

NAFTA@10

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Editors

Foreword

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Ten Years After: An Assessment of the Environmental Effectiveness of the NAAEC

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Introduction

The January 1, 1994 advent of the North American Free Trade Agreement (NAFTA), its accompanying North American Agreement on Environmental Co-operation (NAAEC) and the Commission for Environmental Cooperation (CEC) brought a revolution in North American governance. It was a transformation with potentially significant implications for environmental policymaking, policy and performance in the member countries of Canada, the United States and Mexico. NAFTA brought Mexico “in” to the free trade relationship enjoyed by Canada and the United States since the Canada-US Free Trade Agreement (CUFTA) of 1989. NAFTA further marked the world’s first full free trade agreement equally joining countries of the developed north and developing south. NAFTA introduced pioneering provisions for investment protection and, above all, environmental protection and the promotion of sustainable development. NAFTA and its accompanying NAAEC and North American Agreement on Labour Co-operation (NAALC) introduced the first major trilateral interaction and institutions to Canada and its two North American partners. These joined Canada to Mexico in a much broader, deeper and more permanent way than the almost exclusively bilateral or broadly multilateral Canada-Mexican relationship had before. Above all, the NAAEC and CEC brought to North America its first regional international organization, with substantial resources to facilitate environmental co-operation among the three member governments and their citizens, with direct access for civil society in environmental governance and dispute resolution, and with a regional secretariat with autonomous powers all its own.

After ten years of operation, how effective has this innovative NAAEC and its CEC been in meeting their environmental objectives, as well as the integrally linked environment-economy goals that brought this pioneering North American environmental regime to life? To help address this question, this study undertakes, from a Canadian perspective, a retrospective assessment of the implementation, effectiveness and utility of the NAAEC and CEC, and their

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impact on Canadian environmental and environment-economy policy, policymaking and performance during the ten years up to January 1, 2004. While the North American environmental regime can be legitimately assessed according to its contribution to global environmental governance and impacts, to processes and outcomes within its United States and Mexican members, and to the values of the transnational trade and environmental communities across the North American region, this analysis is grounded in the objectives of the government and interested citizens of Canada, both at the outset of the regime and as those objectives evolved during the NAAEC's first ten years.

This study thus focuses on identifying the overall impact, effectiveness and utility of the NAAEC in and for Canada after ten years of experience. It looks back at the original assumptions and expectations of this agreement, the actual experience in implementation, and the conclusions that can be drawn. It analyzes which of the measures in the agreement have worked well, poorly or not at all in terms of environmental protection in Canada, and what the result has been in Canada in terms of new environmental regulations, activities and programs. It seeks to provide an analytical foundation for drawing lessons that can be learned, particularly lessons of relevance to the government of Canada, for the future of this agreement, and to identify which features would or would not be useful to include in other agreements.

The Approach

As the NAAEC was negotiated in parallel with NAFTA and the two agreements have been, and will continue to be, viewed as a package, the few analyses produced from a Canadian perspective over the years have concentrated on the structure and potential, or a restricted range of high-profile components of the NAAEC and linked NAFTA environmental provisions, rather than the overall agreement and organization itself (Winham 1994, Munton and Kirton 1994, Richardson 1994, Swenarchuck 1994, Bennett 1994, Johnson and Beaulieu 1996, Blair 2003). This more comprehensive review from a Canadian perspective will thus highlight the longer term effectiveness of the NAAEC in meeting the distinctive, enduring and evolving objectives of Canada and Canadians. It will also serve as an analytical foundation to assist Canadian governments and other stakeholders in the important task of building the North American community in the decade ahead.

Drawing in the first instance upon the liberal-institutionalist approach to international regimes in political science, this study explores the autonomous impact of the NAAEC regime and CEC institution on the policymaking process, the resulting policies and actions of the government of Canada and other key actors within Canada, and thus on the state of the environment within Canada. Its vision is consequently broader than the important but narrower question of the extent to which various actors have complied with the legal provisions of the NAAEC itself (Johnson and Beaulieu 1996). It is also more focused and grounded than the larger issue of who has benefited or lost most from the overall NAFTA regime, or whether the NAAEC is adequate to address the actual environmental challenges Canadians and other North Americans will face in the decade ahead.

The judgments and conclusions in this study rest primarily on overall analyses of the broad patterns of NAAEC-created activity, critical cases in the life of the NAAEC and CEC, and the degree to which the NAAEC's successes and shortcomings are currently recognized and valued by the Canadian government itself. In addition to aggregate analysis of shifting objectives, agendas, activities and cases, the study draws on interviews with selected high-level officials and individuals conducted by the author or his scholarly colleagues from 1995 to the present day. It is also enriched by the author's personal involvement with the NAAEC, from the earliest civil society design efforts in the 1980s and intergovernmental negotiations in the early 1990s through to the spring of 2003 (for details see Appendix A).

Canadian Objectives for the NAAEC

Initial Objectives

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

Canada's most central and enduring objective in negotiating, accepting and operating the NAAEC was to make NAFTA work. More specifically, it was to ensure the passage and effective operation of NAFTA itself, by reinforcing the environmental provisions of the free trade agreement, by providing an assured mechanism for their realization and implementation, and by creating a centre for broader and expanding environmental co-operation to ensure that any unforeseen environmental opportunities or costs of NAFTA trade and investment liberalization would be, respectively, realized and controlled. To be sure, by the late 1980s there had arisen strong functional ecological grounds for creating what was initially termed a North American Commission for the Environment (NACE) to deal with common trilateral environmental issues, quite apart from any negotiated economic integration that might take place. But it was NAFTA that was the necessary condition for giving birth to the CEC. Equally and reciprocally necessary were the environmental provisions of the draft NAFTA, and the addition of the NAAEC, to bring NAFTA as a full free trade agreement to life.² In the true spirit of sustainable development, each agreement was thus equal in value

² This was certainly true in the US and arguably true in Canada as well, given the skepticism of the Chretien government that assumed office in the autumn of 1993, and that of the Canadian public as a whole (see below).

to, and integrally necessary for, the realization of the other, and rooted in a deep belief that there were important mutually reinforcing synergies to be realized by doing them together in both a temporal and institutional way.

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

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

Yet this objective was much broader, deeper and more durable than just that. Since the late 1980s, almost all Canadians, when asked about their priority values for Canadian foreign policy, have placed "global environmental protection" and natural resource conservation first, and always well ahead of trade liberalization as a goal. Moreover, by the autumn of 2003, the environment was the policy area where Canadians (along with Americans and Mexicans) most strongly wished to develop policies, not in a "more independent fashion" but to "develop integrated North American policies." Environmental protection in its outward orientation is the one value that enduringly unites all Canadians. Canadians now wish to develop environmental policies (at home and abroad) on a completely integrated (70%) or somewhat integrated (an additional 14%) North American basis (Graves 2003).

