was actually super-exponential for most of the 20th Century as the doubling time decreased with increasing growth rates.

³ For a summary of 2012 weather extremes, see WRI (2012).

growth of anything real on a finite planet indefinitely, and that to attempt to do so is to invite catastrophe.

Not everyone agrees. According to Lawrence Summers (then Chief Economist, the World Bank):

There are no... limits to the carrying capacity of the earth that are likely to bind any time in the foreseeable future. There isn't a risk of an apocalypse due to global warming or anything else. The idea that we should put limits on growth because of some natural limit is a profound error and one that, were it ever to prove influential, would have staggering social costs (Summers 1991, cited in McQuillan & Preston 1998).

Traditional economists and other technological optimists (including many politicians) assert that humankind has achieved mastery over the natural world and that, as the global economy expands, trade, technology and increased wealth will enable humanity to compensate for the depletion of natural resources and the loss of life-support services. The trade argument is relatively straight forward: any human population (e.g., a region or country) that can trade surpluses of resource 'a', for needed supplies of essential resource 'b', need not be restricted in population or economic growth by limited domestic supplies of 'b'. Trade reduces negative feedback, fosters growth and appears to increase *local/national* carrying capacities. More generally, trade in local surpluses that might not otherwise be used enables greater global economic output. This can support greater *per capita* consumption or more people, and thereby effectively increases *global* carrying capacity. Conventional trade theory further argues that we can capture even more efficiencies (i.e., even *greater* net economic output and higher carrying capacity) if each region/country in the global marketplace specializes in those few goods or commodities it can produce most efficiently (goods with the lowest inputs per unit output) and trades for everything else.

But what happens if important globally traded commodities are eventually exhausted? No problem –free markets will come to the rescue. Rising prices will trigger conservation, greater efficiency, and the entrepreneurial search for technological substitutes, thus increasing supplies and, again, *raising* human carrying capacity. Beckerman (1995) puts the economic argument this way: “The finite resources argument is flawed in every respect. It is logically flawed and obviously at variance with the whole of historical experience... It is based on a concept of resources that is static and unimaginative, and an underestimate of the human capacity to make technological progress and adapt to changing conditions.” One can hardly imagine a more confident and assertive rebuttal of scientists' concerns.

The Ecological Footprints of Trade

But that doesn't make it right. The economists' way of thinking originates from simplistic, mechanical, single-equilibrium economic models that have no systemic connection to anything outside of themselves (Daly 1985). These models therefore recognize neither the non-linear biophysical systems within which the economy is embedded nor the similarly complex social systems it supposedly serves.

We can get some understanding of at least the material *connections* between the economy and natural systems using ecological footprint analysis (EFA) (Rees 1996, 1012; Wackernagel and Rees 1996; WWF 2012). EFA starts from the premise that the human enterprise is an integral sub-system of the ecosphere and that the human sub-system can grow and maintain itself only by extracting energy and material 'resources' from its host

system. People are therefore still very much dependent on ecosystem integrity and ‘the land’ for survival. The method also explicitly recognizes: a) that whether one consumes locally-produced products or trade goods from afar, the land connection remains intact and; b) that no matter how sophisticated our technology, the production/consumption process requires some land- and water-based ecosystems services.

EFA is closely related to ‘carrying capacity.’ However, rather than asking how large a population can be supported by a given area, eco-footprinting asks how much productive area is needed to support a specific population, regardless of the location of the land/water or the current state of technology. We therefore define the ecological footprint (EF) of a specified population as *the area of productive land and water ecosystems required by that population, on a continuous basis, to produce the renewable resources it consumes and to assimilate the wastes it produces, wherever on earth the relevant ecosystems may be located*. A complete eco-footprint analysis includes the population’s use of domestic ecosystems, plus the *net* ecosystem area it ‘occupies’ through trade, plus its demands on the global common pool for free eco-systems services (e.g., the carbon sink function).

