

# NAFTA's Institutions

The Environmental Potential  
and Performance of the NAFTA  
Free Trade Commission  
and Related Bodies



1997

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ISBN 2-922305-15-5

©Commission for Environmental Cooperation, 1997

Legal Deposit – Bibliothèque nationale du Québec, 1997

Legal Deposit – Bibliothèque nationale du Canada, 1997

Disponible en français / Disponible en español

Printed in Canada

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<b>Paper</b> 50% recycled, with 30% post-consumer content / no coatings, no elemental chlorine	<b>Ink</b> Vegetable ink containing no chlorine or heavy metals	<b>Fountain Solution</b> No isopropyl alcohol / less than 1% VOCs	<b>Press Washes</b> Low VOC press washes used	<b>Design &amp; Layout</b> Mosaïc design communication
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# Profile of the Commission for Environmental Cooperation (CEC)

In North America, we share vital natural resources, including air, oceans and rivers, mountains and forests. Together, these natural resources are the basis of a rich network of ecosystems, which sustain our livelihoods and well-being. If they are to continue being a source of future life and prosperity, these resources must be protected. This stewardship of North American environment is a responsibility shared by Canada, Mexico and the United States.

The Commission for Environmental Cooperation (CEC) is an international organization whose members are Canada, Mexico and the United States. The CEC was created under the North American Agreement on Environmental Cooperation (NAAEC) to address regional environmental concerns, help prevent potential trade and environmental conflicts and promote the effective enforcement of environmental law. The Agreement complements the environmental provisions established in the North American Free Trade Agreement (NAFTA).

The CEC accomplishes its work through the combined efforts of its three principal components: the Council, the Secretariat and the Joint Public Advisory Committee (JPAC). The Council is the governing body of the CEC and is composed of the highest-level environmental authorities from each of the three countries. The Secretariat implements the annual work program and provides administrative, technical and operational support to the Council. The Joint Public Advisory Committee is composed of fifteen citizens, five from each of the three countries, and advises the Council on any matter within the scope of the Agreement.

## Mission of the CEC

The CEC facilitates cooperation and public participation to foster conservation, protection and enhancement of the North American environment for the benefit of present and future generations, in the context of increasing economic, trade and social links among Canada, Mexico and the United States.



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# Preface

This study of the environmental potential and performance of the institutions created by the North American Free Trade Agreement (NAFTA) represents a substantive contribution to Phase II of the Commission for Environmental Cooperation's NAFTA Effects Project. The project responds directly to Article 10(2)(l) of the North American Agreement on Environmental Cooperation (NAAEC), as well as to Article 10(6) which calls for cooperation between the Free Trade Commission (FTC) and the Commission for Environmental Cooperation (CEC) to achieve the environmental objectives of NAFTA and to assess its effects on the environment. The project will design a framework that will permit the ongoing monitoring of the environmental changes occurring throughout North America in the wake of NAFTA and the side agreements negotiated in conjunction with it.

In the summer of 1995 the CEC initiated the exploratory phase of the project. Phase I focused on the core elements of NAFTA and its more general regime, and their direct and immediate effects on trade and investment flows within North America. In May 1996 the NAFTA Effects Project entered its second year, Phase II. In response to repeated expressions that the effects of NAFTA on the North American environment would depend on the dozens of trilateral intergovernmental institutions implementing, managing and extending that regime, the CEC incorporated an examination of NAFTA's institutions into Phase II.

This study takes a closer look at the way NAFTA's economic institutions have moved to fulfill their responsibilities and potential for environmental enhancement specified in the NAFTA text and have acted synergistically with NAFTA's environmental institutions. Specifically, it identifies and assesses their achievements during their first three years and evaluates how they might be built upon in the future. The environmentally relevant institutions selected for the most detailed treatment were those best able to contribute to the overall goal of the NAFTA Effects Project in its second year: to produce a detailed design of a general framework for assessing environmental effects, and to do so in part through an examination of priority issues in agriculture and energy. This study also will serve as a basis for enhancing the cooperation between environment and trade bodies, particularly those bodies whose mandates reflect an attempt to make important links between economic interests and environmental protection.

This report was prepared by John Kirton, the NAFTA Effects Project team leader and professor of political science at the University of Toronto, and Rafael Fernandez de Castro, professor of political science at the Instituto Tecnológico Autónomo de Mexico. The authors and the CEC also acknowledge the important contribution of Sanford Gaines of the University of Houston. Other key members of the research network for this study were John Audley, Department of Political Science, Purdue University; Armand de Mestral, Faculty of Law, McGill University; and Raoul Hinojosa, professor of economics, University of California at Los Angeles.

Many members of the governments of Canada, Mexico and the United States who are involved in the work of NAFTA's institutions agreed to submit to the series of specialized interviews that formed the core of this study. Their cooperation is greatly appreciated. The CEC also gratefully acknowledges the work of the NAFTA Effects Advisory Group whose members have reviewed the progress of this study and provided counsel and advice. Finally, the CEC would like to thank Julie Soloway, the research coordinator for the NAFTA Effects Project, for her major contribution to this study, and Cecilia Brain, the research assistant to the project team leader.

Although this report is necessarily preliminary in large part because the operation and activities of many of NAFTA's institutions are still taking shape, it is hoped that the research and analysis provided will serve as the foundation for a more detailed dialogue and exploration in the coming years.

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*February 1997*

# Acronyms

AAC	Automotive Advisory Council
APEC	Asia Pacific Economic Cooperation forum
ASC	Automotive Standards Council
CAIP	Community Adjustment and Investment Program
CAT	Committee on Agricultural Trade
CEC	Commission for Environmental Cooperation
Cicoplafest	<i>Comisión Intersecretarial para el Control de Plaguicidas, Fertilizantes y Sustancias Tóxicas</i> (Intersecretarial Commission for the Control of Pesticides, Fertilizers, and Toxic Substances)
CLC	Commission for Labor Cooperation
CSPS	Committee on Sanitary and Phytosanitary Standards
CSRSM	Committee on Standards-Related Measures
CVSA	Commercial Vehicle Safety Alliance
DFAIT	Department of Foreign Affairs and International Trade (Canada)
DOT	Department of Transportation (US)
ECE	Evaluation Committee of Experts
EPA	Environmental Protection Agency (US)
EU	European Union
FAO	Food and Agriculture Organization (UN)
FDA	Food and Drug Administration (US)
FTA	Canada-US Free Trade Agreement
FTAA	Free Trade Area of the Americas
FTC	Free Trade Commission (NAFTA)
GAO	General Accounting Office (US)
GATT	General Agreement on Tariffs and Trade
INE	<i>Instituto Nacional de Ecología</i> (National Institute of Ecology)
ISO	International Organization for Standardization

JPAC	Joint Public Advisory Committee (CEC)
LTSS	Land Transportation Standards Subcommittee
LTSS I	Commercial Motor Vehicle Driver Standards and Motor Carrier Compliance Working Group
LTSS II	Vehicle Weights and Dimensions Working Group
LTSS III	Traffic Control Devices for Highways Working Group
LTSS IV	Rail Operations Working Group
LTSS V	Working Group on the Transportation of Dangerous Goods
NAAEC	North American Agreement on Environmental Cooperation
NAALC	North American Agreement on Labor Cooperation
NAC	National Advisory Committee (CEC)
NAFTA	North American Free Trade Agreement
NAPPO	North American Plant Protection Organization
NCS	NAFTA Coordinating Secretariat
NGO	nongovernmental organization
NHTSA	National Highway Traffic Safety Administration (US)
OECD	Organization for Economic Cooperation and Development
PMRA	Pest Management Regulatory Agency (Canada)
Sagar	<i>Secretaría de Agricultura y Ganadería y Desarrollo Rural</i> (Secretariat of Agriculture, Livestock and Rural Development)
SAGIT	Sectoral Advisory Group on International Trade (Canada)
SCT	<i>Secretaría de Comunicaciones y Transportes</i> (Secretariat of Communications and Transportation)
Secofi	<i>Secretaría de Comercio y Fomento Industrial</i> (Secretariat of Commerce and Industrial Development)
Semarnap	<i>Secretaría del Medio Ambiente, Recursos Naturales y Pesca</i> (Secretariat of Environment, Natural Resources and Fisheries)
SSA	<i>Secretaría de Salubridad y Asistencia</i> (Secretariat of Health)
TCG	Transportation Consultative Group
UN	United Nations
USTR	United States Trade Representative
WTO	World Trade Organization

# 1.0

## NAFTA's Institutional and Environmental Dimensions: Overview and Summary of Conclusions

### 1.1

#### Introduction

Composed of three ministerial commissions and over fifty committees, subcommittees and working groups, the network of trilateral intergovernmental institutions created by the North American Free Trade Agreement (NAFTA) is expanding the range and depth of cooperation among the three countries—Canada, Mexico and the United States—party to the agreement. This study reports on the structure and early activities of these institutions, focusing on the institutions that have, or could have, a direct and important environmental dimension to their work. The findings of this study will serve as a basis for the development of a general framework for monitoring NAFTA's effects on the environment and for generating policy recommendations on how NAFTA's institutional framework might further strengthen environmental cooperation and the practice of sustainable development in North America.

Four criteria were used to select the institutions included in this analysis. The first and most fundamental criterion: Did the NAFTA text specify that the institution is to review, or take action on, issues environmental in nature? Second, was the subject matter of the institution (such as agriculture) closely environment-related even though the NAFTA text did not assign specific environmental responsibilities to the institution? Third, was the institution one of those to which the NAFTA text assigned a permissive environmental mandate by specifying environmental subjects that the institution might take up in the future? And, fourth, to what degree does the institution respect the core components of the general commitment to ecologically sustainable economic development expressed in the preamble to the NAFTA text?

## 1.2

**NAFTA's First Three Years**

The North American Free Trade Agreement (NAFTA), which came into force on 1 January 1994, consists of three legal agreements to regulate economic, environmental and labor cooperation among Canada, Mexico and the United States.<sup>1</sup> Among other things, NAFTA and its side agreements contain innovative mechanisms for resolving any disputes arising from the initial interpretation of the agreements, as well as incentives for the three countries to move toward greater convergence and coordination of their national policies in North America and beyond. In many ways, however, the most significant component of the “NAFTA regime” is its new system of institutionalized trilateral North American governance among its Parties.<sup>2</sup> Indeed, the NAFTA agreements created, or inspired, the establishment of about 50 new trilateral intergovernmental institutions among Canada, Mexico and the United States (Appendix A), designed to guide the implementation of the agreements, expand the range and depth of cooperation, and manage the countries’ relationships in various spheres. This complex web of NAFTA institutions, ranging from ministerial-level councils, with trinational secretariats, to lower-level committees, subcommittees and working groups, is largely invisible to those not directly involved in them. Yet these institutions represent a major departure in the way the three North American countries have historically managed their relations with one another. Moreover, in its first three years of operation, this rapidly growing and increasingly active institutional complex has shown clear signs of significantly altering the breadth, depth and path of cooperation among the three countries.

The new trilateral system of regional governance has been somewhat slow to develop, however. This slow start has stemmed in large part from the major changes that these institutions have brought to the historic relationships among the three North American governments. Traditionally, the three bilateral relationships within North America have produced relatively few effective intergovernmental institutions. They have relied instead on informal exchanges or formal diplomatic interaction (Fried 1994; Spencer et al. 1981; Swanson 1978). There have been no stand-alone trilateral institutions at the national level that have embraced the three countries on an exclusive basis, and few trilateral forums among leaders, state/provincial officials or experts within broader multilateral institutions.<sup>3</sup>

NAFTA and its side agreements marked a sharp departure from this lightly institutionalized, bilateral tradition. To a far greater degree than the Canada-US Free Trade Agreement of 1989 (FTA), they created and catalyzed an elaborate, innovative structure of commissions, committees and working groups to apply, interpret and extend the agreements. The NAFTA institutional machinery consists at its apex of three ministerial-level commissions: the Free Trade Commission (FTC), the Commission for Environment Cooperation (CEC) and the Commission for Labor Cooperation (CLC). The commissions are supported by the advisory committees and committees, subcommittees and working groups specified in the

<sup>1</sup> The web of agreements making up the NAFTA regime are the North American Free Trade Agreement and its side agreements, the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation.

<sup>2</sup> On the concept of developing trade-environment “regimes,” see the Introduction to Rugman and Kirton 1998, forthcoming. Regional elements of continental governance extend beyond intergovernmental activity and embrace the new collaborative efforts and networks among scientists, nongovernmental organizations and business. Many of these initiatives address issues that go well beyond the activity of governments. The larger nongovernmental relationships being built will be explored at a later stage of the project.

<sup>3</sup> See Swanson 1973. For an overview of environment-related subfederal linkages among the three NAFTA countries, see Munton and Kirton 1996.

agreements, as well as secretariats in the cases of the CEC and the CLC. [Two bilateral institutions also were created as part of the NAFTA debate and negotiation: the North American Development Bank (NADBank) and the Border Environment Cooperation Commission (BECC). Although these institutions possess environmental focus, expertise and resources, they will not be discussed in detail in this paper because of their strictly bilateral character.]

This array of institutions, managing one of the more comprehensive and far-reaching free trade agreements in history, was born at a time of economic challenge and resource constraint. Since then, the December 1994 economic crisis in Mexico, budget reductions in all three countries, and preoccupations with domestic elections have impeded rapid and robust activity. The absence of intense historic contact between Canadians and Mexicans, differences in language and legal regimes, and a lack of knowledge about each other's national regulatory systems for the environment and other subjects, have provided additional barriers. It is thus understandable that during their first three years of existence, NAFTA's institutions, including the economic bodies formally charged with environmental responsibilities, have been preoccupied with staffing, budgeting, and defining operational procedures and work program priorities.

### 1.3

#### NAFTA and the Environment

The performance of the NAFTA institutions described in this study is critical to the ability of the three governments to fulfill the commitments to environmental cooperation and sustainable development embedded in both the core NAFTA text and its accompanying North American Agreement for Environmental Cooperation (NAAEC). The three governments, through NAAEC, established the Commission for Environmental Cooperation as their leading institutional instrument for furthering environmental cooperation, but the NAFTA text itself committed the Parties to a broad array of environmental protection and sustainable development objectives, and it endowed many of the new institutions it created with an explicit, mandatory responsibility for meeting these objectives. It also gave some of its institutions a mandate to extend their activities to address identified environmental challenges of the future. Taken together, therefore, the 50 or so NAFTA institutions have a direct present or potential relevance to virtually the full range of environmental concerns, from air quality to automotive and energy-generation emissions to water quality and pesticide use to land quality and wildlife habitats to agricultural and transportation practices.

Although NAFTA was conceived and created as a trade agreement, it contains an historic commitment to further environmental protection and sustainable development (Housman and Zaelke 1994; Saunders 1994). Indeed, its preamble contains specific pledges to:

Undertake [its economic activities] in a manner consistent with environmental protection and conservation;...

Promote sustainable development;

Strengthen the development and enforcement of environmental laws and regulations;...

Article 104 of NAFTA accords primacy to environment over trade considerations in some circumstances by declaring that the major multilateral conventions on endangered species, ozone depletion and hazardous waste disposal take precedence over the new trade rights created by NAFTA. Chapter 7, dealing with sanitary and phytosanitary standards, allows each NAFTA country to set the level of environmental protection it considers appropriate. Chapter 9 protects the right of a NAFTA country to determine the level of national environmental protection it desires when taking standard-related measures. Chapter 11, Article 1114, prohibits a country from lowering environmental standards or their enforcement in order to increase or maintain investment in its territory. Chapter 20 provides new mechanisms for the submission of environmental concerns to dispute settlement panels.

To fulfill these and other commitments, NAFTA created a ministerial-level Free Trade Commission, supported by a network of at least 39 distinct committees, subcommittees, working groups and subgroups. Several of these bodies have environment-related responsibilities, broadly defined, specified in the NAFTA text.

Anticipating the need for an expanded environmental agenda, the NAFTA text also endowed the NAFTA institutions with permissive mandates to take up additional environmental concerns—for example, the Committee on Standards-Related Measures may create bodies to deal with, among other things, uniform chemical hazard classification, criteria for assessing the potential environmental hazards of goods, risk-assessment methodologies, and guidelines for chemical testing (agricultural and industrial). In addition, since NAFTA came into effect, several new institutions, many with environmental responsibilities or relevance, have emerged. Some represent a trilateral extension of established Canada-US bodies and deal with long-standing environmental issues related to agriculture. Others, with no antecedents, are concerned with newer environmental issues related to pesticides, energy efficiency and health.

Cooperation between CEC and NAFTA's institutions on issues related to the environment will have an important influence on the ability of the CEC itself to “*to facilitate cooperation and public participation to foster conservation, protection and enhancement of the North American environment for the benefit of present and future generations, in the context of increasing economic, trade and social links between Canada, Mexico and the United States.*” More broadly, the environment-related behavior of these institutions is integral to the NAFTA regime's objective of promoting sustainable development throughout North America. To this end, a detailed

examination of the activities of NAFTA's committees and working groups, and the CEC itself, would better enable individuals from both the trade and environmental communities to monitor progress, learn from each others' experience, and avoid duplication at a time of scarce resources. Such an examination also would point out where further movement is required, help identify potential areas of synergy and cooperation, and thus enable the CEC and NAFTA's trade and functional institutions to fulfill the overall environmental, as well as economic, goals of the NAFTA agreements.

## 1.4

### Description of the Study

This study is designed to assist this process by

- reviewing the major NAFTA-related institutions that possess clear obligations or specified potential to enhance the North American ecology;
- summarizing the formation, mandates, composition, structure, procedures, priorities, activities and accomplishments of these bodies during NAFTA's first three years of operation;
- identifying the major patterns evident thus far in the way the NAFTA institutions are going about realizing their environmental responsibilities and potential; and
- serving as a foundation for considering ways in which the existing activities and accomplishments might be advanced.

Altogether the study examines about half of the 50 or so trilateral intergovernmental institutions that were created or inspired by NAFTA (see Appendix A). Four criteria were employed to select these institutions. First, did the NAFTA text specify that the institution is to review, or take action on, issues environmental in nature? For example, Article 913.5.a-1 specifically assigns the Land Transportation Standards Subcommittee the task of creating, within six years of NAFTA's entry into force, standards-related measures for the transport of dangerous goods. Second, was the subject matter of the institution closely environment-related, even though the NAFTA text did not assign specific environmental responsibilities to the institution? One example of such an institution is the Committee on Sanitary and Phytosanitary Measures because agri-food issues, by their very nature, are relevant to the environment. Third, was the institution one of those to which the NAFTA text assigned a permissive environmental mandate by specifying environmental subjects that the institution might take up in the future? For example, Article 913.5.a-3 creates the Automotive Standards Council and states that in developing its work program the council "may address other related matters, including emissions from on-road and non-road mobile sources." Finally, to what degree does the institution respect the core components of the general commitment to ecologically sustainable economic development expressed in the preamble to the NAFTA text?

The study thus examines whether NAFTA's institutions offer equal capacity and consideration for the claims of the environment and the economy by, at a minimum, recognizing and taking into account in their operations the first-order environmental and economic implications of their activities. More specifically, have NAFTA's economic institutions incorporated from the start the environmental dimensions of their work? Do they anticipate and prevent future problems? Have they allowed, where appropriate, for the incorporation of genuinely sound science and the expertise of relevant stakeholders? Finally, do they produce integrated decision-making by cooperating and consulting as necessary, and identifying and expanding the large area where trade-related economic and environmental values intersect and thus are mutually dependent? Taken together, are these institutions effective in addressing the priority trade-related environmental issues that have arisen in the NAFTA era?