A third Canadian objective was to bring citizens into the NAFTA regime. Specifically, it was to assure Canadians that they had a meaningful influence in the ongoing operation and governance of the new North American regime. This influence was both for the defensive task of controlling any NAFTA-induced pressure for reduced domestic environmental enforcement or

addressing priority environmental problems, and for the offensive task of reaping sustainable development synergies and strengthening the sustainable development values of open, transparent, accountable, broadly multistakeholder, consensus-oriented decision-making. Here the central NAAEC measures were the Joint Public Advisory Committee (JPAC), the trilateral working groups joining government and non-government stakeholders across a wide range of CEC program areas, and the participation of Canadians in the Article 14-15 citizens' submission process.

A fourth Canadian objective was to secure additional resources, beyond those of the Canadian government, to address Canada's domestic and regional environmental objectives. The NAAEC and CEC were born at a time of substantial and sustained fiscal consolidation within the Canadian government. This process was to lead Environment Canada and several provincial environment departments to suffer budget reductions of about 35% and substantial reductions in expert personnel as well. At the same time, the advent of a regional organization in the form of the CEC brought additional central infrastructure costs, beyond those of actual NAAEC programs themselves. Canada thus supported the initial compromise that gave the CEC Secretariat an annual budget of US\$9 million, composed, unusually for international organizations, of three equal national contributions of US\$3 million each.

A fifth Canadian objective was to have a strong, visible, independent CEC Secretariat. In part this was driven by Canada's sense of ownership of the Secretariat, as its "own" international organization located in Montreal. The Secretariat thus served as a visible symbol of the unifying values that all Canadians shared. In part it was motivated by Canada's confidence, given its successful multilateral environmental leadership in the early 1990s "Rio" era, that effective international institutions would naturally bring to life Canada's environmental priorities and Canadians' environmental convictions.

Evolving Objectives

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

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

upon name of CEC and NAAEC, with the work “co-operation” added to, and prominently featured in both, the agreement and the organization it established.

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

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

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

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

The NAAEC and Its Institutions

The NAAEC established the tripartite Commission for Environmental Cooperation (CEC) to address regional environmental concerns, help prevent potential trade and environmental conflicts, and promote the effective enforcement of environmental law. The NAAEC, in Article 1, lists ten objectives, which can be summarized as follows:

NAAEC Objectives:

1. Protect and improve the North American environment for the present and future.
2. Promote sustainable development through co-operation and mutually supportive environmental and economic policies.
3. Increase co-operation for environmental enhancement, including wild flora and fauna.
4. Support the environmental goals and objectives of NAFTA.
5. Avoid creating trade distortions or new trade barriers.
6. Co-operate to develop and improve environmental laws, regulations, procedures, etc.
7. Enhance compliance and enforcement.
8. Promote transparency and public participation.
9. Promote economically efficient and effective environmental measures.
10. Promote pollution prevention.

These objectives were followed, in Article 2, by six specific obligations, which can be summarized as follows:

NAAEC Obligations:

1. General commitments regarding public state of the environment reporting, emergency preparedness, scientific research and technology development, environmental impact assessment, economic instruments and export prohibitions regarding pesticides and toxics.
2. High levels and continuous improvement of environmental laws.
3. Publication and comment on environmental laws.
4. Specific procedures to enhance government environmental enforcement.
5. Private access to remedies;

6. Procedural guarantees.

Any overall assessment of the effectiveness of the NAAEC in fulfilling these objectives and obligations must be made against this particular configuration of specified goals. First, the NAAEC included a very broad range of environmental and linked economic goals. Second, as the Objectives indicate, the NAAEC was designed as much as a sustainable development agreement linking the economy and the environment as an agreement for stand-alone environmental co-operation. Third, its goal, beyond the first general objective, was to increase co-operation and to promote and to enhance processes, rather than to secure specified outcomes or solve designated problems. Fourth, very few of the economy-environment objectives were carried into the specific obligations. Moreover, the latter concentrated heavily on specified legal and political processes, rather than defined ecological results.

At the most general level, the NAAEC can be judged as effective in meeting its specified Objectives and Obligations. The parties, through the CEC or directly, have undertaken programs, projects and activities that embrace virtually all specified areas, have fostered trilateral interaction and co-operation in virtually all of these, and have helped foster or reinforce ongoing legal and political processes and environmental capacity in Mexico — where they were seen at the time to be most needed.

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

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

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

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

At the same time, while forward looking in several ways, both the Objectives and Obligations remain very much a reflection of the ecological and political world of the early 1990s rather than of the twenty-first century that lies ahead. For example, their attention focuses exclusively within the North American region and the transborder issues among its countries, rather than on the common North American needs in, or interdependencies with, the wider world. Current issues such as the relationship of the environment with human health, particularly children's health, the link between the environment and food safety, the environment-security relationship and the precautionary principle are not directly addressed in the Objectives and Obligations. These statements also remain weak in regard to voluntary standardization, technology transfer and capacity building more generally. The NAAEC of 1994 is heavily attached to national sovereignty to a degree no longer reflected in Canadians' public opinion attitudes about the need for "integrated" approaches to North American environmental policymaking. Nor is there any open-ended provision to allow or induce the parties to modernize the Objectives or Obligations periodically and thus better focus the NAAEC regime on the ever evolving contemporary and emerging set of environmental and environment-economy challenges the parties collectively face. In short, the NAAEC has worked relatively well for its first

decade in the world of the 1990s. Whether it is an optimal or even adequate platform for its second decade in the twenty-first century is a separate question that warrants serious reflection and review.

The Commission for Environmental Cooperation (CEC)

Budget

Assessments of the NAAEC's utility and effectiveness must be made not only in reference to the "constitutional" Objectives and Obligations specified in the agreement, but also against the resources provided to meet these and other defined goals. These resources include the investment of the time, managerial capacity and political capital of the ministers in the CEC Council, the resources of their departments and governments they mobilize to meet CEC-related needs within their national bureaucracies at home, and the resources which civil society brings to the task. Yet at the centre of the available resources stands the CEC Secretariat, with an annual budget of US\$9 million, contributed, as noted above, equally by the three parties and fixed in nominal terms since the start.

The effectiveness and "value for money" of the Canadian contribution to the CEC, and the CEC as a whole, should be assessed against three criteria, each of which relate to a distinct CEC role. The first is the intended purpose of the CEC as a facilitator of intergovernmental and other trilateral co-operation, as policy advisor to governments on innovative and emerging issues, and as an auditor of what its member governments do. These minimalist roles of "intergovernmental facilitator" are distinct from the more ambitious roles of program deliverer, capacity builder or community creator for environmentalists and indeed all citizens across North American society as a whole. Even with this first, minimalist conception of the CEC's proper role, the legal obligation to respond to Article 14-15 submissions whose number and complexity are not controlled by the CEC — together with the existence of the Secretariat's Article 13 power, which the Canadian government now values highly — could fuel a future requirement for resources more robust than the mainstream minimalist conception suggests.