Three qualities of the eco-footprint are worth underscoring: 1) a population’s EF represents much of its demand for global biocapacity; 2) by inverting the standard carrying capacity ratio EFA captures the effects of trade; the method also reflects whatever technologies are in use at the time of the analysis (i.e., EFA accounts for economists’ objections to human carrying capacity); 3) since bio-capacity appropriated by one human population is not available for use by another, human populations everywhere are in competition for the available load-bearing capacity of the earth.

A planet in overshoot

As noted, globalization and trade constitute the engine of the expansionist economy. This is problematic. The argument that trade relieves resource constraints and increases local carrying capacity without limit implicitly assumes each trading region is an open system within an infinite universe. This is a poor representation of reality. In the aggregate, Earth is a materially closed, finite sphere with a limited (even shrinking) productive area. In this *real* world, exchange may result in a one-time increase in the population of trading regions, but it also increases global consumption and total pollution. Moreover, resources imported and consumed by country ‘X’ are no longer available for consumption in the exporting country ‘Y’ (and *vice versa*) which may limit future options. Thus, while trade increases the total human load on the planet, *there is no unambiguous increase in total load-bearing capacity*.

Indeed, in some circumstances unfettered trade can lead to a permanent loss of carrying capacity. Global trade exposes pockets of scarce resources everywhere to the largest possible market (and demand is still growing because of both population growth and increasing disposable incomes). This subjects even renewable natural capital to ever-greater exploitation pressure, often to the point of depletion or collapse. (Such is the history of trade in fisheries products, for example.) To reiterate, instead of increasing load-bearing capacity, trade simply shuffles it around. This enables local population increases but also accelerates resource depletion and ecosystems degradation which, in turn, ensures that all countries, their economies heedlessly expanding through trade, hit the (now shrinking) limits to growth simultaneously.

How far has globalization led the world down this path? By 2008, the aggregate human footprint had reached 18.2 billion global average hectares on a planet with a total global bio-capacity of only 12 billion gha.⁴ Thus, while there are only 1.8 gha of productive ecosystem per person on Earth, the average person already consumes the output of 2.8 gha. The human enterprise has over shot carrying capacity by 50% – it would take the ecosphere 1.5 years to regenerate the renewable resources people consumed and assimilate the carbon dioxide they emitted in 2008 (WWF 2012, see also Rockström *et al.* 2009).⁵

This situation is the very definition of unsustainability – humanity’s present consumption is liquidating Earth’s *real* material wealth. As long as the human enterprise remains in overshoot, it subsidizes its growth and maintenance by depleting critical natural capital and over-filling essential waste sinks essential for its own survival. Regrettably, these impacts are among the many market externalities that remain unremarked in today’s systems of national economic accounts. Such egregious accounting errors have led ecological economist Herman Daly to speculate that we may well have entered a new era of uneconomic growth – growth that generates more costs than benefits at the margin, *growth that makes us poorer rather than richer* (Daly 1999, 2102). Bottom line? If techno-industrial society stays its present course, it risks implosion within mere years or decades.

The unsustainable entanglement of nations

EFA enables us to identify which individual countries are most ‘responsible’ for humanity’s ecological predicament and to assess the contribution from trade. First, EFA reveals that the majority of the world’s approximately 192 countries is in overshoot. Countries in overshoot depend on trade and exploitation of the global commons to grow or simply maintain current levels of consumption. Just ten nations account for over 60% of the world’s biocapacity and only a handful, mostly large low population countries have domestic surpluses of biocapacity.

The world’s wealthy minority generally sport the largest eco-footprints, generally ranging from just over four gha (e.g., Portugal, New Zealand, Japan) to seven or eight gha (e.g., United Arab Emirates, Denmark, United States) *per capita*. It would take the equivalent of two to three planet Earths to support everyone on Earth at the material lifestyles enjoyed by typical Europeans or Japanese. Four Earth-like planets would be needed to support everyone at current US levels of consumption. By contrast, if everyone lived on the 0.9 gha EF of the average Kenyan or Philippino, the human family would be using only *half* of Earth’s biocapacity.