To examine these points, this study proceeds as follows. After this first section that lays the background of NAFTA and its environmental context, and summarizes important conclusions of the study, Section 2 examines NAFTA's core economic institutions: the Free Trade Commission, from its ministerial council to its supporting secretariats (Sections 2.1–2.2); the Free Trade Commission's major bodies for environment-related standards (Section 2.4); and the agricultural institutions (Section 2.5). Other bodies of potential environmental relevance in the areas of trade in goods, transportation, energy efficiency, and health are considered in Section 3. Section 4 describes the CEC and its relationship with and potential role vis-à-vis the other NAFTA institutions. Finally, Section 5 offers conclusions designed to serve as the basis for a more intense trade-environment dialogue for North America.

## 1.5

### Conclusions of the Study

This study indicates that NAFTA's institutions will play an important role in determining the environmental impact of the NAFTA regime in the future and in strengthening the ways its effects might be rendered more beneficial. Over the years following NAFTA's entry into force, these bodies have increasingly shaped awareness and expectations about NAFTA's opportunities and given practical expression, elaboration, and adjustment to the rules laid down in the initial texts. The effective operation of these bodies also promises to determine how extensively NAFTA's dispute settlement machinery will be used, and how processes of national policy convergence will unfold.

Since NAFTA's implementation in 1994, some in the national governments have argued that the trade agreement's economic institutions, even when they possess an environmental mandate, should concentrate on fulfilling the original commercial purposes of NAFTA.

According to this view, during NAFTA's first phase, its economic institutions should focus on implementing the trade agreement and coping with obstacles to commercial liberalization. This has largely been the case. During the second phase, only now getting under way, the institutions should identify and propose other areas the governments might wish to address—that is, during the second phase more robust work on environmental cooperation could move forward. Yet even here, some feel that NAFTA's economic institutions should deal only with those issues directly linked to trade concerns, the operation of the trade agreements, and trade-related disputes.

Given these factors, it is easy to assume that NAFTA's economic institutions have dealt only marginally with environmental concerns, that their environmental activities and accomplishments have been minor, and that this situation will continue for the foreseeable future. Yet a closer examination reveals that the environmental performance and potential of NAFTA's economic institutions are somewhat more productive and promising.<sup>4</sup>

Virtually all of the NAFTA institutions with environmental responsibilities have begun to address their individual mandates. Activities have ranged from the initial establishment of procedures and a work plan to development of a common, long-term, comprehensive vision. Substantial cooperation and collective action on environment-related issues also are evident among the three countries. Moreover, a process of ongoing, generally nonduplicative organizational expansion is under way, as new institutions mandated or inspired by NAFTA have emerged to strengthen the scope and depth of environmental cooperation.

Some of the NAFTA committees have attained concrete achievements that may have far-reaching effects. In some important areas, however, progress has been slower for several reasons, including institutional rivalries or claims from particular societal interests. In a few areas, such as automotive emissions standards, clear environmental responsibilities, with deadlines, appear not to have been met as NAFTA's drafters might have envisaged. For some bodies, the direct environmental relevance of the work has not been recognized. Moreover, in no cases have NAFTA's economic bodies acted on the permissive environmental mandates assigned to them by NAFTA, and in some areas their mandatory environmental responsibilities, from a political if not a legal standpoint, remain unfulfilled.

From an environmental perspective, the standards institutions, particularly the Committee on Standards-Related Measures and its major environmentally mandated bodies, have a mixed record over NAFTA's first three years. At one pole stands the Land Transportation Standards Subcommittee Working Group on the Transportation of Dangerous Goods (LTSS V), with its long-term vision and concrete accomplishments such as its *Emergency Response Guidebook* for dealing with emergencies stemming from the transport of dangerous substances and its work with the Mexican authorities to develop environmental safety regulations compatible with those of Canada and the United States. At the other pole stands the Automotive Standards Council, which has yet to act substantively

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<sup>4</sup> These conclusions, and the analyses on which they are based, flow from the information and insights gained from confidential interviews with officials currently serving in the three national governments (see Appendix C). The interviews were conducted from May 1996 to February 1997.

on either its mandatory or permissive environmental responsibilities. Indeed, the working groups that will address such issues have only just been established and do not operate on a trilateral basis.

The overall performance of NAFTA's agricultural institutions varies as well. The Committee on Sanitary and Phytosanitary Standards has met regularly and successfully resolved several issues arising among the three countries, in part within its nine technical working groups. Its Technical Working Group on Pesticides seems to be pursuing its mandate in a manner consistent with NAFTA's broader sustainable development goals. But the Committee on Agricultural Trade, which deals at the policy level with agricultural issues (such as subsidies) clearly relevant to the environment, is doing little to incorporate basic sustainable development principles in its work or even to recognize the environmental dimension of its mandate.

Although some cross-fertilization between the CEC and NAFTA's institutions is evident through the parallel work carried out on pesticides by individuals involved in both bodies, on the whole there has been a striking absence of contact and cooperation between the two institutional communities, despite the many incentives for collaboration specified in the NAFTA text. The record to date and the deepening and broadening intersection between trade and environment processes and issues within North America point to major potential for cooperation between these two institutions. The substantial environmental contributions of the two NAFTA-related institutions, the Border Environment Cooperation Commission and the North American Development Bank, while valuable, are no substitute for institutionalized, comprehensive trade-environment cooperation on a fully trilateral basis.

The following points summarize these conclusions:

- At a minimum, virtually all of NAFTA's economic institutions with environmental responsibilities or relevance have begun to act on their mandates. Despite a slow start in most cases, 1996 witnessed a sharp takeoff in the intensity of meetings and activity. Almost all bodies have established procedures, elaborated internal structures (including subordinate working groups), and established priorities and work plans.
- The dynamics among these bodies on environment-related issues appears promising in both the balance and depth of interaction. The preference of Canada and the United States to maintain their special bilateral relationship and the tendency of Mexico to remain relatively unengaged have dissipated. US-Mexican and Canadian-Mexican initiatives are now providing a foundation for trilateral discussion and consensus on issues including best practices and North American positions.
- Several NAFTA economic institutions already have delivered concrete environmental accomplishments. For example, the new trilateral *Emergency Response Guidebook* for accidents involving dangerous substances, prepared by one of the Land Transportation Standards Subcommittees, will lead to a reduction in the severity of accidents, and thus environmental damage, in North America (Transport Canada 1996).

- The proliferation of post-NAFTA institutions, both within and beyond the Free Trade Commission framework, suggests that a dynamic process of expanding trilateralization is under way—and is likely to include an ever-greater range of functional fields and environmental issues. These institutions include the Technical Working Group on Pesticides, which reports to both CSRM and CSPS, and the extra-NAFTA Transportation Consultative Group. Proposals currently are under consideration for even more bodies, including those with a clear environmental mandate such as the prospective Energy Efficiency Labeling Group.
- Some economic bodies with environmental responsibilities and relevance have been slow to mount work programs to meet their NAFTA-specified deadlines and have not involved stakeholders beyond industry in their work—public participation is an important component of sustainable development. This situation raises politically consequential questions about the records of the governments in meeting their environmental obligations specified in the NAFTA text.
- The relationship between NAFTA's economic bodies with specified environmental responsibilities and the CEC has been slow to develop at all levels. Most notably, at the ministerial level, despite calls for a joint meeting from both the Free Trade Commission and the CEC Council, there has been little movement toward realizing this shared aspiration. Indeed, cooperation between the secretariats of the Free Trade Commission and the CEC remains virtually nonexistent. Interaction between the two bodies thus has been relegated to imperfect processes of coordination within each national government and to a few individuals serving on bodies created by both communities. Such interaction remains inadequate for mounting a full, forward-looking dialogue on trade, environment, and sustainable development.
- The central conclusion of this study is thus that *the time is ripe for initiating a dialogue between the CEC and NAFTA's economic institutions, embracing where appropriate BECC and the NADBank*. Such a dialogue should be designed to assess jointly the progress made to date in fulfilling NAFTA's environmental objectives, to identify areas where further progress is desirable, and to set priorities for future individual and possible joint action. Such a dialogue and review might include consideration of more concrete steps, leading to specific cooperative ventures.

Thus much remains to be done to ensure that NAFTA's institutions fulfill the trade agreement's seminal commitment to “promote sustainable development” and meet its economic objectives “in a manner consistent with environmental protection and conservation.” In particular, NAFTA's institutions must take steps to meet fully several core sustainable development principles. These include integrating economic and environmental considerations at the ministerial, secretariat and working levels; incorporating environmental considerations, ideally in an anticipatory, preventative sense, at the very outset of the work of several

economic bodies; and developing consultative arrangements not only with industry but also with the broader array of institutions and people having a stake in NAFTA. Most strikingly, the absence of a regular dialogue between the Free Trade Commission and the Commission for Environmental Cooperation, despite the fact that cabinet-level representatives in both bodies have recognized the value of such a dialogue, has sustained an unhealthy separation of trade and environment concerns. It is now time to begin such a dialogue, thereby fulfilling the expressed intent of those who produced and accepted the NAFTA and NAAEC accords over three years ago, and to meet the present and future environmental opportunities and challenges emerging from a rapidly integrating North American region.

## 2.0

# The Free Trade Commission and its Subsidiary Bodies

The ministerial-level Free Trade Commission (FTC), the central institution created by NAFTA, is the body ultimately responsible for fulfilling NAFTA's objectives. The FTC operates within the broad context set by the very occasional meetings of the leaders of the three NAFTA countries and alongside the Commission for Environmental Cooperation and Commission for Labor Cooperation and the other trilateral ministerial forums for transportation, health and agriculture. The other ministerial forums are not formally related to NAFTA, but they do discuss NAFTA-related issues as necessary.

The Free Trade Commission is composed of cabinet-level representatives—normally Canada's minister of international trade, the trade representative of the United States, and Mexico's secretary for commerce and industrial development. The FTC is required by NAFTA to meet at least once a year, in locations rotating among the three countries.

### *Role of the FTC*

The FTC was created with the potential to put political will behind a forward-looking, environmentally sensitive trade agenda. The architects of NAFTA, just as those of the Canada-US Free Trade Agreement (FTA) before them, had hoped that the FTC would develop its own attitude and energy and make NAFTA a dynamic agreement. Thus they sought to have the FTC meet regularly and to motivate and provide top-down direction to the lower-level processes of cooperation. In the case of the FTA, that hope had not been fulfilled. But the FTC was conceived as an institution of ongoing oversight that would broaden and deepen the initial NAFTA-specified trilateral cooperation, that would complete NAFTA's unfinished business, and that would fulfill the aspirations expressed in the text of the trade agreement.

This robust role for the FTC was evident in the architecture for dispute settlement (see Fried 1988). The NAFTA text specified that the Parties were to use the FTC as a mechanism for exploring creative solutions before sending disputes to formal dispute settlement panels.<sup>5</sup> The notion that the FTC itself would provide good offices, mediation and conciliation was developed and embedded in the NAFTA text in anticipation of the time when NAFTA would have more members. Members not directly involved in a dispute could then play a mediating role.

Three years after NAFTA entered into force, this aspiration remains unfulfilled. The major disputes that have arisen (such as Canadian-US supply management, US-Mexican tomatoes, and the US-Mexican trucking issues) have been so politically charged that the envisaged creative ministerial solutions thus far have not been realized. Yet the architectural bias has had some effect in providing overall political management to an ever more complex and thus conflict-prone trilateral relationship. For example, through the committees and other subordinate bodies that report to the FTC, issues move upward to receive ministerial oversight and impetus. In Canada and the United States this mandate, while not yet fully realized, is reducing conflict to some extent.

The emergence of consultation at the vice-ministerial or bureaucratic level between FTC meetings is helping to advance the process of economic integration. Each government has designated a NAFTA coordinator, but as time goes on, very senior officials in some governments have tended to become less involved in direct oversight of the NAFTA process. Thus the high-level political energy required to ensure that the NAFTA economic institutions fulfill their existing environmental responsibilities, let alone expand into new areas, has been lacking.

### *Meetings*

At the inaugural meeting of the FTC in Mexico City on 14 January 1994, the trade ministers agreed to build on the existing FTA working groups by establishing two additional working groups (on government procurement and on investment and services) and a modest single trade secretariat, the NAFTA Coordinating Secretariat (NCS), located in Mexico City.<sup>6</sup> The ministers identified the officials who would lead the various NAFTA bodies, set up temporary working groups, discussed the possible establishment of working groups on antidumping and countervailing duties, and considered the procedure for dispute resolution. After agreeing to meet regularly in 1994, the ministers scheduled a meeting for 15 April 1994 in Marrakech.

At the January 1994 meeting, the ministers, recognizing the need for close, high-level trade-environment integration, reviewed the relationship between the FTC and the Commissions on Labor and Environmental Cooperation. The FTC then agreed to try to

<sup>5</sup> Although the FTA had largely failed in this regard, in a few instances creative ideas had arisen at the commission stage. In the case of plywood, for example, the ministers assigned their disagreement to two independent laboratories, in Manitoba and Minnesota. The solution produced by the labs—which was credible both politically and to industry—was incorporated into the two countries' building codes with no need for litigation.

<sup>6</sup> At the first meeting were Minister of International Trade Roy McLaren of Canada, Secretary for Commerce and Industrial Development Jaime Serra Puche of Mexico, and Trade Representative Mickey Kantor of the United States.

meet in 1994 with their labor and environmental counterparts to achieve the highest possible level of coordination. As of February 1997 such a meeting had not taken place.

In April 1994 the FTC met unofficially in Marrakech at the close of the Uruguay Round of the World Trade Organization (WTO) and held another extraordinary meeting in the fall of 1994 in Bogor, Indonesia, on the margins of the Asia Pacific Economic Cooperation (APEC) gathering. Thus the FTC met three times in 1994, NAFTA's first year.

At its second official meeting on 7 June 1995 in Toronto, the FTC agreed on some areas for accelerated tariff reduction. Procedurally, the Canadian hosts sought to further institutionalize the FTC by introducing meeting minutes and issuing a chairman's statement. Looking ahead, the ministers requested that all the subordinate bodies of the FTC provide forward-looking work plans by 1996.

At Toronto, the ministers again discussed the relationship among the three NAFTA commissions. At the initiative of Canada's Roy McLaren, who chaired the meeting, they asked their ministerial counterparts in the CEC to report to the next meeting of the NAFTA commission on how the work of the CEC was operating in support of the goals of NAFTA.<sup>7</sup> The trade ministers' request stemmed from recognition that the institutions established by the NAFTA side agreements were enjoined to support NAFTA. The trade ministers wished to know how their environmental counterparts interpreted Article 104 of NAFTA which deals with the relationship of other agreements to which the Parties of NAFTA are signatories and whether the trade, labor, and environment ministers had the same perspective on interpretation of the objectives specified in Article 102 of NAFTA.<sup>8</sup> Although the trade ministers had some difficulty identifying clear links between trade and the work of the labor commission, they recognized the trade-environment relationship and wished to consult with their environmental colleagues on how to put their objectives, which potentially deal with trade and the environment, into operation. The trade policy community asked what elements of the CEC work program related to NAFTA. It acknowledged, however, that the CEC, as a free-standing ministerial institution, was at liberty to pursue its own interpretation of NAFTA and NAAEC. Although some observers are concerned that during the first few years of NAFTA the environment ministers have had little relationship with the trade ministers and trade policy, such a consultation has not yet taken place.

The third official meeting of the FTC was held in Washington, DC, on 20 March 1997.<sup>9</sup> The long time period between meetings stemmed in part from busy ministerial schedules and in part from the US preoccupation with the 1996 presidential election campaign and from US doubts that a meeting would be productive—the United States was to host the 1996 meeting. At its March 1997 meeting, the FTC concluded the first round of tariff acceleration talks with an agreement for implementation by 1 July 1997; a second round of tariff acceleration will be concluded by 15 December 1997. The FTC also adopted recommendations from the Advisory Committee on Private Commercial Disputes and the

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<sup>7</sup> They made a similar request to the FTC: "Third Meeting of the Free Trade Commission, Draft Minutes, Toronto, 7 June 1995."

<sup>8</sup> The objectives include the elimination of barriers to trade, the promotion of fair trade, and a framework for further trilateral, multilateral, and regional cooperation to expand and enhance the benefits of the agreement.

<sup>9</sup> This meeting was attended by US Trade Representative Charlene Barshefsky; Mexico's Secretary for Commerce and Industrial Development, Herminio Blanco; and Canada's Minister of International Trade, Art Eggleton.

Working Group on Rules of Origin and adopted the reports from the work of the other committees and working groups.

### *Supporting Processes*

Because the FTC did not meet in 1996, the three countries developed other processes for interaction. First, the trade ministers have met trilaterally or bilaterally on the occasion of larger gatherings to deal with issues such as agricultural supply management. Second, the ministers have delegated their responsibilities for dispute settlement and for decisions about establishing panels under NAFTA. And third, the NAFTA coordinators designated by the three countries have conferred regularly by telephone.<sup>10</sup> In the spring of 1996 the NAFTA coordinators agreed to a US suggestion to use monthly telephone meetings to review activities, prevent fragmentation in the work of the subordinate bodies, and move forward issues at the technical level where progress was possible; some coordinators saw these calls as a means of bringing forward their national concerns. This process revealed that the working groups were making progress and that potential trade irritants were being solved before they became major problems. Assigning problems to specialists outside the public spotlight seemed to produce better solutions as no major domestic constituencies would be aroused and disappointed with the results.

Generally, then, through such pragmatic processes, NAFTA was functioning as a dispute avoidance mechanism. The overall performance of the FTC during its first two and one-half years of operation could thus be considered effective in relation to the hopes of NAFTA's drafters and the experience of the FTA. The regular dialogue also provided some capacity, not yet fully utilized, for considering trilaterally the overall environmental performance of the initial set of NAFTA institutions.

### *Coordinating Role*

What is the FTC's relationship with and coordinating role for the other trilateral ministerial bodies, both at the intergovernmental level and within the individual national governments? This question is particularly important given the status of the FTC as the central NAFTA institution, the absence of an institutionalized trilateral leaders forum, and the emergence of additional trilateral ministerial forums.

At present, the FTC and its responsible officials have no ambition to coordinate, or even comprehensively monitor and service, the activities of other ministers and departments or agencies. The FTC is a trade commission, these officials believe, not an economic commission, let alone the central guide for the full range of functional and political activities and issues such as "open skies," a subject more appropriately left to ministers of transportation. Moreover, the memory of the poor performance of the historic Canadian-US

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<sup>10</sup> The NAFTA coordinators are Jon Hueneman, Assistant US Trade Representative for the Western Hemisphere; Jonathan Fried, a director general in the Canadian Department of Foreign Affairs and International Trade (DFAIT); and Eduardo J. Solis Sánchez in Mexico's Secretariat of Commerce and Industrial Development (Secofi—*Secretaría de Comercio y Fomento Industrial*).

Joint Ministerial Committee on Trade and Economic Affairs and similar bodies has suppressed any desire to construct broader ministerial forums on a trilateral basis. Nor is there any desire, in an age of constricted resources, to coordinate the full range of trilateral activity within each national government.

Some elements of the FTC, however, could lead to more coordination and thus potentially the more systematic incorporation of environmental considerations into the work of NAFTA's economic institutions. The language in NAFTA specifying that the FTC is composed of "cabinet-level officials" deliberately envisages the possibility that more than one cabinet minister from each country would be at the table. At the time NAFTA was negotiated, finance ministers were thought to be the most likely candidates to be added. At present, finance, transportation, industrial, standards, and agricultural issues likely would involve ministers from these domains on an ad hoc basis.

Views are mixed about the usefulness of a joint meeting of NAFTA's trade and environment ministers, either as the Councils of the FTC and the CEC or otherwise. Some members of the trade community have difficulty identifying what kind of agenda the two sets of ministers could usefully discuss together. Others indicate such a meeting would create pressure for a parallel meeting with labor ministers where a shared agenda and interests are far less clear. Yet others are open to the prospect that such a meeting might be useful in the future. A shared agenda might include the items requested by trade ministers but not yet received; a reciprocal, balancing set of issues from the environment ministers; and a discussion of the relevance of NAFTA's trade-environment regime for broader trade liberalization processes such as the World Trade Organization, a prospective Free Trade Area of the Americas (FTAA), or APEC. Or an agenda might explore how the items discussed by the Organization for Economic Cooperation and Development (OECD) Joint Trade-Environment Committee relate to the North American setting.