The second referent is the cost and value of the products the CEC directly builds in house, or buys from consultants outside. Here the key test, as the Canadian government's current vision recognizes, is the distinctive added value as a "capacity contributor" to North American's environmental concerns. Is the CEC pioneering ambitious instruments or analysis that other actors have not done, are not doing and cannot do as well? Are the CEC's products ones that influence, or are adopted by, outsiders once they are done? Here, as the analysis below suggests, there are several instances where this has been the case, such as the NAFTA Environmental Effects project, the increasingly trilateral *Taking Stock* and the recent work on renewable energy, where the CEC fills an important gap. The Article 13 and 14-15 instruments are also of central importance here.

The third criterion is the process the NAAEC-CEC has fostered for meeting its primary goals of enhancing and promoting co-operation, doing so on a balanced trilateral and economy-environment basis, and doing so in a way that

fosters multistakeholder public participation throughout the North American community as a whole. This third role of North American “community creator” is perhaps the most important one in the years ahead.

Central to the NAAEC was a conception of North America as an expansive community of governments, other stakeholders and interested citizens, a community that would radiate outward from the annual Council meetings and Montreal Secretariat to increase the awareness, engage the interest and mobilize the talents of North Americans as a whole. Here it has been strikingly successful, as the systematic evidence from an early review of its operation confirms. Yet it remains the case that the CEC has found it difficult to attract regular senior level participation from the corporate and economic community, which has limited its ability to influence the powerful national departments for trade, finance, agriculture and energy, and the international organizations and institutions they control.

Despite these successes, there are several trends that raise the question of whether the existing resources, frozen in nominal terms at US\$9 billion per year since the CEC’s inception a decade ago, are adequate to sustain its success in the years ahead. One is the way in which the “partnership path” diverts CEC attention to fundraising and may dilute its distinct priorities, or give rise to image problems, especially when private sector organizations offer to provide financial assistance. A second is the recent significant fall in the value of the US dollar, which reduces the available resources to the CEC Secretariat for operations in Montreal, Mexico City, and Canada and Mexico as a whole. A third is the value that CEC work has come to possess for the wider, multilateral, environmental community and the added expenses involved in ensuring a CEC contribution, on behalf of North American expertise and interests, in global debates. A fourth is the significant expansion in the North American population, economy and environmental challenges over the first ten years. Together these suggest that the issue of the adequacy of the CEC’s budget in the future may warrant an architectural and strategic, as well as an incremental response, with resources provided that are appropriate to the tasks assigned to the CEC in the decade ahead.

Council

The CEC Ministerial Council came to a North America that had previously had virtually no trilateral ministerial institutions or widespread interaction, and where the joint ministerial committees established between Canada and the United States had often quickly fallen into disuse. A detailed examination of the Council’s agenda provides an indication of the high-level collective political will and direction it injects into the NAAEC regime. This examination shows several patterns. First, the Environment and Trade Program has been the most consistently, indeed almost continuously, discussed topic, reflecting faithfully the emphasis given to this subject in the overall Objectives of the NAAEC. In second place has come Canada’s central priority of Sound Management of Chemicals (SMOC), an indication of Canada’s influence in keeping the Council focused on core Canadian concerns. A third area of

consistent emphasis, and one that again well reflects the NAAEC Objectives, is public participation (see Appendix B).

The agenda also shows some Council concern with proactive, strategic planning, as delivered through its NAAEC Progress Reviews, CEC Three-Year Planning and the NAFTA Ten-Year Retrospective. Moreover, it displays an outward-looking orientation, not mandated in the NAAEC itself, to address Regional Action on Global Issues and Cooperation on Global Agreements, and the World Summit on Sustainable Development (WSSD). Finally, it is developing direct high-level links with other international institutions through its 2002 joint meeting with the IJC and the International Boundary and Water Commission (IBWC). It is a sign of sound, high-level, political leadership that the ministers in the Council are going beyond the increasingly dated specifications of the agreement through which it was created.

What is particularly striking about the Council's agenda is the large number of new items that have been taken up in the second five-year period from 1999 to 2003. In itself, this shift shows flexibility, innovation and responsiveness to the North America public's and government's priority concerns.

A further sign of the Council effectiveness comes from its internal process of decisionmaking, beyond the agenda formation stage. The Council has displayed its autonomous value-added by altering, rather than merely approving, Secretariat advice, as in the case of Article 14-15 recommendations, including that on Quebec hogs. Within the Council, the available evidence points to a dominant pattern of flexible alignment and mutual adjustment, rather than a permanent majority prevailing over a recurrent loser, or a larger United States regularly inducing Canada and Mexico to follow its lead. One sign of collective Council solidarity is the reluctance of a member to be visibly outvoted on an issue, with the result that unanimous decisionmaking usually comes. Canada has been able to prevail where key national interests, related to national unity, have been relevant, as the Quebec hogs case suggests. Moreover, Canadian ministers have been willing to use their Council participation to further Canada's broader objectives in the overall management of its relationship with the United States, by providing support for U.S. Council initiatives, in part to offset the disagreements between the two countries on key multilateral environmental issues such as climate change.

There are, however, still limits to the effectiveness of the CEC. The three ministers have not intensified the pace of their meetings, by holding more frequent regular sessions, calling ad hoc issue or theme-specific meetings, or regularly caucusing on the margins of large multilateral environmental meetings that they all attend. Nor have they succeeded in attracting their ministerial counterparts in other portfolios, starting with trade but potentially embracing energy and health, to hold a joint session with them to discuss common concerns. And individual ministers who have stepped down from the environment portfolio have not remained actively engaged in the life of the NAAEC.

Secretariat

The work of the CEC Secretariat can also be judged a success. The position of Executive Director has now rotated through incumbents from the

three member governments, and thus helped ensure that all three countries' national perspectives have a privileged place in the CEC's life. The CEC quickly established a management model in which the Executive Director was supported by two "national" directors from the other two countries, to help ensure an ongoing balance. On the whole, the most senior staff positions have been occupied by individuals who are regarded as leading environmentalists and respected professionals in the countries from which they come. The location of the headquarters, with the bulk of the staff and activity, in Montreal has made Canada and the Secretariat more easily, affordably and fully sensitive to each others' concerns than might be the case were the dominant centre to be located in a place more geographically, linguistically and culturally distant from Ottawa and Canada's population centres. It has given the Canadian government and all Canadians a particular sense of ownership of, and responsibility for the CEC, and given its work greater Canadian government attention than would otherwise be the case. It has prevented the realization of the powerful initial tendency to regard the NAAEC and NAFTA as arrangements essentially of concern to the US and Mexico alone. At the same time, the opening of the Mexico City regional office has helped ensure the immediacy of the CEC's links with, and sensitivity to, a Mexican government geographically and linguistically far removed from Montreal.

