



NAFTA and Environment

By Stephen P. Mumme, Colorado State University

The North American Free Trade Agreement's impact on the trinational environment remains controversial. Since entering into force in 1994, NAFTA has significantly boosted regional trade. Environmental conditions in the North American region are stressed, and these trends are particularly evident along the U.S.-Mexico border, which figured prominently in the political debate leading to NAFTA's adoption. Yet assessments of NAFTA's environmental effects remain sharply divided. Public Citizen's trenchant 1996 critique of NAFTA as a "betrayal" of environmental promises still has bite. Other groups, such as the Environmental Defense Fund, argue that NAFTA's presumed short-term environmental effects may be more properly attributed to macroeconomic and social trends evident in 1994, that regional trade integration would have intensified with or without the agreement, and that NAFTA strengthened governmental support for environmental protection within the North American region that would otherwise have been unattainable.

notwithstanding. National environmental regulations are thus suspect and must prove they are not cleverly disguised barriers to trade if they are to be enforced. Trade competition and the harmonization of trade and investment practices in North America may boost production, physical infrastructure, and government policies that support environmental values while accelerating trends that degrade the environment. Tariff elimination, for example, may hasten the decline of traditional farming in Mexico, with adverse conservation and biogenetic effects. Mitigating NAFTA's environmental effects thus requires careful monitoring and regulation, as well as a critical fine tuning of its implementing instruments.

The new environmental institutions and programs spawned by the NAFTA debate also warrant scrutiny. On the positive side, the Commission for Environmental Cooperation (CEC), a trinational body based in Montreal, provides a mechanism both for investigating allegations of nonenforcement of national environmental laws and for monitoring the adverse environmental impacts of the NAFTA trade system. The CEC has emerged as a useful monitor of environmental trends in the region and an important advocate of trinational environmental solutions that advance regional sustainable development. A 1999 CEC report, for example, shows industrial emissions in Canada and the U.S. modestly declining since 1995—an incentive to both governments to maintain emissions regulations currently in place. The CEC is also working on a trinational agreement regarding transboundary environmental impact assessment that will be a milestone in regional environmental cooperation.

On the U.S.-Mexico border, the Border Environment Cooperation Commission (BECC) and its sister institution, the North American Development Bank (NADBank), have infused much-needed resources for environmental infrastructure into cash-strapped border communities, promoting sustainable development and public participation in environmental decisionmaking. The Border XXI Program, a complex of national and binational initiatives aimed at environmental improvements in the border area, has strengthened binational cooperation regarding environmental enforcement and devised key environmental indicators for sustainable development mutually acceptable to both countries.

Yet, NAFTA's environmental agencies and programs are institutionally weak and deficient in government support. These problems should be corrected to protect the North American environment and to refine NAFTA as a model for future trade negotiations.

Key Points

- Free trade poses formidable challenges to the North American environment that require careful monitoring and regulation.
- NAFTA's environmental institutions are performing valuable functions but are insufficient to arrest pressures on the environment arising from increased trade.
- NAFTA's environmental protections should be strengthened if it is to serve as a model for future trade accords.

Environmental concerns were afterthoughts to NAFTA, forced on the governments by environmental and labor groups. In response, the three governments wrote sustainable development into NAFTA's preamble, strengthened sanitary and phytosanitary (plant health) trade requirements, and vowed that NAFTA would not drive down the region's environmental standards. NAFTA's critics also gained new institutions and programs, including side agreements on North American

environmental cooperation and infrastructure development along the U.S.-Mexico border. Linking trade to sustainable development for the first time in a multilateral trade agreement, NAFTA set an important precedent, challenging Free Trade Agreement of the Americas negotiators and the World Trade Organization to write environmental protection directly into future trade accords. Such measures are vital if sustainable development is to be given meaning at the global level.