These numbers illuminate the gross and growing inequity in the world today. High-income people and nations are able to ‘appropriate’ vastly more than their equitable share of global biocapacity through trade and by exploiting the global commons.

Consequently, many wealthy or densely populated countries exceed their domestic carrying capacities and are running large *ecological deficits* with the rest of the world (Table 1).

⁴ To facilitate international comparisons, national eco-footprint estimates are converted to ‘global hectares’ (gha), i.e., their equivalent in hectares of global average productivity.

⁵ According to the Global Footprint Network, the human enterprise first went into overshoot in the 1970s (WWF 2012).

Table 1: The Eco-Footprints and Bio-Capacities of Selected Countries (data estimated from WWF 2012)

Country	Per capita Footprint (gha)	Biocapacity per capita (gha)	Overshoot factor (EF/biocapacity)
United Arab Emirates	8.4	0.6	14.0
United States	7.2	3.7	1.9
Canada	6.5	14.9	(.44)
Netherlands	6.2	0.9	6.9
United Kingdom	4.7	1.3	3.6
Japan	4.3	0.6	7.2

NB: An overshoot factor > 1 means an ecological deficit.

The United Arab Emirates (UAR) is an extreme case – this country depends on 14 times its domestic biocapacity to sustain its population at prevailing material standards. The UAR's demand for carbon sinks comprises over three quarters of the country's total EF, a burden that it imposes on other countries and the global commons. The UAR must also import most of its food and other renewable resources.

The Netherlands and Japan overshoot their domestic carrying capacities by a factor of seven. Again, both countries are trading nations with large ecological deficits. They are highly dependent on other nations and the global commons for food and fiber (which they acquire through trade) and as carbon sinks. The UK with an overshoot factor of 3.6 is perhaps more typical of high-income trade-dependent European countries.

The US is a special and somewhat worrisome case. This nation has overshoot domestic biocapacity by 90% (mostly due to its large carbon eco-footprint). Long an agricultural powerhouse and a major net exporter of food, the US balance of trade (dollar value of exports compared to dollar value of imports) in this critical sector has been steadily dropping in recent decades from over as 2:1 in the mid 1970s to 1.4:1 in 2011-12 (see USDA 2012). Kissinger and Rees (2012) show that between 1995 and 2005 both the import share of U.S. consumption and the offshore land area embodied in those imports increased steadily. The US agricultural trade surplus (by weight) shrank by more than 50% during this period; some import commodities such as fruits, vegetables, beef, processed food, already exceed exports. Trade in wood products displays similar trends. Most critically from the perspective of the present analysis, the actual ecosystem area embodied in U.S. imports of agricultural and forest products was equivalent to the area of Germany, Italy, Spain, and the United Kingdom combined (Kissinger and Rees 2010). This is hardly a trivial claim on extraterritorial biocapacity. It seems that even the U.S. is becoming increasingly dependent on external sources of supply and that U.S. consumers now impose a significant burden on terrestrial ecosystems outside the U.S.

Canada is also a special case but for a different reason. Canada is one of only a few countries with an apparent ecological surplus (8.4 gha/cap). Canadians have large average eco-footprints at 6.5 gha, but their relatively small population (33 million) lives at low average density in a huge country. Even though much of the land is cold and

unproductive much of the year, the available biocapacity (14.9 gha/cap) dwarfs domestic demand.

Not surprisingly, therefore, Canada is a major food exporter: it is the world's third largest producer of barley, fifth largest producer of wheat, and eighth largest beef producer. Tens of millions of people around the world are at least partially dependent on Canadian agricultural exports.

The Canadian prairies are the nation's agricultural powerhouse with 85% of the arable land in the country. Serving international markets makes significant demands on prairie agro-ecosystems. Kissinger and Rees (2009) found that, on average between 1989 and 2007, Canada effectively 'exported' 51.4% of the agricultural land (65% of cropland) in its prairie provinces and that the total area 'exported' increased from about 20 million hectares to 34 million ha in recent years (actual hectares, not normalized ghas).