Canada has benefited from having as a senior staff member and the second Executive Director an individual who was intimately involved in advising the Canadian government on the negotiation of NAFTA's environment provisions and who had served as the head of one of Canada's leading mainstream environmental NGOs (ENGOs). Moreover, Canadian nationals have always served as the manager of the Environment, Economy and Trade Program. This helped ensure that Canadian perspectives on this subject of vital interest to an environmentally committed and export dependent Canada have full resonance in the work of the CEC.

Most strikingly, Canada did achieve its initial objective of having the Secretariat led by an individual with a clearly independent approach. Indeed, the independent spirit was exercised in such a fashion that it came to raise Canadian concerns that the Secretariat was pursuing its work in a way that was not adequately sensitive to the larger political context in which all its member governments operated. However, substantive Canadian-specific sensitivities were never at the centre of this concern.

Four features of the Secretariat might have eroded its effectiveness at the margins. First, the scarcity of senior natural or physical scientists or members of the business community among Secretariat staff may have limited its ability to connect or communicate easily with the broader scientific and corporate community and mobilize resources from them. Second, the abrupt termination of senior staff members have led to some disruption in the work of the CEC and concerns, whether justified or not, about national government political interference in the work of what is obliged by the NAAEC to be an independent international body. Third, the recent lengthy reliance on an Acting Executive Director has raised questions in key constituencies as well. Fourth, a question has

arisen more recently as to whether the resources available for compensation are adequate to attract the desired individuals to work in the Secretariat.

Article 13

Perhaps the leading NAAEC-codified instrument by which the Secretariat can operate independently is its top-down “roving spotlight” mechanism under Article 13 (Kirton 2002a). This empowers the CEC Secretariat, on its own initiative, to investigate independently and report on any matter related to its extensive co-operative work program. In the initial NAFTA negotiations, Canada supported an Article 13 constructed in such a fashion, particularly in the face of those in the US that wanted a more powerful and independent Secretariat prerogative (Winham 1994). Since that time, Canada has become increasingly enthusiastic about the value of Article 13 as it has been used by the Secretariat. Canada has always, without question, favoured making such reports publicly available, even when discussions take place over issues regarding the Canadian response to the recommendations in the reports. The Canadian government has not been deterred by any fear that the “scientific” Article 13 instrument might move into broad policy and directly trade-related areas, where Canada’s preferences could be hurt.

Thus far, there have been five Article 13 cases initiated and four completed, for an average of about one every two years. The initiation of these five reports has been evenly spaced over the first nine years. There is no trend toward making more or less frequent use of this instrument. However, it can take over two years from the start of an investigation to the release of a final report. The elapsed time from initiation to public release is steadily lengthening.

Joint Public Advisory Committee

The JPAC is the leading instrument to ensure the CEC’s commitment to inclusiveness, transparency and public participation in CEC governance - all important initial objectives for the Canadian government. In the early years, Canadian JPAC members played valuable roles in establishing open communication and relations of trust with their Mexican counterparts, who were wary of American motives in the CEC.

Canada still values the work of JPAC in making the CEC an institution of citizens and not just of governments. Those in the biodiversity conservation community value its work in raising the profile of the invasive species issue, even if JPAC has not been particularly visible on a broader front. JPAC is also credited, along with the Secretariat, with pointing to the need for a strategic plan for the Enforcement Working Group. Here JPAC has encouraged traditionally closed and cautious enforcement individuals to engage in a more open, outward-looking dialogue, in part through the presence of the JPAC Chair at a meeting of the Enforcement Working Group. The government also accepted seven of the eight recommendations offered by JPAC for the most recent enforcement work plan. JPAC, together with the Council and the Article 13 electricity report, is also credited with creating the CEC working group on air.

On the other hand, there has been a growing ambivalence about JPAC's choice of issues to take up. JPAC's work on the divisive subject of the procedures for dealing with Article 14-15 submissions is seen as having fostered undue attention to this litigious aspect of the CEC's work, at the expense of its co-operative program. More recently, there are doubts about the value of JPAC's work in regard to NAFTA's controversial Chapter 11 on investment disputes. In addition, a JPAC recommendation that the Enforcement Working Group review the factual records made by each country had to be turned down, on the grounds of being too intrusive into national sovereignty. Here Canada and Mexico resisted most, for they, rather than the US, were the subject of the majority of the submissions and factual records. There was also a concern that NGOs and their American industry allies might be using the submission process for protectionist purposes, in a classic tactic of "baptist-bootlegger" or "green-greedy" coalitions. More broadly, there is a sense that JPAC has provided an alternative constituency for the Secretariat that has encouraged it to display its independence and made it less sensitive to the views and context of the parties than it would otherwise have been. A feeling that the Secretariat is less disciplined than that of the Organisation for Economic Co-operation and Development (OECD), for example, stems in part from this orientation toward JPAC and the ENGO community that lies beyond. The work of the Canadian National Advisory Committee, and its role in advising on issues related to the NAAEC, is also relevant in this regard.

Annual Program

A further way of evaluating the CEC's usefulness and effectiveness for Canada is by assessing the components and results of the key aspects of the CEC's annual program covering environment, economy and trade, the conservation of biodiversity, pollutants and health, and law and policy.

Environment, Economy and Trade

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

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

Within Environment Canada, the CEC is now seen as having usefully raised the profile of environmental ministries in North America within their

governments in regard to economic decision-making, and in making the environment a more important, integral part of trade negotiations and policy formation. It has helped create a context supportive of the development of a substantial unit within Environment Canada to work on trade-environment issues. It has directly addressed the concern that environmental regulations are intended or unintended barriers to trade. And it has helped promote the message that trade and the environment are mutually supportive, show that environmental measures are good for business, and focused policy thinking on making trade liberalization work for the environment.

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

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

Conservation of Biodiversity

The Conservation of Biodiversity Program consists of activities on conservation strategy, birds, terrestrial species, marine species, marine protected areas, invasive species and biodiversity information.

This program stands apart from the others in that, in the field of biodiversity conservation, there had been considerable interconnected bilateral and trilateral interaction among the three governments and other stakeholders prior to the advent of the NAAEC. This came as a consequence of the 1916 Canada-US Migratory Birds Convention, the North American Waterfowl Management Plan, the Convention on International Trade in Endangered Species (CITES) and the RAMSAR convention on wetlands.³ This history helps fuel a

³ "The trilateral concept emerged in discussions to involve Mexico in the North American Waterfowl Management Plan (NAWMP). As an alternative, Mexico drafted a Memorandum of Understanding to create a Tripartite Committee" among the countries, which was signed by all three in 1988. The goal of this committee was to develop and design conservation strategies for migratory birds and their habitats. After Mexico became a full partner in NAWMP (in 1994), the role of the Tripartite Committee was less clear.

dominant view in Canada and the trilateral biodiversity conservation community that the CEC should be a facilitator and auditor, rather than a program deliverer or the central management agency through which all trilateral interaction takes place. This is consistent with a seminal high-level Canadian view of the CEC as but one among many mechanisms for trilateral environmental co-operation. It is reinforced by a feeling in the biodiversity conservation community that the CEC, managed in the US by the EPA, will devote insufficient attention to biodiversity conservation, which is entrusted to the Department of the Interior in the US. From this perspective, difficulties have arisen in the CEC's work when the Secretariat has proceeded more rapidly than the emerging consensus among the three governments in regard to implementation, and when it proceeds, as with biodiversity implementation systems, without agreed expectations among them.