## 2.1

### FTC Secretariat

Another potential vehicle for economy-environment integration is the FTC Secretariat, which could coordinate efforts to monitor environmental progress or conduct a dialogue with the CEC Secretariat. Article 2002 of NAFTA establishes its Secretariat, which has three primary functions: to support the FTC and any working groups or committees established by it; to act as the administrative support for NAFTA Chapters 19 and 20 dispute settlement panels and related committees; and to act in a limited capacity as a depository under Chapter 11 of NAFTA for any investment-related disputes. The FTC Secretariat is composed of three national sections, a mechanism that originated in the Canada-US Free Trade Agreement to administer binational procedures for dispute settlement panel reviews. Under NAFTA, a national section was added for Mexico.

Each country bears the cost of operating its own national section of the FTC Secretariat, which is managed by a secretary. The national sections include support staff and are located in each nation's capital. The role of the Secretariat is administrative only.

The role played by the Canadian and US governments in monitoring the progress of NAFTA institutions has increased interdepartmental coordination. In Canada, the Trade Policy Planning Division of the Department of Foreign Affairs and International Trade (DFAIT) has established a central registry and asked the NAFTA institutions to forward reports on all meetings held. The institutions are beginning to transmit this material, but in some cases the information is up to a year late. In time, this effort will help the FTC to fulfill its expressed desire to take stock of official-level activity.

## 2.2

### NAFTA Coordinating Secretariat

At the time NAFTA was being approved by the Parties, the Parties' trade ministers agreed in principle to create a new NAFTA organization, the NAFTA Coordinating Secretariat (NSC). Mexico will host the new Secretariat, thereby balancing the hosting duties of the three countries—the CEC Secretariat is located in Canada, in Montreal, Quebec; the Secretariat of the Commission for Labor Cooperation (CLC) is located in the United States, in Dallas, Texas (US General Accounting Office 1994).

The NCS mandate is derived from an unsigned interpretation of the NAFTA text approved by the three Parties. The executive director of the NCS will be an American chosen by the US trade representative.

Despite this early agreement, the NCS has remained on the drawing board. One delay arose in the United States where government officials judged 1994–1996 to be a poor time to approach Congress to request additional funds to create a new international bureaucracy. Thus by July 1996 there still were no terms of reference for the NCS; views differed about what functions it could and should be assigned.

Many decision makers believed the NCS should play only a minimal role, leaving political oversight up to the governments themselves. This minimalist view envisages three or four functions for the organization, none of which would endow the body with a policy advisory or even analytic capability independent of governments. Rather, it would perform only administrative functions. US government officials see the NCS providing official translations for NAFTA documents, storing official NAFTA documents, preparing an annual report, and serving as a clearinghouse for NAFTA trade data. Canadian government officials depict an NCS of the same dimensions as the CLC Secretariat (with 15 employees and a US \$2 million annual budget, rather than those of the CEC Secretariat (with a staff more than twice as large and an annual budget of US \$9 million). The Canadian government

envisages the NCS as a repository for jointly agreed documents and interpretations, especially the new annexes and revised rules of origin that are accumulating. National government budget cutbacks and the resulting delays in the Canada Treaty Series add to the value of this basic function. Thus the NCS would be a central repository for all NAFTA agreements and documents, offer an official NAFTA home page on the World Wide Web, assume the tasks of scheduling meetings of government officials and arranging logistics and translation, and make translations available for the dispute settlement process. More important, it could receive reports from the FTC's subordinate bodies and point out when little was happening in a particular working group, if the three governments approved. Its executive director could attend and take notes of FTC meetings in draft, to be approved by the three governments. Views differ as to whether the NCS also should collect and analyze trade and investment data. In short, the NCS would not offer an independent message or an independent voice. The role of the NCS may become broader, however, since Mexico may have negotiated initially for more expansive functions for the NCS (US General Accounting Office 1994).

In December 1996 signs appeared that the NCS was closer to establishment. The US government had secured the US \$600,000 required to fund its share of the secretariat and was eager to proceed with appointing an executive director. The other Parties, however, were not proceeding at such a rapid pace. At its March 1997 meeting, the FTC concluded that officials will meet in April 1997 to discuss the steps necessary to establish the NCS by September 1997.

The establishment of the NCS would facilitate a trade-environment dialogue and provide the CEC Secretariat with a single partner with which to form an ongoing cooperative relationship. Some of the lack of communication between the FTC and the CEC can be attributed to the absence of a single secretariat within the FTC. A reliance on three national sections increases transaction costs, prevents the location of basic trade work in one place, and makes it more difficult to identify cooperative trinational opportunities.

### 2.3

#### Other FTC and Official-Level Bodies

The FTC and its supporting NAFTA Secretariat (and potentially the NCS) work with a number of official-level committees, subcommittees and working groups created by NAFTA. Eight official committees were carried over from the Canada-US Free Trade Agreement, and the NAFTA text specified consultation in eight additional areas.<sup>11</sup>

Of the bodies created since December 1993,<sup>12</sup> most were specified in various articles of NAFTA. [These are listed with the names of the bodies in Appendix A.] Several were created by the FTC at its first official meeting in January 1994.

<sup>11</sup> These eight areas were: Licensing, Extraordinary Challenge Committee, Special Committee for Safeguard of Panel Review System, Article 1907, Special Secretariat Section, Free Trade Commission, Annex 300-B-Section 7.3, and Automotive Sector Review.

<sup>12</sup> Two working groups—on subsidies and countervailing duties and on dumping and antidumping duties—were created on 2 December 1993 in a joint agreement by the trade ministers. The establishment of working groups on government procurement and on services and investment was announced at the first official meeting of FTC on 14 January 1994, using authority granted to the FTC under NAFTA to establish new committees and working groups.

Since 1 January 1994, new bodies, both related to and outside the formal NAFTA structure, also have emerged. The related bodies include those for pesticides (Section 2.5.1) and those, now trilateral, from the FTA dealing with food labeling, food identity, fish, meat and grading. The unrelated bodies include the proposed Energy Efficiency Labeling Group, the Health Group, and the Transportation Consultative Group that has emerged alongside NAFTA's Land Transportation Standards Subcommittee (see Section 3). These bodies provide a forum for issues of concern to the NAFTA countries. The groups generally are composed of government experts, and they are expected to meet at least annually, or more frequently when one or more countries request a meeting. Several groups were created to provide a standing forum for issues that were unresolved under NAFTA.

Some of these NAFTA and post-NAFTA bodies have a direct responsibility for and impact on key environmental issues. For example, the Land Transportation Standards Subcommittee was given the responsibility, to be discharged within three years of the coming into force of NAFTA, of determining vehicle standards for inspections, emissions, and environmental pollution, and, within six years, of developing standards for the transportation of dangerous goods. Also of major environmental importance are the bodies dealing with sanitary and phytosanitary standards and agricultural trade.

## 2.4

### Committee on Standards-Related Measures

Of all the FTC bodies, the Committee on Standards-Related Measures (CSRSM) has the clearest responsibilities and most central role in fulfilling the environmental protection and sustainable development objectives found in NAFTA. From a trade perspective, in a world and NAFTA region where tariffs and other border barriers are falling rapidly, specific national regulations and standards can have pronounced effects. For example, such regulations may prevent products and services friendly or beneficial to the environment from flowing freely, rapidly and inexpensively from one country to another. Such regulations and standards are used by the environmental authorities in each country, however, to ensure ecological soundness and to address the central environmental challenges each country must face. But beyond these differences between the concerns of traders and the concerns of regulators lies an opportunity to identify, in ways that respect national sovereignty, methods for harmonizing standards in a manner that will lower economic costs and ensure the highest levels of environmental enhancement throughout the region. Since NAFTA came into force on 1 January 1994, the CSRSM has undertaken some useful work related to the environment. There is much room for the environmental contribution of the CSRSM and its component bodies to expand, however, particularly as new environmental problems and opportunities arise.

The CSRM has the mandate to monitor the implementation and administration of Chapter 9 of NAFTA (Technical Barriers to Trade), consider nongovernmental developments in standards-related measures, and report annually to the FTC.<sup>13</sup> In Annex 913.5 of NAFTA, the CSRM is directed to establish four subcommittees: Land Transportation Standards Subcommittee (Annex 913.5.a-1); Telecommunications Standards Subcommittee (Annex 913.5.a-2); Automotive Standards Council (Annex 913.5.a-3); and Subcommittee on Labeling of Textile and Apparel Goods (Annex 913.5.a-4). The CSRM also may establish other subcommittees or working groups to address any appropriate topic. According to the NAFTA text, the CSRM may take action on the following issues clearly relevant to the environment:

- a uniform chemical hazard classification and communication system;
- criteria for assessing the potential environmental hazards of goods;
- methodologies for assessment of risk; and
- guidelines for testing of chemicals, including industrial and agricultural chemicals, pharmaceuticals and biologicals.

As of February 1997 the “other subcommittees or working groups” had been neither discussed nor established by the CSRM.<sup>14</sup> In 1996, however, the CSRM did, in conjunction with the Committee on Sanitary and Phytosanitary Standards, create a Technical Working Group on Pesticides, which reports to both committees (see “Technical Working Groups” in Section 2.5.1). The CSRM also reviews and oversees the subcommittees established under Annex 913 of NAFTA (see Section 2.4.1), and follows the emergence of other standards-related forums in the World Trade Organization and the Asia Pacific Economic Cooperation forum.

During NAFTA’s first three years of operation, the CSRM has examined several issues that affect the implementation of trade law such as trade barriers and trade irritants. In keeping with its mandate to consider nongovernmental developments in standards-related measures, the CSRM, composed entirely of government officials, has worked closely since its inception with its societal counterpart, the North American Trilateral Standardization Forum. In particular, the US lead of CSRM, who has been in place from 1994 to the present, has maintained an open dialogue with the forum’s North American Environmental Standards Working Group and participated in its activities.

Both the government and the trilateral forum have faced two major challenges in undertaking environment-related activities. The first is an inherited system of standards organized by diverse industrial sectors, to which cross-cutting economy-wide and ecology-wide environmental criteria must be applied. The second challenge is the national standards systems of the three countries, which differ widely: Mexico relies heavily on central government regulation; in Canada central government regulation is combined with that of five

<sup>13</sup> The CSRM must meet at least once a year, but it has met on average about three times a year. Depending on the agenda, the lead is accompanied by an appropriate delegation of experts. Neither the meetings nor the minutes of meetings are public. Until September 1996 the CSRM was led in Canada by Claude Carrière, the Director of the Technical Barriers to Trade Division of DFAIT. In Mexico it is led by Maria Eugenia Bracho of Secofi, and in the United States by Suzanne Troje of the US Office of the Trade Representative.

<sup>14</sup> Work in such bodies is to focus on the particular requirements of the distinctive North American region and not duplicate the work of the more broadly focused OECD Chemicals Programme and the Pesticides Forum as well as the work of the International Programme on Chemical Safety. All the NAFTA countries participate in these broader efforts.

umbrella, private standards-setting organizations; and in the United States hundreds of private sector bodies set standards.

Much of the work of the CSRSM is conducted through its four subcommittees. From an environmental perspective, the work of the CSRSM and its major environmentally mandated bodies over NAFTA's first three years offers a mixed record. At one pole stands the Land Transportation Standards Subcommittee's Working Group on the Transportation of Dangerous Goods, with its concrete accomplishments and long-term vision. At the other pole stands the Automotive Standards Council (ASC) which has yet to act substantively on either its mandatory or permissive environmental responsibilities and which has resisted creating working groups on a trilateral basis to do so. This section focuses on these two subcommittees of the CSRSM.

#### 2.4.1

##### Land Transportation Standards Subcommittee

Of the CSRSM's four subcommittees, the Land Transportation Standards Subcommittee (LTSS) has undertaken the most work bearing on the environment. The primary purpose of LTSS is to render compatible the Parties' relevant standards-related measures on bus, truck and rail operations, and on the transportation of dangerous goods.<sup>15</sup>

LTSS was officially established on 12 July 1994 as an extension of the existing US-Mexico Transportation Working Group.<sup>16</sup> At the first meeting of LTSS, Canada, Mexico and the United States agreed to create five working groups to operate under its supervision: Commercial Motor Vehicle Driver Standards and Motor Carrier Compliance (LTSS I); Vehicle Weights and Dimensions (LTSS II); Traffic Control Devices for Highways (LTSS III); Rail Operations (LTSS IV); and Transportation of Dangerous Goods (LTSS V).

By a decision of the three trade ministers, no industry representatives serve on LTSS working groups.<sup>17</sup> In Canada a government-industry committee meets before gatherings of LTSS and then afterward for a debriefing. The United States has a similar process and publishes the results of LTSS meetings in the *Federal Register* to provide a public record of its work. The Mexican government also consults with industry about the work of LTSS. Other non-governmental groups are not involved in LTSS or its working groups. LTSS and its working groups focus on harmonization of existing regulations; they do not serve as an input point for policy change. Environmental concerns are addressed at an earlier stage in the process of policy and regulatory development within each national government.

LTSS has a clear environmental mandate with precise deadlines in two important instances. Annex 913.5.a-1, section 2(a)(iii), of NAFTA charges LTSS with, within three years of the entry into force of NAFTA, implementing a work program to make compatible the Parties' relevant standards-related measures for vehicles. This charge includes measures related to

<sup>15</sup> The legal authority of LTSS flows from NAFTA Article 913(5)(a)(I) and Annex 913. LTSS is led for Canada by Kristine Burr of Transport Canada; for the United States by Bernard Gaillard, Director of International Transportation and Trade, US Department of Transportation (DOT); and for Mexico by José Aguilar, Director General for Surface Transportation, Secretariat of Communications and Transportation (SCT).

<sup>16</sup> Canada had been an observer in the US-Mexico Transportation Working Group since 1988.

<sup>17</sup> Initially, industry from all three countries had asked to be involved in the work of LTSS. In Canada provincial officials are members of the LTSS working groups.

emissions that are not covered by the automotive work program of the Automotive Standards Council. In NAFTA Annex 913.5.a-1, section 2(c), LTSS is further directed to implement a work program for making compatible the relevant standards-related measures for the transportation of dangerous goods no later than six years from the date of the entry into force of NAFTA. During NAFTA's first three years, LTSS has produced concrete results, including ones related to the environment.<sup>18</sup> Its greatest environmental achievement is a regime for dealing with hazardous materials, based on that established by the United Nations Economic Commission for Europe (ECE) Working Party Number 29.

LTSS has met three times: in Cancún, Mexico, in June 1994, where LTSS set up subgroups and established work plans, decided on the delegation of work, and identified counterparts in other countries who would implement and facilitate research and development; in Vancouver in June 1995, a meeting that included a half-day industry presentation for the entire plenary; and in San Diego in July 1996, where LTSS addressed, among things, delays in opening the border to trucking between the United States and Mexico.

By the third meeting, however, LTSS still had not established whether the emissions work mandated by NAFTA would be conducted by LTSS I, which deals with operating standards, or the Automotive Standards Council, which deals with manufacturing standards. After a conference call between the chairs of the two bodies, emissions were included in both the ASC work plan and the LTSS I work plan (through the Mexican submission to LTSS I). The requirements to “complete” a plan for vehicles by 1 January 1997 had been accomplished for all items except vehicle emissions. In the view of the US chair of LTSS I and some Canadians, the issue belongs with the ASC as it primarily involves manufacturing, not operating, standards. The Mexican chair, however, remains unpersuaded. Within Transport Canada emissions work is conducted by those responsible for manufacturing standards. In Mexico the same individual is responsible for all standards.

The decision on which body will deal with emissions is important because the NAFTA text assigns LTSS the responsibility and the deadline to deal only with those standards not covered by ASC. Because it assigns no deadline to the ASC itself, any move to assign all work to ASC would in effect remove the deadline specified in the NAFTA text. Thus far, the work on emissions has in practice been given to ASC. LTSS I has thus completed some of its mandate (driver age, language and medical requirements) while other items remain under discussion (a motor carrier safety assessment process). Still other issues have yet to be addressed.

Of the five working groups established under LTSS, the group on the transportation of dangerous goods is undertaking work most clearly related to the environment.<sup>19</sup> In sharp

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<sup>18</sup> It has harmonized the age of drivers throughout the NAFTA region (age 21), mounted a work program that removes differences in the operational regimes for rail, and conducted some work on trucking and buses.

<sup>19</sup> As noted, the first of the four other subgroups under LTSS, LTSS I (Commercial Motor Vehicle Driver Standards and Motor Carrier Compliance), has established minimum age thresholds (21) for NAFTA international operations; created minimum language requirements for international operations; adopted out-of-service criteria for mechanical fitness using the North American standard; and harmonized medical standards for drivers. Within Canada, the Canadian Council of Motor Transport Administrators provides a lead from the provincial governments and has worked with this group. Commercial Vehicle Safety Alliance (CVSA) standards have been adopted.

For LTSS II, Vehicle Weights and Dimensions, progress in harmonizing standards has been slower. Important differences exist in the prescribed length and weight of trucks, particularly in the maximum weight and load allowed. The railroad industry has lobbied to prevent increases in the size and weight of trucks.

LTSS III, Traffic Control Devices for Highways, deals with standards for road signs. Its goal of facilitating enforcement has been carried out for Canada and the United States and for the United States and Mexico, and work is under way for Canada-Mexico. The subgroup also has facilitated the exchange of data on the validity of drivers licenses, and later convictions data, as well as vehicle information, and a monitoring program for carrier safety ratings. Finally, it is producing pamphlets designed to render road signs comprehensible throughout North America.

LTSS IV, Rail Operations, has completed its work plan for harmonization and compatibility. Thus its work is now more facilitating in nature. As a result of the San Diego meetings, the rail standards formerly addressed by LTSS IV have largely been moved to Group Two of the Transportation Consultative Group.

contrast to the work on emissions, the work on the transportation of dangerous goods demonstrates the concrete environmental results achieved by the NAFTA institutions.

### *Working Group on the Transportation of Dangerous Goods*

The Working Group on the Transportation of Dangerous Goods (LTSS V) derives its legal authority from NAFTA Annex 913.5.a-1, which states: “The Land Transportation Subcommittee shall implement a work program for making compatible the Parties’ relevant standards-related measures for the transportation of dangerous goods no later than six years after the date of entry into force of NAFTA, using as their basis the United Nations’ recommendations on the Transport of Dangerous Goods, or such other standards as the Parties may agree.”<sup>20</sup>

LTSS V has an important and direct environmental relevance. Although its primary focus is on the threats to human health posed by the transport of dangerous goods, threats to the environment are a secondary consideration in its work plan. LTSS V is responsible for such environmentally damaging materials as halogenated organic chlorides (HOCs), polychlorinated biphenyls (PCBs), carbon tetrachloride, and radioactive wastes. The group’s most useful achievement is the publication of an *Emergency Response Guidebook*, outlining the procedures to be used by the three NAFTA countries in dealing with an emergency caused by an accident during the transport of a dangerous substance. The guide includes a comprehensive list of all the materials transported in or among Canada, the United States and Mexico. It also includes a detailed explanation of the potential hazards in case of an accident, the emergency measures to be used for each dangerous material, and the steps that should be taken in case listed substances come into contact with humans.

LTSS V began work very early in the NAFTA era. The body grew out of discussions in the fall of 1990 by officials of Canada, Mexico and the United States at a meeting of the US-Mexico Transportation Working Group, under whose auspices LTSS V later was created.<sup>21</sup> In July 1992 Mexico and the United States agreed to work toward harmonization of technical and security standards for land transportation. Two bilateral working meetings followed in Washington, DC, on 13-14 January 1993 and in Merida, Mexico, on 25 February 1994. Rather quickly, the group was able to move to substantive issues. About at the time NAFTA was concluded, the group became LTSS V.