Obviously Canada's agricultural exports benefit all partners in the exchange. Millions of people in importing countries acquire essential foodstuffs while Canadian farmers, chronically undercompensated, enjoy the extra income. However, there are both short- and long-term concerns associated with prevailing agricultural practices and trade policy. High-input production agriculture induces soil erosion, destroys native biodiversity, contaminates surface and ground water and generally accelerates the pace of ecological deterioration. In little over a century, conventional agriculture on the Canadian prairies has all but eliminated the natural grassland habitat and the rich flora and fauna associated with it, and has dissipated half the organic matter and natural nutrients that required millennia to accumulate on the post-glacial plains. Soils that only a few decades ago produced high yields of outstanding quality without artificial inputs now need to be fertilized to maintain both quality and quantity. Excess fertilizer, together with pesticides and mechanization, accelerate the degradation of prairie agro-ecosystems in what is arguably an unsustainable downward spiral. These impacts can reasonably be assigned proportionally to production for export and production for domestic consumption (Kissinger and Rees 2009).

Trade plays a similar role in the exploitation of Canada's forest and marine/aquatic ecosystems. Exports accounted for \$26 billion of \$57.1 billion (46%) in forest sector revenues in 2010 (FPAC 2011); exports of fish and seafood products contributed \$3.9 billion to the industry's total revenues of approximately \$5 billion, about 80% of the total (AFC 2011).

What these data illustrate is that Canada's apparent surplus of biocapacity (relative to domestic demand) is illusory in the global context and the same would be true for any other country with a nominal ecological surplus. In a closed global trading system, the apparent eco-surpluses of a few privileged countries are necessarily absorbed by the growing eco-deficits of net importing countries.⁶ In ecological terms, trade on a finite planet is, at best, a zero sum game.

And we are not operating 'at best' – this is a world in overshoot. Trade has become a *negative* sum game. The few national eco-surpluses are insufficient to cover most other countries' eco-deficits. Trade-stimulated economic growth can therefore only accelerate the depletion of critical natural capital. Consider the North Atlantic cod fishery, among

⁶ This holds also for any terrestrial carbon sink capacity surplus to domestic requirements. Carbon sinks everywhere are overwhelmed by the excess – and still growing – carbon dioxide emissions of the global economy.

the world's greatest fisheries and one oriented largely to export markets. The collapse of cod stocks in 1992, under Canada's regulatory watch, was a major ecological and social tragedy and a classic example of a regional ecosystemic 'state shift' attributable to over-exploitation (see Barnosky et al. 2012).

It should also serve as wake-up call to the global community. Hundreds of millions of lives are now dependent on reliable resource flows from distant 'elsewheres'. These people are increasingly vulnerable to the potential disruption of trade flows because of climate change, natural capital depletion, systems collapse and potential international conflict as geopolitical tensions escalate in a resource-scarce world.

Regrettably, few seem to notice. Politicians and our corporate elites remain in deep denial, mesmerized by the progress myth and dedicated to continued growth. Trade-dependent consumers are blind to the negative ecological effects of distant production processes driven, in part, by their own material demands. Since people lack the direct 'negative feedback' that might otherwise induce them to behave sustainably, there is little serious grass-roots support for serious change (Rees 1994). Combined with general ignorance of systems behaviour and the ecological consequences of unsustainable resource exploitation, these facts encourage still greater material consumption and trade and hence increased reliance on external means of survival (Princen 1997).

Indeed, the present form of globalization facilitates the increasing growth-driven entanglement of nations in a sticky web of interdependence even as it undermines the ecological foundations of the entire system. This has created a perfect storm of unsustainability. We live in an ecologically over-full world breaching the limits of critical life-support systems whose behaviour provides the very archetypes of lags, thresholds and multiple equilibria. Should any major system (e.g., global climate) be forced over a previously untested threshold into a hostile stability regime, there may be no recovery on a time-scale relevant to human civilization. Preventative action is inhibited not only by ignorance but also by denial that feeds on powerful individuals' and nations' short-term economic interests in maintaining the *status quo*.