Nonetheless, the CEC has made, and is seen to have made, a useful contribution to securing Canadian objectives. It has enhanced the capacity of Mexicans to participate more broadly. It has allowed Canadians to tap into a rich network of Mexican academics. It has provided a forum to explore partnerships on a neutral, third-party ground, without first engaging the formal machinery of all three national governments. It has made it easier to access civil society input at a high level, and thus secure a broader spectrum of ideas than that which emerges when a single agency serves as invitee and host. It also allows for an easier, freer-thinking exchange of ideas, given the prevalence of tightly confined political appointees in the US and Mexican systems and the frequency with which these incumbents change.

At a more concrete level, the CEC has produced useful deliverables on continental ecosystem mapping, forward movement on the North American Bird Conservation Initiative, an agreed work program on species of concern, a biodiversity strategy and a budget to fund projects that adds resources to those otherwise available for biodiversity conservation (Commission for Environmental Cooperation 2003).

Pollutants and Health

The Pollutants and Health Program comprises activities on the Sound Management of Chemicals (SMOC), the North American Pollutant Release and Transfer Register (PRTR), air quality, pollution prevention and children's health.

i. SMOC

The first of these activities, SMOC, is regarded, from the perspective of Environment Canada, the Canadian government, and the broader Canadian community, as by far the most useful and effective CEC program. It is seen as valuable by all, is considered the flagship program and is probably the most visible achievement of the CEC to Canadians as a whole. There are very good

The Canadian Wildlife Service suggested revising it with a broader mandate covering all wildlife and its habitat. The new name, the Trilateral Committee for Wildlife and Ecosystem Conservation and Management, reflects this broader mandate." "Migratory Birds Conservation," Environment Canada, http://www.cws-scf.ec.gc.ca/birds/trilat_e.cfm. In addition, 1990 brought a Canada-Mexico Agreement on Environmental Co-operation.

grounds for this highly favourable consensus that SMOC commands. Indeed, so strong, sustained and widespread are SMOC's benefits, both to Canada directly and further afield, that it alone could justify the NAAEC's value for Canada during the Agreement's first ten years.

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

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

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

ii. Pollutants Release and Transfer Registry

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

When the CEC started the PRTR project, Canada was not particularly supportive. Its first reservation derived from the fact that the project was only a bilateral comparison of releases between Canada and US, rather than a genuinely trilateral activity. Canada's second concern was the CEC's adoption of the US national Toxics Release Inventory (TRI) framework as the model for the PRTR, as opposed to the creation of one that was adapted to include the superior features of Canada's National Pollutants Release Inventory (NPRI). This CEC decision might have been a result of the initial need seen by the CEC for rapid action, and

⁴ CEC (2004), "Alaskans consulted on lindane action plan," February 12.

of the familiarity of the responsible CEC project manager with the US system. Yet this approach produced considerable Canadian discomfort, on scientific and environmental grounds. The core concern was that because the US method aggregated pollutants in a less sensitive way than Canada's method did, it could mislead the public. The US TRI examined all substances and aggregated them by weight to produce an overall national ranking of the top releasers. In contrast, Canada's NPRI did not aggregate but ranked releasers individually for each of the top ten individual pollutants. The CEC's US-based approach raised concerns for the Canadian government, Canadian industry and some Canadian environmental groups. They felt it was misleading, because an emitter could be ranked low overall even if it had high releases of carcinogens in particular. Canadian firms wrote letters to the Minister of the Environment, expressing concern that their stock price might fall because of the misleading public reports.

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

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

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

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

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

Rather than resisting, Canadian industry is living with the PRTR, responding to it, and trying to get a better performance as a result. Canada's steel

companies and others are now issuing reports and press releases highlighting the fact that they have improved or moved up on the PRTR list or explaining their apparently disappointing ranking in the PRTR report.⁵ This is a sign that industry is taking the report and its “shaming” effect seriously, and responding in a desirable way. There is a belief that it has also had some impact in reducing toxic emissions in Canada.⁶ There is a hope that it might do so for smog and acid rain pollutants, as indicators for these substances are slated to be added to the PRTR list.

Beyond Canada, the Canadian government’s commitment to trilateralism is slowly being realized in the PRTR. The CEC brought American and Canadian pressure to bear on Mexico to introduce regulations to require industry to disclose this information to the public. In the face of major resistance from industry in Mexico, much pressure was applied from the EPA Administrator and Canada’s Environment Minister. Considerable capacity-building assistance also came from the CEC, and from the discretionary resources of Environment Canada (Kirton 2002a). Mexico has thus increasingly provided data to be incorporated into what is now a trilateral PRTR, if still one heavily oriented to the US and Canada.

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

iii. Air Quality

One area where Canada has begun to act more strategically and successfully in recent years is the Air Quality Program. In the past, CEC work in regard to air flowed from Secretariat initiatives such as the Article 13 Report on Continental Pollutant Pathways. It also came from strategic US initiatives, based

⁵ For example, Noranda (2003), “International Report Demonstrates Importance of Metal Recycling at Noranda,” *News Release* April 17, and Francois Blain, Director, media relations, Canadian Pulp and Paper Association, “Letter to the Editor of the Ottawa Citizen, the Globe and Mail, and the Toronto Star, , n.d.

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

on the US desire to stop dirty air from Mexico entering the US, to create emissions inventories in Mexico that lead to public participation and pressure, and to constitute the foundation for transport modeling.

Canada inspired the creation of a CEC Working Group on Air. This push also came from the Secretariat, JPAC and the CEC's Article 13 report on electricity. The latter confirmed that coal, as a major fuel to generate electricity, had significant smog and acid rain impacts. The Air Working Group first met in June 2003. The Secretariat put existing air-related activity under the heading of the Working Group, and gave it a small amount of money to do air quality monitoring in Mexico. The Working Group then began to develop a strategic plan.

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

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

vi. Children's Health

The CEC's work on children's health was a US initiative, led by former EPA administrator Carol Browner and flowing from an EPA priority. Canada gave this initiative strong support. The prevailing view is that the relationship between environment and health needs to be developed in the North American context, if only to better equip Environment Canada for its dialogue with Health Canada, and to develop improved regulatory policies at home.