Taken as a precedent, however, NAFTA and its environmental side agreements have their flaws. Intended to promote intraregional economic integration, NAFTA privileges trade and investment over the environment, its preambular rhetoric of sustainable development

The post-NAFTA environmental regime's capacity to cope with trade-related challenges suffers from fundamental impediments. Under NAFTA, for example, domestic environmental laws should not discriminate against trade; thus various of NAFTA's dispute settlement provisions allow firms to challenge environmental regulations. Such mechanisms are liable to abuse, as seen recently in the case of NAFTA's Chapter 11.B rules for investor protection. These rules obligate governments to compensate investors for regulations that expropriate an investor's future property. Fearing such penalties, states and provinces may retreat from imposing tough environmental regulations.

Flaws in procedures and programs also impair NAFTA's environmental institutions. Restrictions on CEC's autonomy and problems its citizen submission and government-to-government dispute resolution processes are hindrances to its effectiveness. At least one government, Mexico, has withheld its support for CEC programs contingent on external approval of the commission's projects, a significant limitation on CEC's ability to discharge its mandate in a professional and unbiased manner.

The citizen submission process—a procedure under NAAEC's (North American Agreement on Environmental Cooperation) Articles 14 and 15 designed to trigger investigations of alleged nonenforcement of domestic environmental laws—may be faulted for its complex requirements and lack of transparency. Citizen-initiated complaints face numerous procedural hurdles and may be terminated with cause by the commission or withdrawn by the submitters. Transparency questions also persist—the CEC may still refuse to publish a factual record. A recent and largely governmental initiative to modify these procedural rules would have imposed even more procedures and requirements on the secretariat, further limiting its autonomy. Fortunately, concerted lobbying by environmental groups led the CEC to reject most of these proposals.

In addition to citizen submission problems, rules of procedure have not yet been established for resolving government-to-government disputes under NAAEC's Chapter V—a process that could actually result in penalties—rendering this highly publicized provision virtually toothless. At the program level, the CEC (by its own admission) has been slow to engage in constructive dialogue on environmental assessment and priority setting with NAFTA's Free Trade Commission and other NAFTA-linked institutions and has neglected exploring areas of interagency cooperation.

Along the U.S.-Mexico border, where the symbiotic BECC and NADBank institutions have been justly praised for injecting sorely needed resources for new environmental infrastructure, there is also room for improvement. Political pragmatism has narrowed BECC's policy scope to water supply and wastewater treatment issues, slighting other environmental infrastructure needs. And an admirable record of institutional transparency, public access, and public participation is still marred by limited Mexican participation in BECC's decisions. Moreover, NADBank is still closed to public input in its internal deliberations.

The Border XXI Program, which shoulders the burden of border area environmental management, has generated numerous (some useful) initiatives, with 127 projects currently on its docket. Yet Border XXI remains a congeries of programs dominated by federal agencies on each side of the border, with little systematic programming of long-term commitments by the two governments. One core strategy, promoting decentralization of environmental programs and building local capacity for environmental improvement, has scarcely been addressed. Other projects are moving in haphazard fashion and are contingent on available funds, threatening long-term performance. Border XXI's much-touted environmental assessment program, for instance, is largely composed of "indicators in progress" not yet available for actual assessment.

All these post-NAFTA initiatives suffer from governmental neglect. None have been adequately funded. The CEC has limped along on \$9 million annually, down from the \$15 million originally promised. CEC's U.S. staffing component is the most inadequate of the three governments. Lack of funding is implicated in both the slow pace of processing citizen submissions and the tardiness in implementing CEC's important NAFTA Environmental Effects study. And BECC's operating fund has been in jeopardy from the start. Financing for its certified projects through the U.S. Environmental Protection Agency (EPA) and NADBank is also threatened. In August 1999, a U.S. House Appropriations Subcommittee voted to cut EPA's Border Infrastructure Fund—a vital financial resource for BECC-certified projects—by half, from \$100 million to \$50 million.