The Way Ahead

Globalization and trade have enriched millions and improved the lives of billions of people. Nevertheless, there can be too much of a good thing. Global economic integration has produced an increasingly unsustainable and destabilizing entanglement of nations. The ready availability of trade goods encourages nations to run down their own resource stocks and exceed their domestic carrying capacities, oblivious of the risk this poses for themselves and future generations. The aggregate result is a world in gross overshoot, blindly pursuing a growth-based global development strategy that can only erode essential natural capital, undermine global life-support systems, and risk a global-scale state shift that could be fatal to civilization.

As noted at the outset, humans theoretically have the intelligence, knowledge and resources necessary to confront this dilemma.⁷ However, any effective international solution will require a true 'paradigm shift', including abandonment of the core values, beliefs and assumptions underpinning prevailing global development policies. The simple fact is that circumstances have changed and global development policies must also

⁷ This may not be enough. See Rees (2010).

change to reflect new realities. The question is whether the global community can muster sufficient political will to *choose* to succeed⁸ (see Diamond 2005).

Most critically, the world must act to reduce human demands on global life-support systems and to restore the natural capital base that supports all human activity. To address these goals, the emphasis in international development must shift from growth and efficiency toward a sustainable steady-state with greater social equity (redistribution); competition must be paired with cooperation for the common good; dependent specialization should give way to greater local self-reliance and economic diversity. These are the minimum conditions necessary for the human enterprise to back away from critical systems thresholds and avoid precipitating a potentially catastrophic global-scale state shift.

Consistent with such new goals, the following specific questions flow logically from the forgoing analysis but have largely been ignored in both domestic land/resource planning and international trade negotiations to date (Kissinger and Rees 2009). In a rapidly changing and increasingly unpredictable world:

1. Is it wise for any nation to commit a significant proportion of its agricultural output and land-base to satisfying off-shore demand (i.e., creating dependent populations);
2. Should any population or country allow itself to become significantly dependent on increasingly uncertain external sources of essential food and other resources?
3. Should any region or country allow its prime agricultural lands to be paved over or otherwise degraded on the assumption that it can always import basic foodstuffs from elsewhere?
4. Is it not time to resurrect the virtue of greater self-reliance through investment in local natural capital?
5. What strategies can irreducibly import-dependent countries employ to diversify suppliers, enhance the security of existing trade relationships and share in management responsibility for critical ecosystems in other countries?
6. How can trade rules be modified to prohibit the overexploitation of critical forms of natural capital? For example:
7. How might the terms of trade for agricultural, forest, fisheries and other renewable resource products be adjusted to provide the economic surpluses necessary for the maintenance of the productive ecosystems (natural capital) for the long-term benefit of both producers and consumers?

Similarly difficult questions must be asked in virtually every domain of human economic activity.

Obviously, the paradigm shift necessary for global sustainability poses a daunting challenge beyond anything attempted by the international community to date. While not yet fully understood or appreciated, the motivation for such a dramatic shift is actually quite simple: for the first time in human history, long-term individual/national self-interest may well have converged with humanity's *collective* interests. Failure to recognize this reality and to accept the challenge of planning a cooperative transition to sustainability would be a failure to exercise the very qualities that distinguish modern *H. Sapiens* from all other species: high intelligence (e.g., reasoning from the evidence); the

⁸ This has never happened in so complex a society nor one so large and unwieldy.

capacity for forward planning; and the ability to exercise moral judgement (Rees 2010). In this light, negotiating a just global sustainability would be a milestone achievement, marking our species' release from the grip of blind instinct and maladaptive emotion; failure and systems collapse would be tantamount to a backward step in human evolution.