Canada has suggested that the CEC work on health data and comparability, with some forward-looking assessment included. As the OECD already has work underway in this area, the CEC will focus more narrowly on developing health indicators.

d. Law and Policy

The Law and Policy Program is made up of activities for environmental standards, hazardous waste, enforcement and compliance, as well as freshwater and environmental management systems. Since the start, Canada has viewed the CEC as a way of strengthening the enforcement program, particularly in regard to the import and export of hazardous waste.

Here there have been disappointments. It has not been possible to exchange information on transborder shipments. This is in part for political reasons, due to mistrust between the US and Mexico. It is also due to legal obligations in Canada for the privacy of industry-supplied information and in the US for disclosure. There was a concern that some might use US actors to secure information on Canadian firms that would be confidential under Canadian law at home. Thus far, the CEC has done nothing in the enforcement field with a direct impact on the environment within Canada. One proposal for CEC activity where a specific Canadian interest has been involved — on pollution by maritime vessels — has been difficult to get underway due to budgetary constraints.

Nonetheless the CEC's work as a co-ordinator has been useful in building capacity for Mexican wildlife officers through seminars and training of customs officers. Most recently, the CEC has developed a strategic plan for the Enforcement Working Group. Canada has also successfully avoided being drawn into operational matters where there are sharp US-Mexican differences, as in the treatment of the dumping of tires from the US in Mexico. Most broadly, there has developed a greater willingness by individuals to work together on a common strategic plan, with capacity building in Mexico at its core. Yet here the rapid rotation in personnel on the US and Mexican side has limited progress.

Article 10(6) Trade-Environment

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

NAFTA's Environmental Effects

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

Internationally, the NAFTA Environmental Effects framework, produced by an environmental organization, stands out as being based on an environment-first multidisciplinary approach and on the particular characteristics of North

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

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

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

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

CEC Council–FTC Joint Meeting

Most disappointingly, Canadian officials have been unable to convince their NAFTA partners to proceed with one initiative that would signal the full equality and integration of trade and environment values. This is the proposal to hold a joint meeting of the trade ministers of the NAFTA Free Trade Commission and the environment ministers of the CEC Council. Canada's most recent effort to secure such a meeting was opposed by the US, which feared it would lead to demands that a joint meeting be held for labour as well. Additional concerns relate to the particular agenda, length and prominence of such a meeting, and its symbolic value as a statement of a NAFTA-wide commitment to sustainable trade.

Probably the greatest failure of the NAAEC from a Canadian perspective has thus been the minimal progress made during the first decade in fulfilling the obligation to "cooperate with the NAFTA Free Trade Commission to achieve the environmental goals and objectives of the NAFTA" as specified in Article 10(6) of the NAAEC. To be sure, the emergence of activity in the trade community in the three governments over the NAFTA Environmental Effects project, and the

subsequent creation and work of the Environment and Trade Officials Group helped realize the intent of this provision at the working level. But nothing has taken place at senior levels, or in the form of any collective encounter between the trilateral CEC and its trade counterpart, especially at the ministerial level. In part this is because the FTC has not resulted in a trilateral Secretariat that could easily and continuously interact with its CEC counterpart. But, above all, it reflects the inability of the trade and environment communities in all three governments to agree, at the same time, to hold a ministerial or senior-level encounter, and to agree on its purpose, length, format and agenda.

The Canadian government's trade and environment communities are working together to find a way to bring about such a meeting, in recognition of their new enthusiasm for the CEC's trade-environment work, and the sympathy of both Canadian ministers for integrated work on trade and the environment (Kirton 2003a). Yet the experience of the past decade suggests that a top-down injection of political will and a decision of architectural dimensions, rather than incremental, bottom-up consensus, will be required to forge this critical missing link. The similar experience of the CEC and Environment Canada in the field of energy, where NAEWG officials refuse to include the CEC in their meeting, even as the CEC includes NAEWG in its meetings, also shows how difficult the achievement of equal, reciprocal interaction and integration of the economy and the environment can be.

Article 14-15 Citizens' Submission

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

Of the 42 cases initiated under the Article 14-15 process to the end of 2003, Mexico was the target of 20, Canada 14 and the United States 8. The overall pattern is not highly unbalanced across the three countries if their relative size is not taken into account. Canada, that is, with one third of the cases directed at it, has not been particularly singled out. When one accounts for the likely capacity of the respective governments to enforce their environmental regulations effectively, it is hardly surprising that a relatively poorer Mexico would be the target of more cases than the richly resourced government of the US.

The balance, however, shifts when one considers only those eight cases that have proceeded all the way to the release of a factual record. Here the distribution is Mexico three, Canada four and the US only one. Of the 11 cases listed as active at the end of 2003, Mexico is the subject of seven and Canada four. The US had no cases under active consideration. However, not all these

ongoing cases need end in factual records. Yet when they do, environmentally enhancing change is the major result.

Article 14-15 is operating, as intended, as a mechanism for ENGOs concerned with environmental quality and related social concerns. Most of the cases have been filed by ENGOs. Seven of the eight cases leading to factual records have been submitted by ENGOs. The eighth was submitted by an aboriginal fisheries association in British Columbia. In 1999-2000, firms began to file actions, but the two they mounted were declined on the grounds that they were already the subject of action under NAFTA's Chapter 11. The "process protection" problem for the trade community, in the form of jurisdiction shopping and simultaneously litigating under different mechanisms on the same issue, has thus been contained. Article 14-15 has thus remained a pure mechanism for environmental protection, rather than being mobilized by firms and foreign investors to forward their ultimately commercial concerns. It is also accessible to individuals, who have used it in conjunction with an NGO. The cadence of Article 14-15 usage, with a continuing set of fresh cases initiated each year, and an overall average of four to five cases a year, shows that the ENGO submitter community continues to have faith in the actual and potential impact of the mechanism.

Of the 42 cases initiated to the end of 2003, however, just under 20% have ended in a published factual record. Far more have been terminated, withdrawn, diverted (to an Article 13 investigation) or deferred. Moreover, the CEC's Council has declined a CEC recommendation that a factual record be prepared in two cases.

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

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

Part 5 Dispute Resolution

The NAAEC Part 5 dispute resolution provisions provided a variable regime. Here the United States and Mexico could sanction each other with trade restrictions at the end of a lengthy process for non-enforcement of environmental regulations. In contrast, under Part 5, Canada could sanction, and be sanctioned by, the US and Mexico only with monetary fines imposed through the Canadian domestic court system. This variable architecture preserved Canada's fundamental objectives. These were to protect the open access to the US market that Canada had secured under CUSFTA and to allow the corporate strategies of Canadian companies to be developed free from fear that that NAFTA, through the NAAEC, would imperil their critical export market access.