Since its establishment, LTSS V has experienced a long lead time in securing tangible progress because, while Canada and the United States had harmonized their regulations for the cross-border shipment of hazardous materials long ago, Mexico began with few national regulations. LTSS V meetings thus have focused on reviewing Mexico’s standard-setting activity, and both the United States and Canada have offered their experiences.<sup>22</sup> Mexico has openly welcomed such suggestions, even if all have not been adopted. In 1991 Mexico

<sup>20</sup> The working group deals with all aspects of the transport of dangerous substances and is headed by the Secretariat of Communications and Transportation in Mexico. It is chaired in Canada by Frank Ritchie of Transport Canada; in Mexico by Phillippe Riancho, Director, Hazardous Materials; and in the United States by Frits Wybenga, International Standards Coordinator and Research and Special Program Administrator, DOT.

<sup>21</sup> A discussion on hazardous goods between the United States and Mexico was begun by US highway officials and was reinforced by a subsequent natural gas pipeline explosion in Guadalajara and by US industry complaints about materials entering and leaving Mexico.

<sup>22</sup> The United States began its multimodal transportation of dangerous goods regulatory scheme in 1967. Canada adopted its first Transportation of Dangerous Goods (TDG) Act in 1980, and its first TDG regulations came into force in 1985.

issued ministerial orders requiring signage on trucks carrying dangerous goods and requiring drivers to carry documentation. Then in April 1993 Mexico passed a law requiring over 33 new standards. By the summer of 1996, the Mexican government had produced 20 official and 2 emergency standards. Thus with the cooperation of LTSS V, Mexico has made considerable progress.

The overall goal of LTSS V is to produce a North American Dangerous Goods Code. At meetings, held about three times a year, members of the working group examine the differences in regulations, analyze new legislation, and review each country's present legislation to ensure that no great dissimilarity exists. Members also share information about enforcement and other issues faced by inspectors.<sup>23</sup>

At the first meeting of LTSS V, held in Cuernavaca, Mexico, on 19-20 October 1994, representatives of the three countries analyzed the harmonization criteria for the dangerous goods and wastes most often transported. They also reviewed Mexican standards for the design and construction of tanks for the transportation of dangerous goods. The Mexican delegation requested information on requirements for training of personnel involved in the transportation of dangerous goods and wastes. The issue of packaging, especially problematic, arose as well. US packages are marked "UN USA" and are certified by the manufacturer or one of approximately thirty accredited laboratories. Under the Mexican regulatory scheme, only laboratories accredited by the Mexican government can certify the application of the "UN MEX" mark, but no procedure to accredit a test laboratory has been established by the Mexican government and thus no "UN MEX" packages can be legally manufactured in Mexico. The United States and Canada stressed the need for Mexico to create a system of accreditation.

During the meeting in Washington, DC, on 24-25 January 1995, members of LTSS V reviewed the emerging Mexican official standards covering the transportation of dangerous goods and wastes, the future work necessary to harmonize regulations for the transport of dangerous goods in North America, and the project under way to create a North American *Emergency Response Guidebook*. LTSS V also discussed reciprocity of packaging certifications, including recognition of test laboratories, and international regulations for air and sea transport of dangerous goods.<sup>24</sup> LTSS V reaffirmed its commitment to publish the *Emergency Response Guidebook* in 1996.

At its third meeting on 12-13 May 1995, in Vancouver, LTSS V pursued the establishment of a common North American Transportation of Dangerous Goods Code based on the model being developed by the United Nations Committee of Experts on the Transportation of Dangerous Goods in Geneva. LTSS V examined how to proceed trilaterally at the United Nations and presented a progress report on the development of the *Emergency Response Guidebook*.

The next year, in its fourth meeting, held on 18 June 1996, in San Diego, California, LTSS

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<sup>23</sup> The European Union has harmonized the rail and road regulations of its member countries. NAFTA efforts in the LTSS V represent a slowly evolving effort to harmonize national regulations in this area.

<sup>24</sup> International Civil Aviation Organization's *Technical Instructions* and the International Maritime Organization's *International Maritime Dangerous Goods Code*.

V reported that the *Emergency Response Guidebook* had been published in English and French and that a Spanish version would be published shortly. The countries recognized the need to amend their regulations to conform to the ninth edition of the *UN Recommendations on the Transport of Dangerous Goods*, and they also agreed to work toward the harmonization of standards and specifications for compressed gas cylinders, tank trucks and trailers, and rail tank cars. Finally, the three countries reiterated their intention to create a North American Transportation of Dangerous Goods Code for implementation in 2000.

This serious work and these common projects have arguably led to a substantial improvement in environmental safety stemming from the regulations on warning and containment to minimize the risk of environmental damage and spillage. Mexico probably has experienced the greatest environmental benefit in this area even though Mexico's regulations, by the summer of 1996, approximated those of the United States and Canada in only some areas, such as classification of dangerous goods, labeling and placarding. In other areas, such as containment or packaging, which involves substantial financial cost, progress has been slower. For small packages (the size of an oil drum or smaller), all three countries found it easy to use the UN regime as a floor, even though differences among the three countries remained.

Another area of environmental concern in which progress has been slow is halogenated organic chlorides (HOCs). These chemicals, if released accidentally, descend to the water table and never disappear. In response to industry concerns about massive cleanup costs, both the United States and Canada have begun to adopt standards for ultra-strong tanker rail cars. Mexico, where HOC use and transport are also common, has yet to follow suit. In other areas, however, such as minimum liability insurance to cover potential cleanup costs of HOCs, Mexico has more stringent requirements than the United States or Canada. Canada and the United States thus appear to be following a preventative approach and Mexico a remedial one, although Mexico's system may act as a useful deterrent.

The Canadian-US programs for manifests for hazardous waste (which can include dangerous goods) are another concern. Environment Canada and the US Environmental Protection Agency (EPA) have developed national programs for hazardous waste manifests without consulting each other and do not recognize each other's systems. Particularly when this concern is combined with Canada's earlier closure of the border to exports of Canadian hazardous waste to the United States (requiring its transport to often distant locations within Canada), some see the incompatibility as a major impediment to the inexpensive, efficient and least-dangerous (from a transportation perspective) disposal of hazardous waste.

For the future, LTSS V will develop a North American Transportation of Dangerous Goods Code, enabling a shipper to adopt standards that would allow free entry throughout the North American region. Yet there remain important difficulties about how best to produce such a code. In the summer of 1996, LTSS V moved to consider issues of enforcement.

#### 2.4.2

##### Automotive Standards Council

The second component of the CSRSM with clear, important environmental responsibilities is the Automotive Standards Council (ASC). ASC seeks to facilitate the attainment and implementation of national standards-related measures (that is, regulations requiring a particular standard) that apply to automotive goods. To do this, ASC may establish subgroups, consultation procedures, and other appropriate operational mechanisms. ASC may include state and provincial government or private sector representatives in its subgroups.<sup>25</sup>

Established under NAFTA Article 913(5)(a)(iii) and deriving its legal authority from Article 913 and Annex 913.5.a-3, the ASC is charged with developing a work program based on four criteria: the impact of industry integration; the extent of barriers to trade; the level of trade affected; and the extent of the disparity. In developing its work program, ASC is empowered to address related matters, including emissions from on-road and nonroad mobile sources. By mid-1996 ASC was still in its start-up phase; it had just established its terms of reference and was beginning to create its working group on emissions.

During the NAFTA negotiations, Industry Canada led the discussions within Canada on the automotive sector. To some observers, ASC appears to have been created to have a very large industry component. There appeared to be no particular issues, such as differences in automotive standards, impeding automotive trade.<sup>26</sup>

ASC has met three times since 1 January 1994, once in each national capital. At these meetings, ASC has worked to identify the obstacles to trade and facilitate compatibility of national standards-related measures, and it has addressed issues and established procedures for future activity, compiled a list of the differences in standards among the three countries (most of which deal with safety), and established terms of reference.

As the basis for its work plan, ASC has agreed to seek industry input on standards-related measures that affect trade because of noncompatibility. It also has discussed the different systems of standards in the three countries, focusing on the comprehensive Mexican system which is largely unfamiliar to outsiders. After consulting extensively with industry, ASC developed a list of regulatory areas on which to focus. Of the 17 issues identified by US and Canadian industry in their responses to the initial requests for input, several dealt with the environment. These included California emissions regulations adopted by the Canadian province of British Columbia (and possibly by the New England states in the United States,

<sup>25</sup> Transport Canada's Chris Wilson chaired the first two ASC meetings. Nicole Pageaut (with participation from Industry Canada) then assumed the chair. Environment Canada and Natural Resources Canada will participate in ASC's work on auto emissions. The US members of ASC are Tom Baines, Office of Mobile Sources, EPA, and, from the National Highway Traffic Safety Administration (NHTSA) of DOT, Frank Turpin. Hector Marquez Solis of Secofi is the Mexican member.

<sup>26</sup> An earlier issue, Mexican labeling requirements for imported tires, had been resolved successfully by the time ASC was created.

whereas industry is looking for a single standard for North America), the safety of methylcyclopentadienyl manganese-tricarbonyl (MMT) in gasoline, alleged Mexican nonenforcement of emissions regulations, the nonavailability of low-sulfur fuel in Canada, and different noise standards among the three countries.<sup>27</sup> Canada had sought to include off-road vehicles in the ASC work plan,<sup>28</sup> but the United States, whose NHTSA is not responsible for off-road vehicles, did not agree and they were excluded. This was an important omission from an environmental standpoint because an estimated 30 percent of all carbon dioxide emissions originate from transportation, of which 80 percent flow from road transportation (mostly from motor vehicles). The remaining 20 percent of transportation-related carbon dioxide emissions come from off-road vehicles. While the United States regulates emissions from all engines, Canada does not. For example, in Canada there are no emissions controls on off-road vehicles such as two-stroke outboard motors.<sup>29</sup>

ASC then published a list of these issues, inviting comments from industry. The United States identified four areas that required working groups, but it also proposed that each country establish its own working groups. Although Canada and Mexico preferred trilateral working groups, the US view prevailed. The terms of reference, however, encourage joint working group representations to ASC. Government cochairs provide a formal line of communication among the Parties.

In the United States, EPA and the Department of Transportation (DOT) issued a notice in the *Federal Register* advising the public of ASC and the intention of the governments to form the four working groups and soliciting the participation of interested parties. The US working groups are cochaired by one government representative and one nongovernmental representative. The key nongovernmental groups are judged to be companies in the auto industry since they will face any prospective trade barriers. The four US working groups have begun to meet.

Canada will establish its working groups under the auspices of the Automotive Advisory Council (AAC), a non-NAFTA body that deals with related issues. The AAC includes representatives of parts manufacturers and auto manufacturers as well as interdepartmental government representatives. It does not include representatives of provincial/state governments, consumer and environmental groups, NGOs or academia.

Mexico has established four working groups according to the terms of reference and provided the United States and Canada with a list of persons responsible for them.

The working groups are addressing four issues: emissions/engines/fuels (for all classes of vehicles: light-duty, heavy-duty, and nonroad); light-duty vehicle safety standards; heavy-duty vehicle safety standards; and parts and equipment (both original equipment and replacement).<sup>30</sup> They are charged to: identify incompatibilities among the national standards; assess the extent to which incompatibilities represent a barrier to trade; and suggest to the ASC ways to remove these incompatibilities.

<sup>27</sup> Other issues included occupant protection and mandated air bags.

<sup>28</sup> Canada raised off-road vehicles in a safety context. ASC's Emissions/Engines/Fuels Working Group is responsible for on- and off-road emissions.

<sup>29</sup> Canadian safety regulations include snowmobiles and off-road motorcycles, and Canadian industry had identified some potential safety standard issues.

<sup>30</sup> Further details on the Council's mandates are available in two *Federal Register* notices, (23 December 1994 and end of May 1996), issued by the US Department of Transportation/NHTSA.

From a US perspective, the issues that may arise are not expected to be about different technical standards, but rather about the application of those technical standards in particular contexts.<sup>31</sup> In some cases, however, standards will differ, and here the working groups could have considerable impacts. For example, the United States set so-called Tier 0 emission standards for light-duty vehicles in 1981, which have been superseded by stricter Tier 1 standards, required by the US Clean Air Act. Mexico had adopted the Tier 0 standards but has not yet adopted the newer Tier 1 standards. The working group could encourage Mexico to adopt the more stringent provisions.

Looking ahead, the work of the ASC will become even more important for trade when trade in used vehicles between the United States and Mexico is fully liberalized. This process begins in 2009 and will be completed by 2018. Harmonization of standards also is important for producers of small-volume specialty vehicles (such as refuse trucks or school buses) who wish to have their limited production runs serve the entire North American market.

The visions for the future of the ASC differ among the three countries. According to Canada, ASC will set common North American standards for the automotive trade. In contrast, the United States, following its automotive trade pattern, looks farther afield to work with the Evaluation Committee of Experts (ECE) and APEC to seek a common multilateral standard under which the ASC regime would be subsumed. As for substantive issues, the US government sees a role for the ASC in assisting in and facilitating the compatibility of technical regulations that are obstacles to trade. The ASC is not considered to be an environmental committee. The US Environmental Protection Agency is included in its membership only to oversee and interpret the technical rules on emissions, many of which are made by EPA and should therefore not be altered by the Department of Commerce or the US trade representative. Environmental issues generally, however, are not expected to be raised or resolved by ASC.

### *Explanatory Factors*

The contrasting experiences of LTSS V and ASC in their environmental activism and achievement suggest the importance of several factors in the progress NAFTA institutions are making toward sustainable development. One factor is the length of time officials from the three governments have been working together—the LTSS V experience dates as far back as 1988 and ASC only to 1994. A second factor is the identification in NAFTA of a single center of responsibility—the sharing of responsibility between and resulting interdependence of LTSS and ASC has produced a delay, despite the presence of a specified deadline and one more pressing than for dangerous goods. A third factor is the presence of a “nest” within a larger multilateral organization—LTSS V was able to begin on the basis of and work within well-established UN and ECE regimes.

<sup>31</sup> For example, the United States and Mexico have the same standards for emissions from heavy-duty vehicles. Compliance with the US standard, however, is determined at or near sea level, although the standards are supposed to be achieved at any altitude. Mexico would like compliance established at a higher altitude, even though it has no facilities for testing engines at high altitudes.

A second set of factors relates to the economic and ecological interests underlying this institutional activity. One factor is the clear and present danger offered by the prospective environmental threat—the harm stemming from accidents involving dangerous goods is immediately visible and ecologically damaging in a specific locale in ways that emissions from automobiles and other vehicles tend not to be. A second factor is transborder implications—cross-border transportation is needed to make NAFTA-expanded trade possible and includes the transportation of dangerous goods that immediately threaten the ecology of the other country. A third factor is the prospective financial costs of intergovernmental actions—the automotive industry looms much larger as an industrial sector than the transportation of dangerous goods even broadly defined. And a fourth factor is the ownership and concentration of industry—the pattern in ASC appears to reflect an unwillingness of a US-owned industry to transfer activity from its own forums with its national government representatives to a forum involving the three governments.

## 2.5

### Agricultural Institutions

The second major area in which NAFTA establishes trilateral institutions with direct environmental relevance is agriculture. Because of their overwhelming, integral connection with land, water, air and the natural processes that relate them, all agricultural activities and the regimes affecting them have inherent and important environmental effects. Within North America, agricultural activities, regulatory regimes and thus environmental impacts have become trilateral. The importance of regional concerns about agriculture was evident in the meetings held by the agricultural ministers of Canada, Mexico, and the United States in 1995 in Quebec City at the UN Food and Agriculture Organization (FAO) World Food Day 50th Anniversary Symposium and at a larger meeting of agricultural ministers in Denver. The agricultural ministers also meet bilaterally on an ad hoc basis to discuss NAFTA-related agricultural issues.

At the official NAFTA level, agricultural issues also have become trilateral. Of the many agricultural committees and component bodies reporting to the NAFTA's Free Trade Commission, three have a direct environmental relevance: the Committee on Sanitary and Phytosanitary Standards (CSPS), the Technical Working Group on Pesticides created under CSPS, and the Committee on Agricultural Trade. Through these subordinate bodies, NAFTA is establishing a framework for and disciplining the way the Parties deal with each other.

The overall performance of NAFTA's agricultural institutions varies. At one end of the spectrum is the Technical Working Group on Pesticides, which seems to be fulfilling its mandate in a manner fully consistent with NAFTA's broader sustainable development goals. At the other end is the Committee on Agricultural Trade, which deals at the policy level with

agricultural issues, such as subsidies, whose environmental relevance is well understood by the trade-environment community. Decisions made at the policy level may have direct, first-order effects on the environment, yet little is being done to incorporate in the committee's work the basic principles of sustainable development or even to recognize the environmental dimensions of its work.

### 2.5.1

#### Committee on Sanitary and Phytosanitary Standards

##### *Structure*

The Committee on Sanitary and Phytosanitary Standards (CSPS), established under NAFTA Article 722, is designed to facilitate technical cooperation for the enhancement of food safety, to hold consultations on sanitary and phytosanitary measures and to address issues relating to the adoption of international standards and equivalence. To do so, it may establish and determine the scope and mandate of its working groups. CSPS reports to the Free Trade Commission, together with its parallel body, the Committee on Agricultural Trade.

CSPS is obligated to meet at least once a year and at the request of any Party. In practice, though, its members try to meet at least twice a year.<sup>32</sup> As of February 1997, CSPS had met six times since 1 January 1994, utilizing a formal agenda and minutes.<sup>33</sup> Meetings have dealt with controversies over sanitary and phytosanitary measures predominantly bilateral in nature, such as the export of US cherries to Mexico or Mexican pork to the United States. Such controversies, however, usually have a trilateral dimension, thereby making CSPS an appropriate forum for resolving disputes. For example, Canada participated in the discussions on the US-Mexican cherry and pork disputes because Canada has trade interests in these areas. Canada also provided assistance, even though it was not directly affected, in the US-Mexican avocado issue.<sup>34</sup>

The sanitary and phytosanitary issues that dominated the political debate over NAFTA, such as trade-based challenges to food safety standards and the alleged threat of downward harmonization, have not yet surfaced in CSPS itself (Runge 1990). The network of official and unofficial technical working groups and subcommittees dealing with sanitary and phytosanitary and agricultural trade issues includes some groups that have existed for many years, initiated under the bilateral Canada-US Free Trade Agreement (hereafter, FTA) and later made trilateral by including Mexican participation. Other groups were created for the first time under or after NAFTA. Many of these groups have a mandate for or a tradition of coordinating policy, which has been the hallmark of US-Canadian relations on these issues. Some of that same spirit is beginning to emerge on a trilateral basis and extend into the foreign policy arena. For example, when the representatives of the three NAFTA coun-

<sup>32</sup> The country leads on the SPS Committee are Randy Benoit, Agriculture Canada; Javier Trujillo, Mexican Secretariat of Agriculture, Livestock and Rural Development (Sagar—*Secretaría de Agricultura y Ganadería y Desarrollo Rural*); and Lloyd Harbert, Foreign Agricultural Service, US Department of Agriculture.

<sup>33</sup> A one-page summary of the minutes is released. By contrast, after its meetings the Technical Working Group on Pesticides issues joint press releases, which serve a formal record of the discussions.

<sup>34</sup> To date, Mexico and the United States have not resolved that issue at the SPS Committee; rather, they have pursued it in other forums.

tries attend meetings on sanitary and phytosanitary issues at the World Trade Organization (WTO) or on a prospective Free Trade Area of the Americas (FTAA), they meet separately to consider possibilities for coordinated positions to advance in those forums.