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ANALYSIS

Footprints on the prairies: Degradation and sustainability of Canadian agricultural land in a globalizing world

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ABSTRACT

The 'Canadian prairies' represent one of the world's great breadbaskets, supplying people all over the world with agricultural commodities ranging from various grains, through legumes and oilseeds, to both grain and grass-fed meat products. However, the expansion and intensification of Canadian agriculture in the last century has significantly altered the structure and degraded the function of prairie ecosystems. This, combined with climate change, has put the ecological sustainability of the region at risk and raises questions about the region's ability to continue supporting millions of distant consumers. We use variants of two existing sustainability assessment tools, material flows analysis (MFA) and ecological footprint analysis (EFA) to estimate the terrestrial ecosystem area and other physical inputs used on the Canadian prairies to satisfy export demand and to link this production to documented processes of ecological degradation. We discuss the implications of this interregional framework for impact analysis and conclude that, in a globalizing, ecologically full-world, trade-dependence implies previously-ignored risks to both importers and exporters. The results underscore the importance for all countries to protect or restore their own natural capital assets and enhance their self-reliance. Citizens and their governments, particularly of countries that have become irreversibly import-dependent, have a direct interest in ensuring that the ecosystems that support them are sustainably managed, wherever in the world the latter may be located.

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1. Introduction

Human societies depend for survival on various natural 'goods and services' (e.g., clean air and water, food, stable climate) provided by both local and global ecosystems. Over time, this dependence has actually intensified. People everywhere, both individually and in the aggregate, now consume vastly more energy and material than they have historically (French, 2000; Meadows et al., 2004; MEA, 2005; Brown, 2006; FAOSTAT, 2008). Humans are demanding ever larger flows of goods and services—natural income—from what are often diminishing stocks of natural capital. For most of history, people relied mainly on the output of local natural capital. More recently, with economic globalization, they increasingly sustain themselves on trade goods (incorporating 'natural income') imported from all parts of the world (Princen, 1997, 1999; French, 2000; Rees, 1994, 2004; WTO, 2006; Hornborg, 2006).¹

Globalization allows various regions to grow beyond their local carrying capacities, but it also increases their vulnerability to the degradation of now-distant supporting ecosystems; to climate change; and to geopolitical instability, any of which might jeopardize distant production or vital trade linkages. Significantly, signals that something is awry are often weak—the spatial separation of production from consumption prevents negative feedback from over-exploited ecosystems from reaching consumers particularly if, behind the scenes, transnational corporate traders can shift to alternative sources of supply (What is out of sight, is out of mind). The resultant consumer ignorance helps entrench the status quo and encourages the continued and sequential deterioration of affected ecosystems everywhere (Princen, 1997; Norgaard, 2001; Rees, 2004; Dauvergne, 2005; Young et al., 2006).

Indeed, a central premise of this paper is that, partially because of such hidden inter-regional impacts, the world is already reaching material limits to growth (Meadows et al., 1972, 2004; MEA, 2005; WWF, 2008) and that, in these circumstances, global development policy must shift from ecologically empty- to ecologically full-world thinking (Daly, 1991). In an ecologically full-world, natural capital becomes the limiting factor and the sustainability of any import-dependent region is increasingly tied to the ecological sustainability of supporting regions half a planet away.

Most densely populated and high-income countries could not maintain their current material standards without both international

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¹ In ecological economics terms, humans depend on 'natural income' (e.g., fish 'harvests') produced by various forms of 'natural capital' (e.g., fish stocks or marine ecosystems). In this context, sustainable income/consumption is any level of consumption that does not exceed the long-term productive output of relevant stocks of natural capital (i.e., exploitation should leave productive natural capital essentially intact).



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Importing terrestrial biocapacity: The U.S. case and global implications

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ABSTRACT

Human societies depend for their survival on goods and services provided by both local and global ecosystems. For most of history, people used mainly local resources. Increasingly, however, globalization and trade enable consuming populations everywhere to support themselves on the output of distant ecosystems. This is potentially problematic because of global change and because the spatial