Key Problems

- NAFTA's trade protections are liable to abuse, threatening deterioration of environmental standards within the region.
 - Flaws in procedures and programs also impair NAFTA's environmental institutions.
 - NAFTA's environmental institutions are poorly funded by the three governments.
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Editors

Tom Barry (IRC)
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Communications Director
Tim McGivern (IRC)

Production

Grant Moser (IRC)

Project Administrator
Nancy Stockdale

Orders and subscription information:

Mail: PO Box 4506
Albuquerque, New Mexico 87196-4506

Voice: (505) 842-8288

Fax: (505) 246-1601

Email: resourcectr@igc.apc.org

Editorial inquiries and information:

IRC Editor

Voice: (505) 388-0208

Fax: (505) 388-0619

Email: resourcectr@igc.apc.org

IPS Editor

Voice: (202) 234-9382/3 ext. 232

Fax: (202) 387-7915

Email: ipsps@igc.apc.org

Website: <http://www.foreignpolicy-infocus.org>

Five years and counting since the NAFTA accords took effect, there is much to be done to realize its promise of supporting sustainable development. It is now plain that NAFTA's rules protecting trade and investment in the trilateral region are an invitation to the private sector to challenge environmental regulations. These rules and their implementation procedures must be shored up if a gradual erosion of state and provincial standards is to be avoided. At minimum,

Key Recommendations

- The CEC should strengthen its ties with NAFTA's Free Trade Commission and other NAFTA-linked institutions.
- BECC and NADBank must refine their citizen access and transparency procedures. The Border XXI Program should move beyond federal initiatives to strengthen local environmental capacity on the U.S.-Mexico border.
- NAFTA's environmental protections should be strengthened, better funded, and built into future trade accords.

NAFTA's trade officials should be required to consult with the CEC and national environmental ministries in dealing with environment-related trade disputes. In the matter of NAFTA Chapter 11 challenges to environmental rules, the CEC has already proffered its advisory services to the Free Trade Commission, an offer the FTC should accept.

NAFTA's most constructive policy contribution has been the development of new international institutions and initiatives for environmental protection in the trilateral region. Operating with very

limited resources, these institutions have performed judiciously and shown their value. Thus far, however, the three governments have not allowed these auxiliary bodies to function to their potential. Neither the CEC, BECC, nor NADBank have been adequately funded, resulting in staff shortages, fewer programs, and less efficient performance of mandated functions. The federal governments should augment budgetary support for these institutions and allow them to respond more effectively to public concerns.

Additional refinement at the level of operating procedures and organizational practices is also necessary. The CEC should strengthen its ties to NAFTA's economic institutions and deepen its consultative relationship with other NAFTA environmental bodies and programs. CEC's council should move quickly to develop the necessary procedures to implement its Chapter V dispute resolution process. The CEC secretariat must continue to monitor and assess its citizen submission process, taking care, on the one hand, to support and improve citizen access to these procedures and, on the other, to preserve and strengthen its reputation as an independent and fair-handed body. At the program level, if the CEC is to emerge as the leading independent body for assessing NAFTA's impact on the North American environment, then it must move quickly to refine its evaluation framework and to apply it broadly to the analysis of sectoral trade and environmental issues. The CEC should also hasten to conclude a trilateral agreement on transboundary environmental impact assessment.

Along the U.S.-Mexico border, after a slow start, both BECC and NADBank have made headway in certifying

and funding projects for needy communities. BECC is unquestionably an institutional model of transparency and public participation in developing water and wastewater projects that serve both environmental and social aims of sustainable development. BECC should, however, show that it is willing to consider meritorious projects not specifically tied to urban water provision and wastewater treatment. It should also be encouraged to make better use of its advisory board and to take every opportunity to ensure that the Mexican public is participating in decisions that affect Mexican communities. Notwithstanding its recent efforts to better utilize BECC as a platform for soliciting public input in funding decisions, NADBank is still too insular and should open its doors to greater public scrutiny. Together, these linked institutions must strive to improve public access and input opportunities and must insure that interested parties and stakeholders are better informed.