Despite the well-developed pre-NAFTA framework under the General Agreement on Tariffs and Trade (GATT) and FTA, NAFTA has had an autonomous effect on sanitary and phytosanitary measures. All three countries are constantly modifying their sanitary and phytosanitary rules, but since NAFTA, the countries have demonstrated a much greater sensitivity to the effects of trade disciplines on sanitary and phytosanitary measures, such as the need for risk assessments to support rule changes. The NAFTA Parties not only conduct such risk assessments but also bring proposed rule changes to the attention of their trading partners at an early stage. Indeed, they often use CSPS meetings as a forum to inform each other of proposed rule changes or rules under development.<sup>35</sup> In general, many recommendations of the CSPS must be implemented through formal procedures for modifying rules in a process that includes both political and public participation. There is therefore no guarantee that the matters discussed at the committee level will ever be implemented.

As of February 1997, no links had been established between the CEC and the CSPS.<sup>36</sup> The committee deals only indirectly and very rarely with purely environmental and public health issues. (However, in a recent case—candy wrappers containing lead—Mexico invited US public health officials to a CSPS meeting to discuss whether the United States actually had a public health standard that applied to candy wrappers.) But the Technical Working Group on Pesticides does deal with many such issues. Some issues, such as animal welfare (beef), biotechnology and genetically manipulated products, have been addressed in the context of both NAFTA and the WTO.<sup>37</sup>

### *Meetings*

CSPS held its first meeting on 25 March 1994 in Washington, DC. The United States proposed the establishment of a pesticide subcommittee, and the Parties agreed that the United States would prepare terms of reference for this body for consideration by Canada and Mexico. Mexico proposed as a topic for early discussion the establishment of pest-free zones. The Parties agreed that their work should not duplicate existing trilateral and bilateral sanitary and phytosanitary activities. Indeed, much of the discussion of CSPS has centered on structural and procedural issues, trying to clarify its mandate in relation to the many bilateral and trilateral working groups and subcommittees with jurisdiction over sanitary and phytosanitary-related matters. The Parties also agreed that disputes involving two of the three countries should not come before the committee until an effort had been made to work them out on a bilateral basis.

<sup>35</sup> At a FTAA meeting on sanitary and phytosanitary issues (Mexico chairs the SPS Committee in the FTAA process) Mexico made a presentation on risk assessment methods, presumably for the education of representatives from other Latin American countries.

<sup>36</sup> The committee, however, established ties with the trade and environment committee at the WTO. The US contact in agriculture in the context of trade and the environment is Pam Cooper.

<sup>37</sup> An SPS committee may be established at WTO in the future. The Europeans want environmental issues in the SPS agreement. The director general of WTO would like to push forward the timetable of the Trade and Environment Committee before the next round progresses. Although countries want to retain the right to choose their own level of protection, for trade reasons some degree of discipline is required. The WTO regime maximizes trade, but individual countries can choose the measures they regard as appropriate. The NAFTA SPS Committee could serve as a prototype for a WTO SPS Committee, but it remains to be seen whether such a notion will be accepted in the next round.

The second meeting of CSPS was held on 6 October 1994, again in Washington, DC. To deal with the pest-free zone issue, the Mexican government proposed that pest-free status (against hog cholera and salmonella) be given to certain Mexican states that ship poultry and pork to Canada and the United States. Mexico also wanted to ship to Japan through the United States, even if its products did not meet US standards. Others argued, however, that such action could generate accidents or other leakages affecting public health and having other impacts in the United States.

At its third meeting, held on 21 September 1995, CSPS discussed fumigation requirements; meat, plant, and animal pest-free regions (hog cholera-free zones); medfly incidence in Chiapan papayas; and the Mexican ban on US exports of sweet cherries.

The last three meetings of CSPS were held in September 1995 and February and June 1996. In June 1996 CSPS discussed policy harmonization and bilateral irritants. It also addressed how best to participate in the discussions of the prospective Free Trade Agreement of the Americas.<sup>38</sup>

CSPS thus deals with two kinds of issues. About one-third of the time, it addresses general policy issues such as the harmonization of technical regulations and collective regional action for regional bodies such as WTO, FTAA, APEC and the North American Plant Protection Organization (NAPPO). The Parties are trying to work together toward the harmonization of standards and border risk mitigation by elaborating articles in NAFTA Chapter 7 and its accompanying agreements and ensuring consistency in the application of appropriate levels of protection for humans. In doing so, they recognize that NAFTA allows each country to choose its own level of protection for health and environmental purposes and requires that the provisions be applied in a consistent manner, not varying per commodity to satisfy trade objectives.

One important issue with broader implications for environmental protection is the use of scientific risk assessment measures to demonstrate that risk mitigation provides a consistent level of protection. In determining a level of protection, a country must be able to demonstrate to a dispute resolution panel that it is conscious of harmonizing the risk assessment methodology set out in Chapter 7 of NAFTA.

The second issue examined by CSPS, requiring the remaining two-thirds of its time, is trade irritants. While the Parties recognize domestic areas of regulatory freedom, the exercise of these freedoms often has trade implications. Of these, 95 percent are bilateral in nature. One trilateral issue is classical swine fever in Mexico, which that country claims to have eliminated from states that ship pork.

CSPS has a high success rate in ultimately resolving issues, although the process is slow. If no progress is forthcoming on a particular issue, the aggrieved country may request a panel under the dispute settlement provisions of NAFTA. CSPS has been successful in preventing

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<sup>38</sup> The committee agreed that it was important not to duplicate work already undertaken in Geneva and to encourage all countries to meet the WTO regulations. It concluded that it was not necessary for the South American countries to reinvent the wheel. Canada chairs the Technical Barriers to Trade Committee of the FTAA.

disputes from reaching the formal panel stage because it offers an informal process in which a NAFTA Party can assess its position in relation to that of an opposing Party or Parties on a particular issue. For example, Canada and Mexico have resolved several potential irritants, such as soft fruit, pork and seed potatoes, before it became necessary to strike a panel.

When an issue arises in CSPS, a bilateral technical working group often is struck to report back to the committee. The third, noninvolved Party may play an important role as a neutral scientific adviser. For example, in the US-Mexican sweet cherries dispute, a Canadian scientist was invited to participate in the technical working group under CSPS. The use of a neutral third party and genuinely sound science thus has a precedent and proven value. It should be noted, however, that the Mexican government does not always have the capacity to address some of the scientific issues brought before CSPS. In the Technical Working Group on Pesticides, for example, Canada and the United States have a similar scientific backgrounds and experience, and it is a challenge for the Mexican government to participate fully at this stage. In this case CSPS would find it more difficult to arrive at decisions based on genuinely sound science and fully reflecting specific environmental and other conditions in all three countries.

Many of the substantive issues discussed in CSPS are long-standing bilateral disputes, often between the United States and Mexico. These issues include hog cholera in pork; the determination of disease-free areas in Sonora; restrictions on Mexican avocados in the United States; restrictions on US West Coast cherries in Mexico; US detention of candy from Mexico because of wrappers containing lead; and limits on the shelf-life for milk products. One of the few US–Canadian issues to be brought before CSPS is access to the United States for Canadian seed potatoes. This being said, the NAFTA Parties often are reluctant to raise bilateral issues in CSPS because of the leverage that might be exercised by the third Party. The Parties generally prefer that issues be resolved at the technical level and not the trade level. The panel process, a measure of last resort, irritates the groups on both sides of the border involved in a dispute. Thus far no panels on agricultural disputes have been convened under NAFTA despite many threats to do so.<sup>39</sup>

### *Technical Working Groups*

The Technical Working Group on Pesticides is the only official working group that was created under the Committee on Sanitary and Phytosanitary Standards of NAFTA.<sup>40</sup> Eight additional technical working groups were created under the FTA and were continued by NAFTA. All of these groups fall under CSPS, and in the three years since NAFTA came into force, most have become trilateral (de facto).<sup>41</sup> The most important of these groups for CSPS are those dealing with animal and plant health issues.

<sup>39</sup> Panels have been struck for similar issues at WTO, however. Canada is presently in various stages of the panel process for French scallops, Australian salmon and European hormone beef.

<sup>40</sup> A new network of trilateral technical committees also is forming under the auspices of the US Food and Drug Administration (and presumably FDA's counterparts in other countries).

<sup>41</sup> There are divergent views about the desirability of trilateralizing the groups that have remained bilateral since NAFTA. Mexico prefers that all technical working groups be trilateral. Canada prefers the technical working groups to be bilateral and therefore more informal. From a political perspective, the Canadian government believes that it serves Canada better to keep the working groups functioning bilaterally because it is easier to resolve issues with one Party than with two. The Mexican government will often support a US standard, given the importance of protecting Mexico's trading interests with the United States. In some groups such as the Packaging and Label group and the Meat, Poultry and Egg Inspection group, all three countries prefer to move to a trilateral basis early because, rather than adopting standards, the focus of the committee is on opening up borders—that is, facilitating the free flow of goods and services across North American boundaries. Here the issues mostly place Canada and the United States against Mexico.

The nine technical working groups (and their status as of late 1996) are:

1. Pesticides (trilateral)
2. Meat, Poultry and Egg Inspection (trilateral)<sup>42</sup>
3. Plant Health, Seeds and Fertilizers (trilateral with the North American Plant Protection Organization)<sup>43</sup>
4. Animal Health (trilateral)
5. Dairy, Fruit and Vegetable Inspection (bilateral)<sup>44</sup>
6. Veterinary Drugs and Feeds
7. Food, Beverage and Color Additives and Unavoidable Contaminants (trilateral)<sup>45</sup>
8. Packaging and Labeling (trilateral)<sup>46</sup>
9. Fish and Fishery Products Inspection (bilateral)<sup>47</sup>

Although some of these groups are not very active, NAFTA stipulates that they must meet annually to participate in technical exchanges. Few formal meetings are held, but many individuals with technical responsibility are in contact almost weekly among the three governments.

Some of these groups have dealt with explicitly environmental issues. For example, the Animal Health group has addressed the coordination of the environmental assessments required for import permits by the Canadian Environmental Protection Act. The group also has addressed the review of emergency procedures for the destruction and disposal of animal species. In certain circumstances there are no specific consulting mechanisms functioning within the technical working groups.

### *Technical Working Group on Pesticides*

In 1995 a new trilateral body on pesticides emerged under the Committee on Sanitary and Phytosanitary Standards and the Committee on Standards-Related Measures. It flowed, at the initiation of the United States and Canada, from the trilateralization of the Canadian-US Pesticides Technical Working Group, initially formed under the agriculture chapter of the FTA (Article 722) to deal with the verification of pesticide residues. This new NAFTA

<sup>42</sup> The Meat, Poultry and Egg Inspection Group has operated trilaterally for the past ten years, dating back to before the FTA. It was officially made trilateral within a year of the signing of NAFTA because Mexico saw the group as a vehicle for helping it to secure its desired access to the lucrative meat market in the United States, according to non-Mexican sources.

<sup>43</sup> The Plant Health, Seeds and Fertilizers Group also was set up as a trilateral body from the start, given the three countries' long-standing work together on similar issues in the North American Plant Protection Organization, a regulatory body. The membership of NAPPO, established under the auspices of the FAO over 15 years ago, consists of Canada, Mexico and the United States. When the Plant Health, Seeds and Fertilizers Group was established under NAFTA, the agendas of the two bodies were made concurrent—that is, they build on each other's work.

<sup>44</sup> The bilateral Dairy, Fruit and Vegetable Inspection Group deals with commercial disputes over fruits and vegetables. Since 1994 the dispute between Canada and the United States over UHT (ultra-high-temperature) milk has taken up most of its time. The UHT milk case was a technical one, dealing with equivalency, but it had political overtones and trade policy implications. (The case eventually went to a FTA panel for resolution in 1993, but a number of residual issues have persisted for several years.)

<sup>45</sup> The Food, Beverage and Color Additives and Unavoidable Contaminants Group was invited to attend the most recent meeting of the SPS Committee in the spring of 1996. To that extent the group is trilateral. Within the group different philosophies have emerged on additives, such as whether limits should be placed on safe additives. The group is working toward greater harmonization of individual additives so producers do not have to change product runs for sales in different countries.

<sup>46</sup> The Packaging and Labeling Group is one of the first in which Mexico was asked to participate. This committee has dealt almost exclusively with exchanging labeling information among the three countries.

<sup>47</sup> The Fish and Fishery Products Group was created after the FTA. Canada's federal fish inspection system formed the basis of the *Codex Alimentarius* guidelines. Although the United States had state inspection systems, it also has begun to formulate a similar federal inspection system.

body reports to both the CSRM and CSPS. Its members also are in contact with the CEC through the North American Working Group on the Sound Management of Chemicals, which is trying to phase out the use of harmful chemicals. The Pesticide group is examining how pesticides are regulated in the three countries, exploring ways in which to make the most efficient use of existing resources in assessing new pesticides (including through harmonized registration systems), and reevaluating currently registered pesticides as well as establishing maximum residue limits (generally at reduced levels) that do not cause barriers to trade among the three countries.<sup>48</sup> This working group is unique among the NAFTA economic institutions in that it includes broad representation from industry and non-governmental organizations such as the World Wildlife Fund, Consumers Union, and National Coalition against the Misuse of Pesticides.

The Technical Working Group on Pesticides coordinates North American positions in international forums such as the Pesticide Forum of OECD. Indeed, a number of the group's activities are directly related to those of the OECD forum, including, for example, the preparation of a common dossier on data submission to support pesticide registration in OECD member countries. In addition, all three NAFTA countries participate in the activities of the *Codex Alimentarius* Commission and contribute to development of the guidance documents and procedures developed in the different *Codex* committees on pesticide residues in food.<sup>49</sup>

The origins of the Pesticides group can be traced to political and budgetary pressures in the three countries.<sup>50</sup> Canadian and US concerns initially focused on disparities in the maximum residue limits established for pesticides on agricultural products traded among the three countries. In addition, the United States was concerned about the air and water migration of pesticides after their application and use in Mexico.<sup>51</sup> To meet these concerns, US and Canadian government officials agreed to create a working group composed of representatives from the three countries; the trilateralization of the Canadian-US body to include Mexico was thought to be the best option.<sup>52</sup>

In April 1995 the Pest Management Regulatory Agency (PMRA) was established in Health and Welfare Canada with the authority to administer the Pest Control Products Act. The creation of the PMRA consolidated the Canadian pesticide registration process in a single body and replaced the previous interdepartmental process. The PMRA takes a risk management approach to decision-making, basing each regulatory decision on objective, sci-

<sup>48</sup> The Pesticides Group is jointly chaired by the Canadian Pest Management Regulatory Agency, the US Environmental Protection Agency, and the Mexican Secretariat of Health (SSA—*Secretaría de Salubridad y Asistencia*). Representatives of the Mexican Ministry of Agriculture (Sagar) and Semarnap also have participated in the meetings of the technical working group. (One reason the Mexicans initially were reluctant to establish this committee was their uncertainty about which agencies within the Mexican government should be represented.)

<sup>49</sup> The Technical Working Group on Pesticides works with industry directly to prepare submissions on, for example, registry systems. This group also is working on capacity building with Mexico.

<sup>50</sup> In 1993 the chairman of the US House of Representatives Agriculture Committee, "Kika" Eligio de la Garza from Texas, sought action on pesticides along the US-Mexican border. US Trade Representative Michael Kantor agreed to take such action. The Technical Working Group on Pesticides is the only formal, officially structured group of its kind because Kika de la Garza based his support for NAFTA on the formal assurance of the formation of a pesticides working group. The Technical Working Group on Pesticides carries on the work plan of the Canadian-US Pesticides Technical Working Group, and it issues an annual report. (North American Free Trade Agreement Technical Working Group on Pesticides, Communiqué, 27-29 March 1996, Washington, DC.)

<sup>51</sup> When pesticides illegal in the United States are sprayed on crops in Mexico, the pesticides can cross the border and land on fields in the United States. Pesticides also migrate through land and water transmission—for example, such chemicals entered the Rio Grande and crossed the border through water tables and watersheds.

<sup>52</sup> For two years officials in Canada and the United States discussed how to trilateralize this body. In Canada, the Department of Foreign Affairs and International Trade strongly encouraged Mexico's participation and offered the body a NAFTA home in Ottawa should this be desired. The formation of the Technical Working Group on Pesticides, which the US Environmental Protection Agency strongly advocated, thus folded the FTA activities into the NAFTA process.

entific assessments of the risks to human health and the environment, balanced by the need for the product. To sell a pesticide in Canada, the producer must register it with government which then tests it for residues in food and publishes a list of how much residue is allowed in each food type. The pesticide registration process must incorporate an environmental assessment. Thus both Environment Canada and Health and Welfare Canada are members of the trilateral group.

Some differences are found in the approaches to pesticide registration used by the three countries. In both Canada and the United States a single agency is responsible for reviewing the relevant data and making a final decision on the registration of a pesticide. In Mexico the Secretariat of Health relies on advice from an interministerial committee, Cicoplafest, in making regulatory decisions. For registered pesticides, all three countries rely on *Codex Alimentarius* for classification but have different systems built on it. For non-registered pesticides, the United States requires nondetectable limits; goods containing such pesticides in any detectable amount are refused entry. In contrast, Canada has a general tolerance of 0.1 parts per million. Mexico appears to have no limits.

Canada's PMRA has begun to work with the United States in registering new pesticides. The FTA succeeded in establishing the foundation for sharing work on pesticide regulation, harmonizing scientific and policy considerations for pesticide regulation, and reducing trade barriers.

The trilateral Technical Working Group on Pesticides held its first meeting in March 1996. (Mexico had been invited to attend an earlier meeting of the bilateral group as an observer.) Its terms of reference have not been finalized. The group operates in a transparent fashion, holding meetings with interested members of the public the day before or after its deliberations. Press releases issued after the group's meetings summarize the discussions.

The initial meeting focused on how the three countries could make better use of one another's data reviews, avoid duplicating efforts in evaluating data submitted in support of registration petitions, and understand the significance of apparent differences in data requirements. The benefits of closer cooperation on pesticide data reviews would be increased efficiency for the government review process with no or minimal increase in costs or, in the view of some, the prospect of actual cost reduction. Moreover, the registration process in the three countries would proceed more quickly, and industry might ultimately need to prepare only a single submission to support the registration process in the three countries. The prospect is thus lower costs for the regulated as well as the regulators.

The initial work by Canada and the United States succeeded in establishing the foundation for sharing work on pesticide regulation, harmonizing scientific and policy considerations for pesticide regulation, and reducing trade barriers. At the present time the NAFTA technical working group is the principal forum for the harmonization and coordination of pesticide activities among Canada, Mexico and the United States. The group covers all aspects

of pesticide regulation, which includes developing and implementing integrated approaches to pest management, developing common approaches to data development and assessment, exchanging comprehensive assessments of the human health and environmental impacts of pesticides, and avoiding unnecessary barriers to trade that might result from regulatory practices. The activities of the Pesticides group are in line with the broader NAFTA objectives of environmental protection and sustainable development.<sup>53</sup>

The efforts of the technical working group to date have focused on understanding the differences in the regulatory systems among the three countries and identifying how they might be brought closer in line; at present there are only minor differences between the data requirements of Canada and those of the United States for the approval of pesticides. Among other things, the Pesticides group has implemented a program for the joint review of reduced-risk pesticides and an agreement for the exchange of confidential business information (CBI); developed zone maps to facilitate the development and exchange of residue data; and harmonized environmental/ecotoxicological data requirements. But despite this record of accomplishment and the wide range of projects initiated under the group, concerns about the environmental quality of the group's work remain. Some observers feel the more stringent Canadian residue standards have been lowered to better harmonize pesticide residue standards in all three countries. Moreover, because many of the projects were originally initiated between Canada and the United States, Mexico is not fully participating in all projects.<sup>54</sup>

To ensure that all three countries benefit from the cooperative activities undertaken by the technical working group, a proposal to restructure its operation is being considered. The restructuring also will ensure that the activities of the group reflect the priority needs of the three countries. A meeting of senior officials from the US Environmental Protection Agency, the Canadian PMRA, and the Mexican secretariats of health, agriculture and environment was held in Mexico City in March 1997 to discuss the restructuring proposal and how it might be implemented. The restructuring proposal is to be implemented, at least in part, for the meeting of the technical working group in June 1997, to which the CEC will be invited.<sup>55</sup>

### 2.5.2

#### Committee on Agricultural Trade

The Committee on Agricultural Trade (CAT), established under NAFTA Article 706, is another major NAFTA agricultural institution having potential rather than direct relevance to the environment. According to NAFTA, this body is responsible for: a) "monitoring and promoting cooperation on the implementation and administration of (the Agriculture) Section; b) providing a forum...to consult on issues related to this section at least semi-

<sup>53</sup> The three countries also have resolved to work jointly on the technical harmonization of a pesticide registry and establishment of limits on residues. Projects under way or in the planning stage are: data requirements, worker exposure, acute toxicity, biopesticides, minor use, reregistration/reevaluation, fish farming, spray drift, integrated pest management, and good laboratory practices.

