

Abstract

of paper proposed for the

Commission for Environmental Cooperation's
**North American Symposium on Understanding
the Linkages between Trade and Environment**

Analysis of Links between NAFTA and Environmental Law

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The trade and environment relationship has numerous dimensions. The essential question for this research proposal is: in what circumstances, *if any*, do the trade disciplines in NAFTA constrain or inhibit environmental law-making or administrative decision-making?

At least one recent analysis argues that the development of international trade law through the World Trade Organization has not had any negative impacts on the ability of governments to regulate or otherwise take steps to manage the environment, as long as the law-making is done in accordance with WTO obligations.¹ This conclusion begs the question as to whether those obligations themselves have an impact on the efficacy and timeliness of the environmental law-making function.

The research proposed here would examine this question in the NAFTA context, drawing upon the author's expertise and personal experience in international trade law and environmental law development, his participation in CEC comparative law projects, and the literature on the Mexican, Canadian and United States environmental law systems. A legal analysis of the points of intersection between the NAFTA disciplines and the major forms of environmental legislation would provide the central theme of the analysis. If this analysis suggests that constraints on environmental law making do arise from the trade law disciplines, a second line of analysis would be established. This would consider the importance of those impacts from an environmental law and policy perspective. Questions that might be posed here include whether useful alternative approaches can be developed, or whether the constraints lead to the dropping of that area or type of policy-making? A third line of questioning that might be considered, whether trade liberalization has created additional stresses on the ability of regulators to regulate, would be an interesting additional element here, but would require significant additional research and one-on-one discussions that would exceed the anticipated budget for this proposal.

The research proposed here is seen as related to several sections of the Analytical Framework, but would be geared primarily to two of them:

- Section III B, NAFTA's Institutions; and
- Section IV D, Government Policy.

The analysis conducted under this proposal will seek to provide conclusions relevant to each of these sections.

¹ *Retrospective Analysis of the 1994 Canadian Environmental Review, Uruguay Round of Multilateral Trade Negotiations*, Department of Foreign Affairs and International Trade, November 1999.