The Border XXI Program also needs attention. Its current menu of federal, nation-to-nation projects is not enough. The two governments should give greater attention to the practical matter of bolstering the capacity of state and local regulatory bodies, NGOs, and the social sector. In this regard, the governments should lend their support to such innovative grassroots initiatives as the El Paso-Ciudad Juárez binational air shed task force, an outstanding model for involving local actors in long-term cross-national efforts to mitigate pollution and improve public health. At the program level, leading initiatives should be clearly prioritized, consistently funded, and better coordinated amongst participating agencies. For instance, Border XXI's national coordinators should hasten to apply and refine its new environmental indicators so that accurate appraisals of environmental conditions can guide public policy improvements.

In sum, NAFTA is a first step in the direction of bridging the policy gap between trade and environment. NAFTA's various environmental initiatives should be supported and strengthened, and, at minimum, incorporated into future trade agreements. At the global level, NAFTA's shortcomings indicate what should be done to strengthen the prospects for sustainable development in future accords. First and foremost, environmental machinery, now largely relegated to secondary or sideline status, should be built into trade agreements along with action-forcing compliance mechanisms. Environmental ministers should be able to vet and veto environment-degrading trade initiatives. Environment secretariats should be strengthened and made more autonomous, with independent investigative abilities. Trade and investment panels should coordinate their work with the environmental secretariats to insure consideration of environmental values. Second, participating governments must pay greater attention to implementing details. They must follow through with procedural rules and practices that give substance to formal mandates. Third, governments must invest additional resources in the institutions charged with monitoring and enforcing these agreements. Sustainable development requires no less.

Sources for More Information

Organizations

Commission for Environmental Cooperation

393 rue St. Jacques Ouest, bureau 200
Montreal, PQ H2Y 1N9
Canada

Voice: (514) 350-4300
Fax: (514) 350-4314
Email: msilva@ccemtl.org
Website: <http://www.cec.org>

International Institute for Sustainable Development

161 Portage Avenue East, 6th Floor
Winnipeg, MB R3B 0Y4
Canada

Voice: (204) 958-7700
Fax: (204) 958-7710
Email: info@iisd.ca
Website: <http://iisd.ca>

Southwest Center for Environmental Research & Policy

San Diego State University Foundation
5250 Campanile Drive
San Diego, CA 92182-1913

Voice: (619) 594-0568
Fax: (619) 594-0752
Email: scerp@mail.sdsu.edu
Website: <http://www.scerp.org/>

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Box 2618
Austin, TX 78768
Voice: (512) 474-0811
Fax: (512) 474-7846
Email: tcps@onr.com
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Udall Center for Studies in Public Policy

U.S.-Mexico Border Environment Program
University of Arizona
803/811 E. First Street
Tucson, AZ 85719
Voice: (520) 621-7189
Fax: (520) 621-9234
Email: udallctr@u.arizona.edu
Website: <http://udallcenter.arizona.edu/programs/border/border.html>

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

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Pierre Marc Johnson and Andre Beaulieu, *The Environment and NAFTA* (Washington: Island Press, 1996).

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Mark J. Spalding, *NAFTA Plus 5: On the Right Track? An Assessment of the BECC/NADBank Institutions*, 2nd ed. (Washington: National Wildlife Federation, 1999).

World Wide Web

Border Ecoweb

<http://www.borderecoweb.sdsu.edu/>

Border Information and Outreach Service (BIOS)

Interhemispheric Resource Center
<http://www.irc-online.org/bios/>

Canadian Global Change Program

<http://www.cgcp.rsc.ca>

North American Institute

<http://www.northamericaninstitute.org/>

Trade and Environment Database

<http://www.american.edu/projects/mandala/TED/ted.htm>

U.S.-Mexico Border XXI Home Page

<http://www.epa.gov/usmexicoborder/index/htm>

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