<sup>54</sup> For example, the United States and Canada already have maps of crop residue zones and of the use of pesticides. Mexico, however, has no clear classification of hazardous pesticides nor has the Mexican territory been mapped. Moreover, it does not appear likely that such information will be available in the near future. The project on joint registration review proposals will outline the procedures and timetables for the joint review of reduced-risk pesticide data submissions between EPA and PMRA, but Semarnap has not been included in this project.

<sup>55</sup> The Pesticides group also will hold a planning session in Mexico City on 20-21 March 1997 to consider the initial proposals for restructuring. These will be circulated to stakeholders and others.

annually; and c) reporting annually to the FTC on the implementation” of the agriculture section of Chapter 7.<sup>56</sup>

Since its inception, the CAT has experienced a host of difficulties over its mandate and procedures for generating minutes.<sup>57</sup> At its first two meetings, however, it decided to take up three issues relevant to the environment: trade-related sanitary and phytosanitary measures, tariff rate quotas (such as those governing grain trade through the new Working Group on Tariff Rate Quota Administration), and subsidies (through the Working Group on Agricultural Subsidies).<sup>58</sup> By 1996 CAT had become very active; it met three times that year. It began to take up broader policy-level issues and moved toward cooperation as a region in international forums (including on the issue of eliminating export subsidies).

The work of the Committee on Agriculture could have a potentially important impact on the environment in two ways. First, its work on subsidies, if successful, may reduce the strain on stressed North American marginal lands. And, second, its work on trade-related sanitary and phytosanitary issues could have a positive impact on the environment as well. Yet it is unlikely that the committee will evolve into a body that considers the environment in a meaningful way. From the viewpoint of Mexico’s Sagar, the main purpose served by the Committee on Agricultural Trade, the CSRM, and their subordinate bodies is to address barriers to trade, primarily for agricultural and livestock products in the case of Mexico. Some committees, such as the Committee on Agriculture and Livestock Trade (under NAFTA Article 706), have served as forums for attempts by the Mexican delegation to demonstrate that certain plant and animal illnesses have been eradicated in Mexico in order to permit greater market access for some Mexican products that traditionally have been banned from the United States. The Working Group on Technical Measures and Commercialization of Livestock and Agricultural Products (under NAFTA Article 703.2) also serves the purpose of resolving problems that may stem from the norms of classification and quality that affect trade. Most Sagar efforts are directed at these two committees because it is so important that Mexico gain access to markets for products such as avocados, tomatoes and beef and other animal products that are critical to its economy.

In the future, the CAT’s workplan may have further environmental impacts through the Working Group on Agricultural Subsidies which will work toward the development of domestic support measures having minimal or no trade-distorting or production effects. This working group will further explore the possibilities of extending such work through the FTAA process and with the European Union. Two additional groups may have further environmental relevance. The Advisory Committee on Private Commercial Disputes in

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<sup>56</sup> In the United States the committee is chaired by Richard Schroeder, Assistant Administrator of the Foreign Agriculture Service of USDA, and Len Condon of the Office of the US Trade Representative. In Mexico, in 1996, the cochairs were Humberto Jasso of Secofi and Jaime Almonte of Sagar. The committee is formally cochaired in Canada by the director general of International Trade Policy in Agriculture Canada and the director general of Trade Policy in the Department of Foreign Affairs and International Trade.

<sup>57</sup> Part of the delay in getting CAT started may have stemmed from the reluctance of the Canadian managers of the Canadian-US relationship, and possibly their American counterparts, to have their long-standing bilateral relationship moved into this new trilateral forum. Canada and Mexico had maintained contact on agricultural issues since the early 1980s when discussions were held about the shipment of Mexican produce into Canada and the related issues of grading standards, as well as pesticide registration, monitoring, regulation and staff training. There also was bilateral contact through the Canadian Dairy Commission about milk powder from Mexico. Little resulted from these contacts, however. The decision to create CAT flowed in part from the experience of FTA, which contained a provision for an agricultural commission within which the Canadian Minister of Agriculture and the US Secretary of Agriculture would meet twice a year, with various working groups reporting to them. During the first few years it was clear this structure did not work; the ministers had difficulty finding the time to meet, and when they did, they did not deal with the prearranged agenda.

<sup>58</sup> It also created a trilateral Working Group on Agricultural Grading and Marketing Standards and convened the governmental representatives of the Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods and the Working Group on Agricultural Subsidies.

Agricultural Goods will examine the harmonization and establishment of common standards with respect to agricultural commodities and the Agricultural Grading and Marketing Standards Working Group will examine grading and marketing standards which affect agricultural trade between the three countries.

### 2.5.3

#### Committee on Trade in Goods

The Committee on Trade in Goods, which reports to the FTC, does not deal directly with environmental issues, but it could affect such issues through the acceleration of tariff reductions on environmentally friendly goods or agricultural products. Indeed, with its mandate for accelerated tariff reduction (possibly applied to environmentally friendly products or methods), its potential environmental relevance is considerable. According to NAFTA Article 316, the committee is to hold separate meetings with border authorities responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and transportation regulation for the purpose of addressing issues related to the movement of goods through the Parties' ports of entry.<sup>59</sup>

The Committee on Trade in Goods is an expanded form of the bilateral FTA committee responsible for tariff reduction. The FTA committee, which had been very successful, accelerating over a billion dollars in trade, was simply rolled into a NAFTA committee and its mandate broadened. Accelerated tariff reduction takes place progressively; in each round the committee establishes a short list, which it circulates to the relevant stakeholders through the official gazettes of each country—the *Canada Gazette*, the US *Federal Register*, and the Mexican *Diario Oficial*. Relevant industry associations and officials also are notified. For example, in Canada the relevant Sectoral Advisory Groups on International Trade (SAGIT) are contacted about impending changes, and Industry Canada evaluates all proposals. The committee considers requests from private sector interest groups and industry before taking any action; it is largely an industry-led process.

The committee has met four times since 1 January 1994. At the first meeting, held in Mexico City on 10 March 1994, some officials indicated their discomfort with accelerated tariff reductions being considered so soon after NAFTA came into force. The second and third meetings were held in Washington, DC, on 8 and 22 April 1994. At the second meeting a consolidated list of requests for accelerated tariff reduction put forth by the Parties was circulated. The fourth meeting was held in Ottawa on 26-27 June 1995.<sup>60</sup>

Thus far the Committee on Trade in Goods has not specifically examined tariff reduction for environmental technology or environmentally friendly products. Since this is a new and developing technological area, industries may need further protection to develop a globally competitive capacity and thus may not wish to see accelerated tariff rollbacks. Indeed, the

<sup>59</sup> The committee is led for Canada by Patricia Close, Ministry of Finance; for the United States by John Melle, Office of the Trade Representative; and for Mexico by Humberto Jasso, Secofi.

<sup>60</sup> The agenda included tariff acceleration for some items, the Mexican import registry system, US border fees, changes to the US nonpreferential rules of origin for textile goods, Mexican certificates for nonoriginating goods, and the high Mexican tariff on frozen ducks and geese. The First Round of NAFTA Tariff Acceleration concluded 20 March 1997 and the Second Round is expected to end on 1 December 1997.

industry associations in Canada have not requested an accelerated phase-out of US or Mexican tariffs.

### *Explanatory Factors*

The relative environmental accomplishments of the CSPS, the Technical Working Groups on Pesticides, and the Committee on Agricultural Trade further suggest the importance of several factors in facilitating the performance of NAFTA's institutions from a sustainable development perspective. The direct ecological interdependence across at least one of the three bilateral relationships within North America appears decisive, as the Pesticides group indicates. Here US leadership, including a commitment to manage bilateral problems through the trilateral machinery of the nascent NAFTA, is important. Another factor is the prospect of reducing governments costs and budget deficits through collaboration and a willingness to rely on and respect the independence and results of genuinely sound science as a basis for solutions.

Also relevant is the institutional factor of the supportive “nest” provided by other regimes, such as FTA and OECD in the case of pesticides, and NAPPO, WTO, FTAA, and APEC in the case of the Committee on Sanitary and Phytosanitary Standards. The institutional structure of the NAFTA bodies themselves, however, appears less important, as all three bodies—CSPS, the Pesticides group, and CAT—had a relatively late start as trilateral institutions, and the Pesticides group has a dual reporting relationship to both CSRM and CSPS. One factor in the group's success, however, may be the participation of environmental ministries, a broad array of nongovernmental stakeholders, and, indirectly, the CEC in its work.

A final factor relates to the business interests at stake. The advances made by the Pesticides group promise to lower regulatory costs and transaction times for industry, thereby providing an broad incentive for industry to support the group's work.

## 3.0

# Other Environmentally Relevant Institutions

Of the post-NAFTA institutions with present or potential environmental relevance, the most important are a new Transportation Consultative Group with working groups that mirror the LTSS structure, a prospective group on energy efficiency labeling which emerged in 1996, and a new consultative group dealing with health. All have significant environmental potential.

From an environmental perspective, the performance thus far of these bodies spans a wide spectrum. At one end stands the still unformed Energy Efficiency Labeling Group, with its prospect for enhancing consumer- and market-based economic and environmental action. At the other end is the Transportation Consultative Group, with the potential even to erode the work of the LTSS on automotive emissions, as well as affect the timetable and other environmental disciplines imposed by the NAFTA text.

### 3.1

#### Transportation Consultative Group

After the first meeting of the Land Transportation Standards Subcommittee (under the Committee on Standards-Related Measures) in June 1994, a new Transportation Consultative Group (TCG) emerged. Although it operates outside the NAFTA structure, and outside any established time schedule, the group nevertheless reports to and receives direction from the LTSS heads of delegation. The TCG arose from the realization that transportation issues other than those related to standards are important to the implementation of NAFTA. The chairs of the LTSS working groups, who suggested creating the body, recognized that issues such as vehicle registration, taxation, and entry requirements do not fall within the mandate of NAFTA.

The TCG, which meets formally the day before or after LTSS meetings, has five working groups. Group One deals with the operational aspects of transportation such as requirements for operating authority, registration of vehicle permits, and fees to cross the border.

It strives to understand the processes of the three countries. Group Two addresses border issues such as customs and immigration, and requirements for rail. The rail standards formerly addressed by LTSS IV have been moved to this group (see Section 2.4.1). Group Three deals with automated data on trucking and facilitates the exchange of data on the validity of drivers licenses, and later convictions data, as well as vehicle information, and conducts a monitoring program for carrier safety ratings. Group Four, on science and technology, includes a Canadian-funded program to train Mexicans on simulators. The fifth group, on maritime matters, is not active. Thus far, none have dealt directly with environmental issues, including those highlighted during the NAFTA debate, such as oil spills and tanker accidents involving vessels traveling among the three countries.

### 3.2

#### Energy Efficiency Labeling Group

Another environmentally relevant body that emerged in 1996 deals with energy efficiency. Lying outside the FTC structure, the group arose from existing Canadian-US cooperation. In Canada the lead is the Energy Efficiency Office in Natural Resources Canada. One obstacle to transforming this group into a trilateral body, which Canada and the United States would prefer, is Mexico's inability to participate because of lack of funding.

The Canadian government sees a future in which the Energy Efficiency Labeling Group, once established trilaterally and effective, might expand its agenda. Initially, the United States devised a program that would allow US manufacturers to place on products one label in three languages that would apply to all of North America. In Canada, DFAIT envisages a progression from labels that merely describe the energy efficiency of a product to energy efficiency ratings which place a value judgment on the energy efficiency of a product. On this issue, Canada and the United States are very close to an agreement. The system could then expand from products such as kitchen appliances to televisions, lamps and bulbs. The three countries might find it easy to harmonize on new applications by, for example, introducing one North American system for televisions and computers.

This post-NAFTA development shows exceptional environmental potential. It relies on an environmentally critical, economy-wide input, takes advantage of free choice by environmentally informed and concerned consumers, and deals in a trade-friendly way with a broader view of a product's life cycle. Now that the CEC's own activity relating to energy efficiency has ended, the creation of such a group on a trilateral basis is even more important.

## 3.3

**Health Group**

Since NAFTA came into force, a trilateral consultative mechanism among Canada's Department of Health, the US Food and Drug Administration (FDA) and the Mexican health secretariat has emerged. Those involved in the group assert that it has no relationship to NAFTA.

The meeting held by the health officials of the three countries in the first half of 1996 was motivated by the desire to examine health standards and joint problems and opportunities. Like the post-NAFTA processes in transportation, this meeting was driven more by functional concerns than by competition or emulation. Because health standards often relate to the environmental precursors of reduced health in humans, or may provide analytic advances transferable to environmental issues, the work of this body may become relevant to the environmental community.

*Explanatory Factors*

The wide variation in the performance of the bodies described in this section suggests several additional factors that generate a substantial environmental contribution from institutions. Although precise, legally encoded, mandatory ecological responsibility, accompanied by specified deadlines, may encourage environmental performance in some instances, the efforts to create the Energy Efficiency Labeling Group indicate that these conditions are not a necessity, especially when forward-looking officials can identify areas where low-cost investments can generate large gains for the economy and the environment.

Yet the major lesson appears to be that NAFTA is better than nothing, despite the criticism of some observers that its environmental provisions are too weak. As noted previously, the same officials are members of both LTSS, a NAFTA body with an environmental mandate, and the TCG, a non-NAFTA body without an environmental mandate. Environmental considerations may thus find their way into the work of the TCG. Although the Committee on Trade in Goods has no environmental mandate, it is possible that the internationally oriented departments that oversee it (Finance in Canada and the Office of the US Trade Representative in the United States) may provide similar cross-fertilization of environmental issues.

A final factor is the organizational and resource weaknesses of the environmentally conscious, or narrower environmental products and services, industries. The absence of demands by these industries to place themselves on the NAFTA policy agenda has contributed to the absence of action in the Committee on Trade in Goods and appears to be a contributing factor in the delay in creating a trilateral Energy Efficiency Labeling Group.

## 4.0

# Commission for Environmental Cooperation

It is important that any review of the environmental activities of NAFTA's economic institutions, and any assessment of the progress achieved, be conducted in the context of the work of the Commission for Environmental Cooperation itself.<sup>61</sup> In some cases, the CEC may be undertaking work originally envisaged as taking place within NAFTA's economic institutions—especially because the core NAFTA text was designed before the North American Agreement on Environmental Cooperation (NAAEC), which created the CEC, was developed, and because the CEC benefits from a single, professional secretariat which NAFTA's Free Trade Commission still lacks. In other cases, such as pesticides, the CEC is supporting work, through cooperative programs and in a nonduplicative fashion, with NAFTA's economic institutions. But, most important, because the CEC and these NAFTA institutions have both economic and environmental responsibilities and a fundamental commitment to sustainable development, the way in which they work separately and in tandem will be critical in determining the progress made in forging trade-environment linkages to promote environmentally sustainable economic development in North America.<sup>62</sup>

At its core, the CEC has a three-part structure: a ministerial-level Council, which serves as the governing body; a single secretariat located in Montreal for technical, administrative, and operational support; and a 15-member Joint Public Advisory Committee (JPAC) to advise the Council on any matter within the scope of NAAEC.

Views vary on the overall potential and performance of the CEC both in general and in relation to one of its key tasks, promoting trade-environment linkages in North America. For some observers, the positive environmental impact of the CEC depends on a broad range of factors, including the commitment of the Parties to the organization; adequate funding; quality of ministerial participation; legitimacy of Council recommendations in the view of the mandates of the domestic environmental agencies; independence of the CEC Secretariat and the quality of its personnel, technical expertise, and analytic capability

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<sup>61</sup> Analytically, the work of the CEC itself may well represent the most direct environmental effect of the NAFTA regime thus far.

<sup>62</sup> Thus this chapter focuses on the relationship of the CEC to NAFTA's other institutions, rather than on the work of the CEC as a whole. Other aspects of the CEC's work relevant to forging improved trade-environment linkages and sustainable development are the North American Fund for Environmental Cooperation and the Article 13 and 14 processes.

(including independent verification of information supplied by government); quality of JPAC appointees; relationship of JPAC to the Council and Secretariat; links established with the broader environmental community; and the openness, transparency, and proactiveness of the CEC structure.<sup>63</sup> For others, the establishment of the CEC marked a major move toward regional governance by creating a new center of political activity and legitimacy on the continent to which national political authorities will, over time, adjust (Munton and Kirton 1994). And yet others portray the CEC as in a weak position, contributing at best simply to transboundary environmental management in the future and only insofar as its member governments will support it (Mumme and Duncan 1996).

A full, official report on the CEC's role in improving the environmental impact of NAFTA should be available by 1998 when, under the terms of the North American Agreement on Environmental Cooperation, the Council is obliged to review the operation and effectiveness of the Agreement. In the present context, however, it is important to examine how the CEC has dealt with those issues of most concern to NAFTA's economic institutions, whether it has forged a productive relationship with those institutions, and how it might move effectively to further the shared cause of sustainable development by expanding the realm of cooperation.

## 4.1

### CEC Component Institutions

#### 4.1.1

##### CEC Council

Article 9 of the North American Agreement on Environmental Cooperation specifies that the CEC Council will be composed of cabinet-level representatives of the three Parties. As the CEC's governing body, the Council oversees all CEC operations; it also meets at least once a year (part of its annual meeting is open to the public).<sup>64</sup> Decisions are made by consensus, except where otherwise provided in the agreement. Any Council decision or recommendation is generally made public. The Council is empowered to consider and develop recommendations on specified environmental matters—and as they relate to economic development. In this vein, the Council will establish a process for developing recommendations that will lead to greater compatibility among the Parties in the areas of environmental technical regulations, standards and conformity assessment procedures, without reducing levels of environmental protection. In all its work, the Council encourages the effective enforcement of, and compliance with, environmental laws and regulations.

<sup>63</sup> A definitive account of the CEC's powers and potential is found in Johnson and Beaulieu (1996). Also see Abbott (1996).

<sup>64</sup> The first meeting of the Council was held in July 1994 in Washington, DC; the second in October 1995 in Oaxaca, Mexico; the third 31 July–1 August 1996 in Toronto; and the fourth in June 1997 in Pittsburgh.

At the 1996 Council meeting in Toronto there were several signs that forging an equal, integrated trade-environment linkage in the interests of sustainable development was a high CEC priority. Canada's minister of the environment, Sergio Marchi, publicly emphasized his personal commitment to the continued linkage of trade liberalization to environmental cooperation. EPA Administrator Carol Browner included trade among her priorities for a more focused CEC agenda. And Mexican environment secretary Julia Carabias noted that the Council could not allow trade problems to place pressures on projects at the expense of the environment. Some Council representatives pointed to the need to develop North American solidarity in the broader multilateral forums dealing with trade-environment issues. Most important, the ministers agreed in their final communiqué on the specific need to contribute to the trade-environment debate in the World Trade Organization in the lead up to the latter's ministerial meeting in December 1996. They also pledged to seek a meeting with NAFTA's trade ministers to discuss shared concerns.<sup>65</sup>

This focus on trade and the environment continued in the June 1997 Council meeting in Pittsburgh, when Julia Carabias, Mexico's Secretary of Environment, Natural Resources and Fisheries and representative to the CEC Council, emphasized the central importance of the trade-environment linkage in the CEC's work. In addition to announcing several important transboundary environmental initiatives, the Council continued the work of the NAFTA Environmental Effects (of trade and investment) project (of which this study is one component) and urged the selection of terms of reference for the 1998 work program. The Council also agreed to the process for the NAAEC review, and the public consultation to accompany that evaluation.<sup>66</sup> Representatives to the Council also announced that a special session of Council would be held in October 1997 to accelerate progress on important priorities of the CEC.