Part 5 has remained a dead letter, in that no government has initiated actions that could lead either to trade sanctions or fines. It is widely expected to remain a dead letter in perpetuity, under a *de facto* non-aggression pact in which no country will initiate the first dispute for fear of unleashing a spiral of retaliation under which all would lose. Nonetheless, its very presence and the legal potential for action have substantial negative effects. It has made Canadian provinces more reluctant to accede to the NAAEC. It has made some in the legal and trade community in DFAIT anxious to restrict the Article 14-14 mechanism for fear that the contents of a factual record flowing from it, relating to environmental subsidies with trade effects, could unleash political pressures in the aggrieved country that would induce their government to mount the first Part 5 case. Above all, the presence of Part 5 suggests a continued collective belief in punishment and economic protectionism, rather than capacity-building assistance and open commerce and co-operation as the way to secure environmental improvement. It is thus the antithesis of Canada's core sustainable development beliefs. Compounding the costs of Part 5 is the practice of the US government in introducing such provisions into its bilateral trade agreements with other developing countries in the western hemisphere in particular, and thus seeking to legitimize their philosophy of punishment in the wider context of the FTAA and WTO. In recognition of its costs and absence of benefits, and knowing that developing countries are strongly opposed to trade sanctions, Canada has eliminated such provisions in its bilateral free trade agreements, and its FTAA and WTO negotiating stance (Kirton 2003a). Indeed, the Canadian government's refusal to accept trade sanctions for environmental reasons is fundamental to its approach to negotiations in the WTO Doha Development Agenda and the FTAA.

There is, at a minimum, no evidence that the presence of either the trade sanctions or fines envisaged by Part 5 have had any deterrent or other psychological effect in inducing improved environmental performance on the part of any of the parties. The absence of Part 5 action during the first decade suggests that no party believes that even the threat of such action would have an environmentally beneficial effect. The absence of any pressure by a civil society actor in any country over ten years to initiate such action suggests that everyone of consequence shares this belief.

Provincial Participation

Ten years after the agreement, little has been accomplished by way of attracting Canadian provinces to participate in the NAAEC. That the two initial leaders were Quebec and Alberta suggests that provincial decisions to participate are more an expression of a political judgment on NAFTA as a whole than of a functional evaluation of the value of the NAAEC and the CEC for this important area of provincial responsibility. Moreover, provinces have been largely uninvolved in the ongoing life of the CEC and its working groups, even in areas such as air quality where they have important concerns.

Although Canadian government officials consider that the greater presence of the provinces in the work of the CEC might strengthen the pan-Canadian voice, they do not see the CEC as a solution for the specific federal-provincial challenges they face. Indeed, in the biodiversity area, the ability of networks outside the CEC to attract state and provincial participation and contributions is one reason why the biodiversity community looks upon the CEC with some wariness.

Specific NAAEC Impacts

It is an analytically challenging task to assess the specific impact of the NAAEC on the way that governments in Canada manage and regulate, and the actual effects on the pressures, supports and the state of the ambient environment that result from the actions of Canadian governments. First, doing so involves specifying the autonomous effect of NAAEC-inspired action, whether through the CEC or outside it, identifying the resulting changes in interaction, institutionalization, learning and altered calculations of interests and conceptions of identity, and then the consequent changes in national government behaviour and the physical transformations in the Canadian ecology. Because the CEC is essentially a policy development facilitator, with virtually no budget for program implementation, the linkages are largely indirect. Moreover, much of the impact of the CEC takes place through nongovernmental mechanisms, through its civil society incubation and participation, and through enhanced public awareness as a whole. Many of the impacts, as with SMOC, have taken place in Mexico, and their effects have then been transmitted back to Canada. And several of the projects of most interest to the Canadian government — including projects now central to Canada's overall strategic vision for the CEC and approach to its work — are of recent origin, with impacts yet to be seen.

Yet several impacts of the NAAEC on the way the Canadian government regulates and manages, and the resulting environmental change in Canada, can confidently be identified at this time. Most broadly, a wide array of officials, from many of Environment Canada's programs and in DFAIT, regularly interact on a trilateral basis, in an increasingly co-operative spirit, through CEC forums. As this is an entirely new experience, outside the biodiversity area, the NAAEC has generated an often intense process of awareness, learning and even embryonic sense of identity on a North American scale. In particular, it has made Mexico a priority and a privileged partner of Canada. And it has strengthened Canada's behaviour abroad, as a member of a North American community, on global

debates on sustainability assessments of trade agreements and in securing resources from multilateral organizations to reduce toxic chemicals in Mexico.

Conclusions

During its first decade, the CEC has worked well for Canada. Indeed, it has worked increasingly well as the years have passed. Moreover, it promises to work even better for Canada in the years ahead. This is especially so as and if a more strategic Canadian vision, more continuous Canadian ministerial leadership, and a process of major modification of the CEC and its surrounding architecture are brought to bear.

Key Measures

The NAAEC and CEC represented a revolutionary departure in international governance for Canadians and for their colleagues in the United States and Mexico. Canada's initial aspirations for the new regime, while somewhat reactive, were architectural, ambitious, general and expansive, rather than incremental, modest, narrow in scope and limited in time. Thus, the effectiveness of the NAAEC for Canada should be assessed according to several measures that capture the generality and expansive nature of the great step that Canada made in designing and accepting the NAAEC in 1993. Here the most central measures for identifying success are:

1. Realizing Canada's initial and evolving objectives for the NAAEC and the CEC itself;
2. Forwarding, strategically and otherwise, Canada's national environmental and economy-environment priorities;
3. Engendering a trilateral North American community that fosters an improved environment and more open economy across the inherently integrated region and thus for Canadians living in its Canadian community or the region as a whole.
4. Expressing Canadians' nationally unifying priority for global environmental protection, within North America and on a global scale.

By these broad and ambitious measures, the NAAEC-CEC has, on the whole, served Canada well. A more detailed approach to assessment involves identifying Canada's specific success in achieving its five seminal and four evolving objectives, in securing its approach in each of the CEC's main programs and projects, and obtaining the environmental impacts its desires. Appendix C provides an overall judgment, based on the evidence reported and assessed above, in each of these categories, in regard to the level of Canadian success during the first decade as a whole, the trend over the past decade toward the present, and the prospects for Canadian success in the future should the NAAEC-CEC arrangements and architecture remain essentially the same, in the face of the real environmental and economic changes underway. The overall portrait is one of a medium level of success, a rising trend toward greater success in recent years, and reasonable prospects for success by building on the existing NAAEC-CEC architecture in the years ahead. The major areas of low performance, stagnation, and an uncertain future relate to areas where success is highly dependent on

institutions outside the NAAEC-CEC – notably the core NAFTA itself – and where greater resources are required to meet the economic and environmental challenges that lie ahead.