Trade-environment issues also have been a recurrent item on the agenda of those responsible for managing the CEC in the time between the annual Council meetings. The alternate representatives, at the assistant secretary level, meet in person or by conference call monthly. They are assisted by a lower-level General Standing Committee, which met 24 times in 1996. In the United States, EPA has a NAFTA coordinator who, in addition to providing a focal point, has begun to meet with US trade officials to foster trade-environment coordination at the national level.

#### 4.1.2

##### CEC Secretariat

The CEC Secretariat, which numbered about 50 employees in 1997, provides technical, administrative and operational support to the Council and to committees and groups established by the Council. A budget of US \$9 million was approved for 1996 for the CEC, contributed equally by the members.<sup>67</sup> This level of investment in furthering North American

<sup>65</sup> See "Final Communiqué: North American Environment Ministers Accelerate Environmental Protection Efforts," Toronto, 2 August 1996. In anticipation of a Canada-Chile bilateral free trade agreement and the probable accession of Chile to NAFTA, representatives from Chile participated as observers in the public meetings of the Council (but not at the in-camera session).

<sup>66</sup> See "Final Communiqué of the NAFTA Environment Commission's 4th Annual Session," Pittsburgh, 13 June 1997.

<sup>67</sup> This amount is less than was authorized in NAFTA's implementing legislation in which Congress authorized a US contribution to CEC of \$5 million for fiscal year 1995 (US General Accounting Office 1994, 25). The 1996 budget was US \$10,255,000, and the 1997 budget was US \$10,020,000.

environmental enhancement and sustainable development remains at the same nominal dollar level as 1994, despite a major expansion in the Secretariat's work. The CEC has moved faster in establishing its operations than the other NAFTA-related organizations, in part because it was the first to select the Secretariat's executive director and staff.

#### 4.1.3

##### Joint Public Advisory Committee

The purpose of the Joint Public Advisory Committee is to ensure that citizens of the three countries play an active role in the efficient execution of the CEC mandate. The JPAC also advises the Council on matters within the scope of NAAEC, including the annual program and budget of the CEC, and is empowered to provide relevant technical, scientific or other information to the Council. JPAC is expected to convene at least once a year at the time of the Council's regular session, or at its members' discretion. Five government-appointed volunteers from each country serve on JPAC.<sup>68</sup> In 1995 the JPAC held five meetings; in 1996 it held three public consultations.

In the months leading up to Council meetings, JPAC conducts regional public consultations attended by representatives of NGOs, industry, academia and government. A summary of the consultations is then prepared for the Council. Prior to the 1996 regular session of the Council, public consultations were held in Montreal, Toronto and San Diego to discuss the environmental issues of central interest to the environmental ministers. These included: reducing the human health risks of environmental contaminants, conserving North American biodiversity, strengthening environment and economy linkages in North America, and defining the public participation activities of the CEC. In 1997 public consultations are being held on three specific issues: the long-range transport of air pollutants in North America; voluntary compliance with environmental laws in North America; and environmental networking among North American communities.

In 1995 JPAC advised the Council seven times on issues such as the expansion of NAFTA and the 1996 program and budget. At its regular session in October 1995, the Council asked JPAC for advice on the following issues: follow-up to the Article 13 report on the Silva Reservoir; the 1996 work program; and the criteria for the selection of projects under the North American Fund for Environmental Cooperation. In 1996 JPAC advised the Council ten times.

In its work, JPAC, which includes representatives of the environmental and business communities in all three countries, has helped to further environment-trade linkages by encouraging an open process through which economic as well as environmental considerations can enter CEC decision-making. JPAC members also have strongly supported the environment-trade work of the CEC.

<sup>68</sup> Current JPAC members are: María Cristina Castro (chair), T. M. "Mike" Apsey, Guillermo Barroso, Peter A. Berle, Jorge A. Bustamante, Michael E. Cloghesy, Louise Comeau, Jacques Gérin, Dan Morales, Jonathan Plaut, Ivan Restrepo, Jean Richardson, Mary Simon, and John D. Wirth. Very few of these members are involved in the national advisory structure for international trade (such as Canada's International Trade Advisory Committee), and JPAC itself has not yet met with such bodies.

*National Advisory Committees*

All three countries have established national advisory committees (Article 17 of NAAEC) which advise Council members on CEC matters. The US National Advisory Committee (NAC), established in September 1995, comprises between 12 and 14 members from diverse geographic, ethnic, and professional backgrounds. They represent environmental NGOs, academia and business. Members of the US NAC are appointed by the EPA administrator and approved by the White House. The US NAC normally meets twice a year, in April and September; it first met in September 1995 and has met four times since then. The NAC reports to the EPA administrator through the US alternate representative and member of the General Standing Committee.

Canada's National Advisory Committee was created in August 1996. It is appointed by the Canadian Governmental Committee, which is composed of the federal minister of the environment and the provincial ministers of the environment from those provinces that have accepted to be bound by the terms of NAAEC through the Canadian Intergovernmental Agreement on NAAEC. Canada's NAC currently has six members and includes representation from the environmental nongovernmental and business communities; it reports to the Canadian Governmental Committee. Since August 1996 the NAC has met twice and has held several conference calls.

In Mexico the National Advisory Committee also functions as the National Consultative Committee for Sustainable Development. This body is made up of five regional councils, each comprising around 50 members. Each regional council includes a senior roundtable of approximately six people to whom the members of each council report. The senior roundtables of the five regional councils make up the Mexican NAC which thus comprises approximately 30 individuals representing the environmental nongovernmental community, academia, and industrial sectors. Julia Carabias, Mexico's Secretary of Environment, Natural Resources and Fisheries and member of the CEC Council, is the president of this body.

*Government Advisory Committees*

The Parties also are entitled to convene governmental advisory committees (GACs) to advise them on the implementation and further elaboration of the North American Agreement on Environmental Cooperation. Canada and the United States have each established such a group. The US GAC, formally titled the "Governmental Advisory Committee to the US Representative to the North American Commission for Environmental Cooperation," comprises ten individuals with two appointments pending.

This group meets in conjunction with meetings of the US NAC, in plenary session and then individually.

The Canadian government has established an interdepartmental committee to deal with matters relating to the agreement. The approximately 20 representatives of the federal government departments meet on an ad hoc basis as necessary and are consulted before major meetings of the Council or of the Council's alternate representatives when decisions are expected on important items such as approving the annual work program and budget.

### *Ad Hoc Committees and Working Groups*

Under Article 9(5)(a) of NAAEC, the CEC Council may establish and assign responsibilities to several types of groups or committees to assist the CEC: ad hoc committees, standing committees, working groups and expert groups. Ad hoc committees address a specific issue within a specific time frame for the Council, and standing committees carry out an ongoing function of the Council. Working groups undertake specific activities related to a specific program area or function of the Council. Expert groups provide advice to the Council on any specific policy and operational aspect of any matter related to NAAEC or the work program.

The Council has established several groups. The North American Working Group on the Sound Management of Chemicals has four task forces, established by the working group to address PCBs, DDT and chlordane, mercury and criteria.<sup>69</sup> The North American Working Group on Environmental Enforcement and Compliance is composed of senior-level environmental enforcement officials from the three countries. Its adjunct group, the North American Working Group on Wildlife Enforcement, also cooperates with the Trilateral Committee for Conservation and Management of Wildlife and Ecosystems. Another example of the cross-fertilization among experts occurring within the CEC is the participation of the enforcement working group in the development of a compliance strategy for the sound management of chemicals regional action plans.

## 4.2

### **CEC-NAFTA Institutions Relationship**

The CEC is thus well positioned to create the flexible institutional process required to mount a trade-environment dialogue with NAFTA's economic institutions. Indeed, there could well be individuals on NAFTA's economic committees able to contribute usefully to these CEC bodies and to the CEC work plan. Including them in their expert capacities, if not formally as committee members, in CEC work (with reciprocal efforts on the part of the trade community) could be of substantial benefit.

<sup>69</sup> The North American Working Group on the Sound Management of Chemicals was created by a resolution of the Council in 1995 and directed to prepare North American regional action plans for the control and management of PCBs, DDT, chlordane and mercury. The Council directed that two senior officials from each government working on toxic substances collaborate with the CEC and provided for substantial stakeholder review. As of early October 1997 the North American Regional Action Plans for PCBs, DDT, and chlordane had been approved and that for mercury, along with the criteria document for selecting additional substances, was submitted for approval.

Such a process could build on the model of the informal linkage between the NAFTA Technical Working Group on Pesticides and the CEC's Working Group on the Sound Management of Chemicals. Individuals from each of the three countries serve on both of these committees. Although this does not represent a formal linkage between a CEC group and a NAFTA group, it does illustrate some degree of cross-fertilization of ideas on the complex issues surrounding chemicals management and sustainable development. One such issue is whether some pesticides should be merely reduced to lower allowable levels or, in what some see as full recognition of the precautionary principle, phased out altogether.

Presently, there is some concern about the potential for overlap in future work plans and the development of diverging sets of priorities on pesticides issues. Since the same individuals are involved in both the NAFTA and CEC groups, these concerns thus far have been minimized. In the future, however, the two groups could cover the same ground if there is not close cooperation between the two bodies and a clearer definition of their respective responsibilities for pesticides. To ensure that the most efficient use is made of the resources available in each of the three countries and at the CEC to address pesticide-related concerns, effective cooperation and respect for the integrity of the scientific process will be essential. One advantage of the intergovernmental bodies is their forthright focus on the particular national priorities and political preoccupations of the three countries. With its broad, built-in public representation, the CEC offers the advantage of being able to bring forth the views, expertise, and resources of many people and organizations to the work of the NAFTA committees.

Indeed, Article 10(6) of the North American Agreement on Environmental Cooperation provides for that sort of cooperation between the Free Trade Commission and the CEC Council to achieve the environmental goals and objectives of NAFTA.

To this end, the CEC has the mandate

- to act as a point of inquiry and receipt for comments from nongovernmental organizations and persons about those goals and objectives;
- to provide assistance in consultations under Article 1114 of NAFTA;
- to contribute to the prevention or resolution of environment-related trade disputes by seeking to avoid disputes, making recommendations to the Free Trade Commission about the avoidance of such disputes, and identifying experts able to provide information or technical advice to NAFTA committees, working groups, and other NAFTA bodies;
- to consider on an ongoing basis the environmental effects of NAFTA; and
- to otherwise assist the Free Trade Commission in environment-related matters.

In the three years since NAFTA came into effect, though, there has been relatively little contact between the CEC and those involved in NAFTA's economic institutions. This is very surprising given the environmental responsibilities of the trade community embedded in NAFTA and the related economic elements of NAAEC. Moreover, at the ministerial level both the trade and environment ministers of NAFTA have recognized the joint relevance of their respective concerns and requested reports on each other's activities or called for a joint meeting of the two groups.

This relative isolation on the working level flows in part from the preoccupation of each community with developing its own institutions, priorities and work programs, and the slow start each has experienced in varying degrees. Also adversely affecting the situation is the fact that no meeting of the NAFTA trade ministers was held in 1996, that within the trade community there is no single trilateral secretariat able to mount a dialogue with the CEC at the secretariat level, and that within the national governments, there is no single NAFTA center able to maintain a comprehensive, detailed overview of the activities of the Free Trade Commission and other trilateral institutions. Only recently has the trade community moved to establish such a center and to open a dialogue with those officials in other departments responsible for the CEC.

In such a situation it is easy for a lack of communication to breed not merely benign neglect but also a lack of awareness of cooperative opportunities—and even an absence of trust. At present, the situation shows elements of promise: those in the trade communities in some member governments can identify several ways in which the CEC's work has been of benefit. Current CEC work initiatives could also serve as paradigms for application in the context of environment-trade investigations, for instance, exploring how the CEC's Article 13 process could be used as an instrument or model for fact-finding in emerging environment-related trade disputes. More generally, there is considerable understanding of the way in which environment-enhancing cooperation and national convergence can assist the trade and industrial community by providing a single set of rules that make trade easier and less expensive, a single testing system that reduces costs to all three federal governments and the private sector, and a dialogue that supports distinctively North American interests in broader regional and multilateral forums. Some members of the trade standards community also point to new principles and practices in government decision-making, being analytically developed at the OECD, that can bring environment-enhancing transparency and openness.

Given such goodwill, the lack of dialogue may mean that opportunities for active joint learning, mutual support and cooperative ventures are being missed. At a minimum, a more systematic dialogue between the CEC and those responsible for NAFTA's economic institutions would be a valuable step.

## 5.0

# Conclusions

The analysis used in this study and the conclusions based on it are preliminary and suggestive rather than definitive. The slow start and proliferation of activities that characterized the NAFTA institutions in 1996 limit both the depth and conclusive character of the judgments that can be drawn.<sup>70</sup> Nevertheless, some patterns are clear and point to ways to advance the progress of the NAFTA institutions in the promotion of sustainable development. Seven specific conclusions can be offered.

**1. Sharp Takeoff.** Most of the NAFTA institutions with specific, mandatory environmental responsibilities have begun to move on their mandates in a meaningful way. Despite a slow start in most cases, 1996 witnessed a sharp takeoff in the intensity of meetings and activity. Virtually all bodies have now established their procedures, elaborated their internal structures (including subordinate working groups), and established priorities and work plans. A few have even developed a common long-term vision that is far-reaching and comprehensive in nature, such as the North American Dangerous Goods Code.

**2. Cooperation.** The dynamics among these bodies on environment-related issues suggest that some cooperative action is under way. This can be seen in both the balance of interaction among these bodies and the depth of cooperation the three Parties to NAFTA—Canada, Mexico and the United States—have pursued within these forums. The early pattern in which US-Canadian collaboration has served as the pole for trilateral agreement or as a force driving agendas and agreements also is broadening. For example, Mexico is now moving to become a full participant in the Technical Working Group on Pesticides.

Only in rare cases, such as the Automotive Standards Council's working groups, has the United States resisted the process of establishing trilateral, rather than relying on bilateral or national, bodies. Moreover, despite Canada's instinctive and calculated preference for bilateralism with the United States, a majority of the nine technical working groups of the Committee on Sanitary and Phytosanitary Standards carried over from the Canada-US

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<sup>70</sup> After this study was completed, a number of NAFTA Committees and Working Groups reported on their progress to the Free Trade Commission. In August 1997, the authors reviewed these reports to ensure that the material presented in this study was fully up-to-date before it was published. Of the 12 committees that reported to the Free Trade Commission only three correspond to committees or working groups that are dealt with in this study: the Committee on Trade in Goods, the Committee on Sanitary and Phytosanitary Measures, and the Committee on Agricultural Trade. As well, the authors reviewed the communiqué from the March 1997 meeting of the Free Trade Commission for additional insights into its work.

Free Trade Agreement have now been trilateralized. Canada in particular is beginning to see its interests aligned with those of Mexico in more cases as both countries negotiate with a much more powerful country than themselves. Both Canada and Mexico see their interest in establishing clear common rules of the game. This dynamic recently was highlighted in Canada's and Mexico's desire for trilateral working groups in the Automotive Standards Council. Moreover, Mexico and the United States have begun a more tentative pattern of alignment.

The open, more trilateral dynamics just described have had clear payoffs in producing a higher degree of cooperation among the three countries. To be sure, in many cases, such as in working groups of the Committee on Sanitary and Phytosanitary Standards, the strong pull of the three countries' respective national interests, as they currently interpret them, is evident. National interests are more generally apparent in the strong overall conviction of Mexico that (1) the function of NAFTA institutions is to implement NAFTA as a commercial agreement and to secure greater access for Mexican exports in primarily US markets, (2) environmental concerns should be limited in NAFTA bodies to identifying which concerns the United States is using as barriers to trade, and (3) only in a second phase, if at all, might ecological issues be taken up in their own right.

Many bodies have moved toward genuine and increasingly advanced forms of cooperation. In the areas of pesticides and sanitary and phytosanitary standards, NAFTA institutions have been used effectively to avoid disputes or as containment mechanisms. Institutions are exchanging information about each other's systems and best practices. Also evident is a commitment and action to converge national practices on the best available or most collectively beneficial plane, with actual harmonization as the goal, and even the result in some cases. For example, for dangerous goods there is now a commonly identifiable set of signs on trucks in Mexico. And the Land Transportation Standards Committee has succeeded in harmonizing truck safety regulations among the three countries. There also has been limited international coordination in the form of technical cooperation and the integrated implementation of new region-wide systems. For example, Mexico was assisted by LTSS in developing its labeling standards for dangerous goods. Finally, there is a growing trend toward creating a common North American position in interacting with outsiders, such as the Committee on Agricultural Trade's development of common regional perspectives on subsidies with regard to the Free Trade Agreement of the Americas and Asia Pacific Economic Cooperation forum, and the CEC's potential contribution to the trade-environment debate within the World Trade Organization.

**3. Concrete Environmental Achievements.** In a few instances NAFTA institutions already have delivered concrete achievements that have affected the behavior of national governments, subfederal governments, and their societies. A good example of this outreach is the

Emergency Response Guidebook created under LTSS V. This trilateral guide for accidents of dangerous substances is being absorbed and used by outsiders and arguably will lead to a reduction in the severity of accidents, and thus environmental damage, in North America. Although this innovation relates to only a very narrow, if important and publicly visible, component of the North American environment, it establishes a basis for larger achievements to come. It will be particularly important if it establishes the momentum for preventative action on priority contaminants, such as the bulk containers transporting halogenated organic chlorides.

In general, such institutional innovations could have important long-term effects. For example, they would create a trinational dialogue, cooperation, learning and community formation among federal and subnational governments and nongovernment actors in a wide range of functional fields. They would provide the private sector and citizens with greater confidence and single regional focal points of activity. And such innovations could make the NAFTA regime a living, expanding organism.

**4. Institutional Proliferation.** A process of organizational expansion, both laterally and vertically, is under way as new post-NAFTA institutions have emerged under the auspices of, outside of, or in parallel with existing NAFTA structures. New bodies include those for pesticides and energy efficiency labeling. Additional technical working groups may arise in the area of sanitary and phytosanitary standards. In a few cases, such institutional proliferation leads to wasteful duplication or overlap, which results in turn in delay, conflict or a weakening of NAFTA's environmental dimension. The relationship among LTSS V, the Automotive Standards Council and the newer Transportation Consultative Group is particularly worrisome.

The proliferation of post-NAFTA institutions on the whole, however, suggests that a dynamic process of community creation is under way—one with the potential to embrace an ever-greater range of environmental topics. As some post-NAFTA bodies appear to have an environmental orientation that is at least as strong as that of their 1994 predecessors, their contribution to sustainable development is likely to grow. Moreover, these newer bodies are moving beyond first-generation environmental issues to deal with, for example, energy efficiency ratings (which embed information about future resource requirements in a description of the characteristics of the product). Unless other bodies which are at present less inclined to consider environmental components of their work begin to do so, they could indeed slow progress in North America towards achieving NAFTA's goal to support sustainable development and the potential for mutually beneficial interaction between the environment and the economy.

The process of expanding trilateral intergovernmental contact and cooperation, evident in fields such as pesticides, transportation, and health, is largely a functional one rather than one driven by top-down political considerations, broader environmental consciousness, or specific impediments to transborder trade. Beneath these apparently functional dynamics, however, are considerations and a quest for competitive commercial advantage. Moreover, the prevalence of trilateral ministerial contact in the fields of agriculture, health and transport—as well as trade, environment and labor—suggests broader political considerations are at play.

Another sign of the post-NAFTA proliferation is found in the trend of the NAFTA institutions to take up important environment-related topics not centrally addressed or institutionally provided for in the NAFTA text. In some areas, such as agriculture in general and the cattle feeding-feedgrains complex in particular, NAFTA provided a rich institutional repertoire, centered on the Committee on Sanitary and Phytosanitary Standards and the Committee on Agricultural Trade. In other areas, such as electrical energy, NAFTA said little and created no institutional capacity. But during NAFTA's first three years, electrical energy issues have been—or will be—taken up in the new Energy Efficiency Labeling Group, the general Committee on Standards-Related Measures, and the Government Procurement Group's Committee on Small Business.

**5. Delays in Progress.** Some NAFTA institutions have been slow to make progress, to the point that outsiders might begin to raise serious questions about the record of the governments in meeting their environmental obligations specified in the NAFTA text. More specifically, some bodies have been slow to meet and initiate work programs to fulfill their NAFTA-specified deadlines. Some have been overcome by institutional rivalries or claims from societal interests.

Progress is evident in the groups dealing with agriculture, standards, rules of origin, and financial services. Action in the other groups such as the Automotive Standards Council has been slow. The reasons for slow progress vary. They include the resistance of the leaders of the various efforts, differences in departmental visions, and difficulty at a time of resource constraints in moving ahead with a process that involves so many different departments, which themselves often are in the process of downsizing and restructuring.<sup>71</sup> Progress appears to be faster in areas headed by trade officials, as their professional socialization leads them to emphasize the opening of borders. In other areas, such as immigration, customs and the temporary entry of business people, progress is slower. Slow progress also stems from the absence of collective ministerial guidance for areas of major blockage.

Perhaps the most problematic areas are those in which the deadlines specified in the NAFTA agreements for environmental cooperation appear not to have been met. Most notably, NAFTA's Article 913(5)(a)(I) and Annex 913–s.2(a)(iii) charges the CSRM's Land

<sup>71</sup> For example, the staff of the US Department of Commerce's Office of NAFTA has been significantly reduced over the past three years.

Transportation Standards Subcommittee with implementing a work program within three years of the entry into force of NAFTA. The program is intended to harmonize the Parties' relevant standards-related measures for vehicles, including measures related to emissions and environmental or pollution levels not covered by the automotive work program established under Annex 913–C. As the 1 January 1997 deadline passed, the automotive work program and relevant committee structure had just been established, and LTSS had not begun work on this matter. Moreover, there was an ongoing debate about whether the LTSS, the Automotive Standards Council or the new Transportation Consultative Group would undertake the required work. Removing the responsibility from LTSS also would remove the NAFTA-imposed three-year deadline. Moreover, the TCG has not put any special emphasis on the environmental dimensions of its work and may be competitive with existing bodies that have an environmental mandate. As a non-NAFTA body, it stands outside the environmental obligations of the NAFTA text.

Elsewhere, the CSRSM has not yet moved to create, or to consider the need to create, any of the four environment-related bodies it was permitted to establish by the NAFTA text. It is possible that because of an institutional gap there is less environment cooperation and action in key areas than was intended by the founders of NAFTA's trade community.

**6. CEC-NAFTA Institutions Relationship.** Despite Article 10(6) of the North American Agreement on Environmental Cooperation, there has been a paucity of contact, communication, and in some cases trust, let alone integrated decision-making and cooperation, between NAFTA's economic bodies with specified environmental responsibilities and the CEC itself. The relationship that the Pesticides group has established with its counterparts in the CEC expert group remains a rarity across the full array of NAFTA institutions.

To some degree, the lack of contact and communication flows from the absence within all national governments of a single center with a comprehensive, detailed overview of the work of the NAFTA's institutions and their post-NAFTA trilateral equivalents. There is no major move or desire on the part of those responsible for the NAFTA institutions to control or coordinate this activity at either the international or national level. Because no ministerial meeting of the FTC was held in 1996, the action-forcing deadlines behind the reporting mechanisms and coordinative processes that do exist have been removed. With so many NAFTA institutions now at work, and with some of the new post-NAFTA trilateral bodies operating outside of the FTC structure, the challenge of monitoring, and assisting such activity, in part to improve its environment-enhancing impacts, has become formidable.

No single entity (at least within the governments of Canada and the United States) is systematically reviewing the environmental requirements and deadlines contained in the NAFTA agreements and assessing, either continually or periodically, how well the Parties

are meeting their obligations, or adjusting and extending them to meet new environmental priorities. Within Environment Canada, responsibility for trade and NAFTA-relevant items appears dispersed throughout the agency. Within Canada's Department of Foreign Affairs and International Trade, the US Trade Policy Planning Division only recently began to ask interdepartmental colleagues for reports on all trilateral meetings. Within the US government, the Office of the US Trade Representative lacks the resources to maintain such an overview, even with the assistance of the Department of Commerce's Office of NAFTA (which has been significantly reduced in size in recent years). Only with the prospect of new trade negotiations (for example, for Chilean accession to NAFTA) would Washington's interagency process and focus take on new energy.

Participation by various stakeholders outside the federal government varies widely across the various NAFTA committees and working groups. Among some committees, such as LTSS, there is little participation and a strong feeling that it is the wrong forum for stakeholder participation because NAFTA is not an input point for policy change. Stakeholder participation and environmental concerns are best addressed, such views maintain, at the national level, where mechanisms already are in place to collect such information. The function of NAFTA committees is to work toward the coordination of policy, not to create policy. For the Automotive Standards Council, emissions concerns have been delegated to a forum composed only of industry and government representatives. At the other end of the spectrum, committees such as the Technical Working Group on Pesticides are consulting with consumer groups, industry and environmental NGOs at the committee level, and thus can in practice access the broader resources, expertise and constituency of the CEC.

Although NAFTA groups do not uniformly incorporate broad participation in their work, various environmental considerations are not necessarily excluded. As many of the groups work toward regulatory harmonization, it is important to keep in mind that such regulations are created at the national level with a wide degree of consultation. Yet broader stakeholder participation offers valuable resources, such as scientific expertise, of value to all.

**7. Organized Dialogue.** Finally, the time is ripe for initiating an organized dialogue between the CEC and NAFTA's economic institutions to allow a joint assessment of the progress made to date in fulfilling NAFTA's environmental objectives, to identify areas where further progress is desirable, and to set priorities for future individual and possible joint action. These tasks, perhaps an appropriate item for review and approval by NAFTA's environment and trade ministers, would encourage more intense contact between the two communities at a lower level, allowing the innovative provisions in NAFTA and NAAEC that suggest such cooperation to be tested.

As this study has demonstrated, a good deal of NAFTA committee work is under way or will be shortly. As many of the matters these committees will address contain important

environmental dimensions, their work should, in general, be guided from the earliest conceptual stages by NAFTA's commitment to environmental values. Yet with some notable exceptions, the NAFTA committee work to date has not put into practice the Parties' pre-ambular commitment to promote sustainable development in this way. Whether the committees' reluctance to do so in particular cases is deliberate or entirely unintentional remains unclear.

The importance of at least considering environmental considerations at the outset of framing the scope of and embarking on committee work is central. Indeed, the initiation of NAFTA committee activity represents a singular opportunity to integrate the environmental values enshrined in NAFTA at the earliest moment and to build on the institutional support created by NAAEC. As the work of these committees progresses, patterns of practice and expectations will develop, constituencies will form, and processes will be set in motion that will be considerably more difficult to influence in the future. Awareness, anticipation and prevention from the start, rather than remediation later, is a core component of sustainable development.

# Appendix A

## NAFTA's Intergovernmental Bodies

*[Note: The Article authorizing the creation of the body, and the organization or commission to which it reports are listed in parentheses.]*

### Free Trade Commission [FTC]

NAFTA Coordinating Secretariat

FTC Secretariat (Article 2002)

Committee on Trade in Goods (Article 316, Finance)

Working Group on Rules of Origin (Article 513, DFAIT)

Customs Subgroup (Article 513.6, Revenue)

Committee on Trade in Worn Clothing (Annex 300-B, Industry)

Committee on Agricultural Trade [CAT] (Article 706, Agriculture and DFAIT)

Working Group on Agricultural Grading and Marketing Standards  
(Annex 703.2.25, Agriculture and DFAIT)

Working Group on Agricultural Subsidies (Article 705.6, Agriculture and DFAIT)

Advisory Committee on Private Agricultural Disputes (Article 707, Agriculture and DFAIT)

Working Group on Tariff Rate Quota Administration (CAT, Agriculture and DFAIT)

Committee on Sanitary and Phytosanitary Standards [CSPS] (Article 722, DFAIT, Agriculture)

Technical Working Group on Pesticides (created jointly by CSPS and CSRM)

Trilateral/Bilateral Working Groups adopted from Canada–US FTA (FTA Article 708, DFAIT):

Meat, Poultry and Egg Inspection Working Group (CSPS)

Plant Health, Seeds and Fertilizers Working Group (CSPS)

Animal Health Working Group (CSPS)

Dairy, Fruit and Vegetable Inspection (CSPS)

Veterinary Drugs and Feeds (CSPS)

Food, Beverage, Color Additives and Unavoidable Contaminants (CSPS)

Packaging and Labeling Working Group (CSPS)

Fish and Fisheries Products Inspection (CSPS)

Committee on Standards-Related Measures [CSRM] (Article 913, DFAIT)

Land Transportation Subcommittee [LTSS] (Annex 913.5. a-1, Transport and DFAIT)

LTSS I Driver and Vehicle Safety Compliance  
LTSS II Vehicle Weight and Dimension  
LTSS III Road Signs  
LTSS IV Rail Operations  
LTSS V Committee on Transportation of Dangerous Goods  
Telecommunications Standards Subcommittee (Annex 913.5, a-2, Industry)  
Automotive Standards Council (Annex 913.5.a-3, Industry, Transport)  
Textile/Apparel Labeling Subcommittee (Annex 913.5.a-4, Industry)  
Working Group on Government Procurement (Article 1021, DFAIT)  
Committee on Small Business (Article 1021, DFAIT)  
Financial Services Committee (Annex 1412.1, Finance)  
Working Group on Trade and Competition Policy (Article 1504, DFAIT, Industry)  
Working Group on Temporary Entry (Article 1605, Citizenship and Immigration)  
Advisory Committee on Private Commercial Disputes (Article 2022, DFAIT)  
Working Group on Emergency Action (Article 2001(2)(d), Finance)  
Working Group on Subsidies and Countervailing Duties (Joint Statement 12/2/93)  
Working Group on Dumping and Antidumping Duties (Joint Statement 12/2/93)  
Working Group on Investment and Services (Chapter 11 and 12)

#### **Commission for Environmental Cooperation [CEC]**

CEC Council (NAAEC, Article 9-10)  
CEC Secretariat (NAAEC, Article 11)  
Joint Public Advisory Committee [JPAC] (NAAEC, Article 16)  
National Advisory Committees [NAC] (NAAEC, Article 17)

#### **Commission for Labor Cooperation [CLC-not discussed in this report]**

CLC Council  
CLC Secretariat  
National Advisory Committees [NAC]

### Review Processes

Long-term review process—Automotive (Annex 300-A, paragraph 2)

Long-term review process—GATT (Annex 300-B, Section 7.3)

### NAFTA-Inspired Institutions

Energy Efficiency Labeling Group

Health Group

Transportation Consultative Group

Border Environment Cooperation Commission [BECC—not discussed in this report]

North American Development Bank [NADBank—not discussed in this report]

Working Group on Dumping and Antidumping Duties (Joint Statement 12/2/93)

## Appendix B Overview of NAFTA'S Institutions

### Free Trade Commission

- *Mandate and obligations:* Serves as central NAFTA institution and trade commission; composed of cabinet-level representatives, governs the institutions framework
- *Meetings:* January 1994, April 1994, June 1995, March 1997
- *Activities and achievements:* Has set broad policy direction for NAFTA institutions
- *Multistakeholder participation:* N/A
- *Interagency participation:* N/A
- *Relationship with international organs:* N/A

### FTC Secretariat

- *Mandate and obligations:* Supports FTC, working groups, committees; provides administrative support for Chapter 19/20 panels; acts as depository for Chapter 11 disputes
- *Meetings:* N/A
- *Activities and achievements:* Secretariat arms established in each country provide administrative support

- *Multistakeholder participation:* N/A
- *Interagency participation:* Canadian and US initiative to increase such participation
- *Relationship with international organs:* N/A

### NAFTA Coordinating Secretariat

- *Mandate and obligations:* Provides general administrative support; acts as a clearinghouse and central repository for NAFTA documents and data
- *Meetings:* N/A
- *Activities and achievements:* (Secretariat not yet established)
- *Multistakeholder participation:* N/A
- *Interagency participation:* N/A
- *Relationship with international organs:* N/A

### Committee on Standards-Related Measures

- *Mandate and obligations:* Monitors implementation and administration of Chapter 9 of NAFTA (Technical Barriers to Trade); considers nongovernmental developments in standards-related measures; reports annually to FTC
- *Meetings:* Held on average three times a year
- *Activities and achievements:* Co-created Technical Working Group on Pesticides; monitors the work of its four subcommittees; discusses trade irritants
- *Multistakeholder participation:* Has worked closely with the North American Environmental Standards Working Group of the North American Trilateral Standardization Forum
- *Interagency participation:* Through its subcommittees
- *Relationship with international organs:* Through its subcommittees

### Land Transportation Standards Subcommittee

- *Mandate and obligations:* In general, renders compatible the Parties' relevant standards-related measures on bus, truck and rail operations, and transportation of dangerous goods; specifically, implements a work program for compatibility of vehicle standards by January 1997 and for compatibility of standards for the transportation of dangerous goods by January 2000
- *Meetings:* June 1994, 1995, 1996

- *Activities and achievements:* specific mandates accomplished, except that for vehicle emissions which is now covered by the Automotive Standards Council; established and monitors five working groups
- *Multistakeholder participation:* Industry consultations in all countries
- *Interagency participation:* Through its working groups
- *Relationship with international organs:* Through its working groups

### Working Group on the Transportation of Dangerous Goods

- *Mandate and obligations:* Implements a work program that makes compatible the Parties' relevant standards-related measures for the transportation of dangerous goods
- *Meetings:* Approximately three a year
- *Activities and achievements:* Developed a regime to deal with the transportation of hazardous materials, including publication of an Emergency Response Guidebook; has made substantial progress on a North American Transportation of Dangerous Goods Code
- *Multistakeholder participation:* None
- *Interagency participation:* Overlaps with environmental departments
- *Relationship with international organs:* UN consultation

### Automotive Standards Council

- *Mandate and obligations:* Facilitates the implementation and review of standards-related measures that apply to automotive goods
- *Meetings:* Three held since January 1994
- *Activities and achievements:* Has developed a list of 17 regulatory issues for focus and established four working groups
- *Multistakeholder participation:* Has solicited wide participation from interested parties, including industry and subnational government agencies
- *Interagency participation:* Has consulted with environmental departments
- *Relationship with international organs:* None

## Committee on Sanitary and Phytosanitary Standards

- *Mandate and obligations:* Facilitates technical cooperation for the enhancement of food safety; holds consultations on sanitary and phytosanitary measures
- *Meetings:* Six held since January 1994
- *Activities and achievements:* Has removed many trade irritants and successfully resolved potential disputes; has provided scientific risk assessments and advice; has harmonized technical regulations and collective regional action
- *Multistakeholder participation:* N/A
- *Interagency participation:* N/A
- *Relationship with international organs:* Overlaps with GATT/WTO, APEC and NAPPO

## CSPS Technical Working Groups

- *Mandate and obligations:* Deals with specific issues on plant and animal health
- *Meetings:* Informal meetings held as issues arise
- *Activities and achievements:* Has established nine technical working groups to serve as forums for the resolution of technical issues in specific areas [these nine groups include the Technical Working Group on Pesticides, see below, jointly constituted by the CSRM and the CSPS]
- *Multistakeholder participation:* N/A
- *Interagency participation:* Some coordination with Environment Canada
- *Relationship with international organs:* N/A

## Technical Working Group on Pesticides

- *Mandate and obligations:* Examines pesticide regulations in each country; harmonize registration of pesticides; establish maximum residue limits
- *Meeting:* March 1996
- *Activities and achievements:* Implemented a program for review of reduced-risk pesticides and an agreement for the exchange of confidential business information; developed zone maps to facilitate development and exchange of pesticide residue data; harmonized environmental/ecotoxicological data requirements.
- *Multistakeholder participation:* Broad environmental NGO representation
- *Interagency participation:* Extensive consultation with environmental departments in respective countries; some work with CEC
- *Relationship with international organs:* Consultation with *Codex Alimentarius*

### Committee on Agricultural Trade

- *Mandate and obligations:* Monitors and promotes cooperation on implementation and administration of agricultural trade and provides a forum to consult on related issues; reports annually to the FTC
- *Meetings:* Four held in 1996
- *Activities and achievements:* Has discussed trade-related SPS measures, tariff rate quotas, and subsidies; established working groups on agricultural subsidies, agricultural grading and marketing standards, and tariff rate quota administration, as well as an Advisory Committee on Private Agricultural Disputes
- *Multistakeholder participation:* N/A
- *Interagency participation:* N/A
- *Relationship with international organs:* N/A

### Committee on Trade in Goods

- *Mandate and obligations:* Assumes responsibility for issues related to customs, immigration, inspection of food and agricultural products, border inspection facilities and transportation regulation
- *Meetings:* Five held since January 1994
- *Activities and achievements:* Has accelerated over a billion dollars in trade through accelerated tariff reduction
- *Multistakeholder participation:* Features substantial participation by industry and private sector interest groups
- *Interagency participation:* N/A
- *Relationship with international organs:* N/A

### Transportation Consultative Group

- *Mandate and obligations:* Deals with non-standards-related transportation issues (outside NAFTA structure)
- *Meetings:* Held immediately before or after LTSS meetings
- *Activities and achievements:* Has established five working groups on: operational aspects of transportation; border facilitation; automation; science and technology; and maritime matters
- *Multistakeholder participation:* N/A
- *Interagency participation:* N/A
- *Relationship with international organs:* N/A

### Energy Efficiency Labeling Group

- *Mandate and obligations:* (Outside NAFTA structure, Canada-US only) Harmonizes energy efficiency labeling requirements
- *Meetings:* None held to date
- *Activities and achievements:* N/A
- *Multistakeholder participation:* N/A
- *Interagency participation:* N/A
- *Relationship with international organs:* N/A

### Health Group

- *Mandate and obligations:* (No relationship to NAFTA) Serves as consultative mechanism among national health departments
- *Meeting:* 1996
- *Activities and achievements:* Has examined issues related to health standards
- *Multistakeholder participation:* N/A
- *Interagency participation:* N/A
- *Relationship with international organs:* N/A

### Commission for Environmental Cooperation

- *Mandate and obligations:* Exercises broad regional environmental governance
- *Meetings:* Annual Council meetings
- *Activities and achievements:* Extensive ongoing activities covering a broad range of issues and areas; numerous achievements
- *Multistakeholder participation:* Consistent broad community, industry and environmental NGO participation
- *Interagency participation:* Consults with environmental departments and relevant NAFTA committees such as the Technical Working Group on Pesticides
- *Relationship with international organs:* N/A

# Appendix C

## Interview Questionnaire

The interview program was designed to complete and provide context to the information publicly available from a variety of governmental and other sources. The interviews primarily are aimed at securing a comprehensive, detailed and accurate factual descriptive review of what has been and is happening.

1. How often has this body (committee/subcommittee/working group) met? When and where has it met?
2. Who participated in the meetings?
3. What were the major agenda items discussed at the meetings?
4. What were the major priorities of the members?
5. In these meetings, was there any discussion of the environmental aspects of the agenda items?
6. Has there been any discussion of environmental subjects this body might take up or of bodies that might be created?
7. What are the deadlines for specific work in the committees?

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