Judgments about present and past success, as well as future prospects, are inevitably related to the investments that have been made. Although the resources available to the CEC are broader than the core funding provided directly to the CEC by the three member governments, this latter contribution is the core resource whose ample provision and wise use is essential for mobilizing the other resources which can come. Here one can compare the Canadian government's annual US\$3 million contribution, fixed in nominal dollars at this level since the CEC's start, with a selected array of other international and internationally-oriented environmental institutions that the Canadian government invests in. The results show that the CEC stands as one of the Canadian government's "big four" international environmental institutional investments, as follows: the Montreal Protocol on Ozone at C\$10,208,900; the CEC at C\$4,650,000; the International Institute for Sustainable Development at C\$3,361,000; and UNEP at \$2,525,000. The CEC thus emerges as a leading, but not singularly central investment.

Key Impacts

The key impacts of the NAAEC-CEC are best seen in relation to the desired outcome – an enhanced physical environment for Canadians and North Americans to enjoy. Here, as detailed above, there is a substantial legacy of success. It is led by the reductions in toxic chemicals due to SMOC, the containment of air emissions as measured by and in modest part due to *Taking Stock*, prospects for preserving endangered species through regional biodiversity action plans, improved health for vulnerable and regular Canadian populations due to SMOC and PRTR, and a move toward controlling trade in hazardous substances due to the environment, economy and trade work. Demonstrable, physical improvements have thus come across most ambient environmental media, and even, embryonically in the trade-environment realm. Producing similar successes in regard to water, Canada's ice covered regions, and the global community are challenges that await in the next ten years.

Relevance for Other Agreements

The trade-environment achievements raise the central question of whether the revolutionary, pioneering North American regional model of the NAAEC-CEC is appropriate for adaptation and adoption by the global community as a whole. Here it is easy to identify the defects of the NAAEC-CEC architecture and performance, and the distinctiveness in a global context of the North American ecology and economy for which it was designed (Ostry 2002). Yet on the whole the evidence suggests there are good grounds for a more optimistic view (Maclaren and Kirton 2002).

In broad, architectural terms, the NAAEC-CEC model works. It should be strengthened and adapted and adopted on a global scale. Its wider value rests on its unique character as a full free trade regime that normatively, legally and institutionally put the environment in, in a largely integrated and equal way, that

did so by bridging countries across the long divisive north-south divide, and that treated equally countries with great diversity in levels of development, economic and social structure, and language, and with little prior social, political or economic connection or sense of community. No other real world model comes close to the NAAEC-CEC's proven record of success in the face of such diversity. Yet as Canada's core recent and prospective trade liberalization agreements will take place across new communities that manifest such diversity in ever larger measure, the NAAEC-CEC model stands as the only proven guide (Kirton 2003a, 2004).

In considering the adaptations required for this outward looking task, there are important issues that arise regarding, *inter alia*, the need to eliminate the impact or existence of the punitive provisions of Part Five, and the need to mobilize the resources required to solve, co-operatively, the environmental problems that the NAAEC's provisions and processes bring to light. Yet beyond the NAAEC-CEC organism and surrounding community lies the broader issue that full free trade agreements have proven to be politically necessary to bring such effective, expanding international environmental communities to life.

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Appendix A: Data Sources

The evidence and judgments in this study, where not otherwise identified, are based on two sets of sources. The first are several series of confidential, semi-structural interviews from 1995 to 2003 with relevant stakeholders in all three NAFTA countries, as follows:

1. NAFTA Environmental Effects, Fall 1995–Spring 1996
2. NAFTA Institutions, Summer 1996–Spring 1997
3. IDRC Research (conducted by Julie Soloway), Fall 1997–Winter 1998
4. EnviReform CEC, Autumn 2002–Summer 2003
5. NAAEC@10, Autumn 2003

The second is through the author's "participant observation" involvement in five processes of relevance to the CEC's creation and operation. The first of these was as a member during the late 1980s of an informal multistakeholder group of individuals from the three countries, assembled by Jean Hennessey and Konrad Von Moltke of Dartmouth University, to assess the need for and the design of what was then termed a North American Commission on the Environment (NACE). The second was as a member from 1989 to 1995 of the Foreign Policy Committee of the National Roundtable on the Environment and the Economy with a major role in preparing advice to the Prime Minister of Canada on the environmental and sustainable development dimensions of the NAFTA and NAAEC. The third was a member of the Canadian government's International Trade Advisory Committee from 1995 to 1997. The fourth was as the project team leader of the CEC project on NAFTA Environmental Effects from 1995 to 1998. The fifth was as a member of the CEC's Advisory Committee on NAFTA's Environmental Effects from its inception through the spring of 2003.

It should be added that the community partners of the EnviReform project at the University of Toronto include the CEC, and the following organizations involved in the work of the CEC: Pollution Probe, the Centre patronal de l'environnement de Québec, and the Sierra Legal Defence Fund.

Appendix B: The Council's Agenda, 1995–2003

Issue	95	96	97	98	99	'00	'01	'02	'03
Public Participation	X	X		X			X		
Migratory Bird Deaths in Mexico	X								
Reducing Risks to Human Health through Pollution Prevention Strategies	X								
Wildlife Habitat Protection	X								
Energy Efficiency and Climate Change	X								
Public Access to Environmental Information	X						X		
Transboundary Initiatives (Including Transboundary EIA)	X		X		X		X		
Public Submissions (Article 14 and 15)	X			X		X			X
Enhancing Environmental and Public Health Protection		X							
Environment and Trade		X	X	X	X	X		X	X
Air Monitoring and Modeling/Cooperation on Air Quality Issues		X	X						X
Cozumel Factual Record		X							
North American Pollutants Release Inventory (Pollutant Release and Transfer		X			X	X		X	X

Registers)									
Environmental Enforcement and Compliance		X	X		X				X
Green Jobs		X							
Funding Communities		X							
Protection Migratory Species		X							
Evaluating Success of NAAEC/Progress Reviews			X	X					
“A Shared Agenda for Action” CEC 3 year planning				X					
Regional Action on Global Issues and Cooperation on Global Agreements				X			X		
Reducing the Threat of Toxic Chemicals/Sound Management of Chemicals			X		X	X		X	X
North American Bird Conservation Initiative					X		X	X	
Upper San Pedro River Initiative					X				
The Silva Reservoir					X				
Children’s Health and the Environment						X	X	X	X
Law and Policy						X			
Biodiversity Conservation						X	X		X
North American Fund for Environmental Cooperation						X			

Market Based Approach to Environmental Conservation							X		
CEC Capacity Building							X		
Freight Traffic							X		
Electricity Market							X	X	
Industry Practices							X		
Strengthening CEC's Relationship with Private Sector							X		
Hazardous Waste								X	X
Finance and Environment									
Corporate Environmental Stewardship								X	X
World Summit on Sustainable Development								X	
Joint Meeting with International Joint Commission and International Boundary and Water Commission								X	
Management of Freshwater Resources									X
Renewable Energy									X
Disclosure of Financially Relevant Environmental Information									X
North American Green Purchasing Initiative									X
NAFTA 10 Year Retrospective									X

Prepared by Caitlin Sainsbury, November 14, 2003

Appendix C: Canada's Accomplishments at the NAAEC-CEC

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