

The North American Commission
for Environmental Cooperation:
Early Implementation

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Report and Recommendations

from a Workshop sponsored by

THE NORTH AMERICAN INSTITUTE
VANCOUVER, BRITISH COLUMBIA
MARCH, 1994

Edited by Rod Dobell and Michael Neufeld

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Cooperation: Early Implementation

A Report and Recommendations from a North American
Institute Workshop, Vancouver, British Columbia.

March, 1994.

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STATEMENT BY THE NAMI CO-CONVENERS

In March of 1994 the North American Institute convened a meeting of over 25 environmental experts from Canada, Mexico and the United States, in Vancouver, British Columbia, in order to provide a forum for discussion of the North American Commission for Environmental Cooperation (CEC) and the early implementation of its initial workplan. NAMI would like to thank the participants in this Workshop - drawn from the governmental, academic and non-governmental sectors and private industry in North America - whose knowledge and insight contributed to the success of the Workshop upon which this report is based.

The trilateral CEC, established under the North American Agreement on Environmental Cooperation, was designed to promote sustainable development and enhance compliance with environmental laws and regulations within the North American community. Both the spirit and the letter of the Agreement empower the CEC to act as more than a watchdog for the North American environment under NAFTA. Instead, CEC can be seen as a first step toward more effective cooperation generally within North America.

The CEC, and the character of NAFTA itself, reflect the insistence of the environmental community in North America that environmental concerns receive prominence on the international trade agenda. This growing desire to see environmental concerns adequately addressed in all trade, development and commercial arrangements was the result of frustrations with existing trade agreements as well as the concern that enforcement of existing environmental laws might, in some cases, be less than rigorous. As a result of these concerns, the concerted and effective effort expressed by the environmental community in North America is in large part responsible for making the NAFTA what some characterize as the world's first "green" trade treaty.

At the time of the planning for the NAMI Workshop, however - held just prior to the meeting of the Council on Environmental Cooperation in Vancouver - there existed a concern that the momentum of North American cooperation in this area might be diminishing. While the NAFTA and its side agreements came into force on January 1, 1994, the inaugural meeting of the Council on Environmental Cooperation - a necessary first step in establishing the CEC and launching its work program - had not yet been scheduled. It was the desire to re-establish the momentum behind CEC that provided the motivation for the Workshop's focus on early initiation and implementation.

The Workshop discussions, notes from which have been summarized briefly in this document, generated a useful exchange of views and concerns with respect to the Commission and its initial workplan. The main results of the Workshop are set out in the Chairman's Statement - also included in this document - along with a copy of the program schedule which provided the framework for the meeting.

Immediately following these discussions, the Chairman's Statement and a summary were drafted and reviewed by some, though not all, workshop participants. From there, they were conveyed to the three senior officials supporting the meeting of the Council on

Environmental Cooperation - comprised of Canada's Environment Minister Sheila Copps, Mexican SEDESOL Secretary Carlos Rojas, and US-EPA Administrator Carol Browner - with the hope and intent that the NAMI Workshop position would be taken into account in the Council's deliberations.

Perhaps as a reflection of both the degree to which the North American Institute is respected as a representative tri-national institution, and also of the ability of the NAMI Workshop participants to achieve a realistic appreciation of the challenges and responsibilities faced by the CEC, the communique that was released following the meeting of the Council is to a remarkable degree similar to the NAMI Workshop recommendations.

While the NAMI Vancouver Workshop was concerned with procedural issues and start up of the initial workplan of the CEC - and to the degree that the Council meeting of the Ministers addressed these issues in its communique - attention must now shift to monitoring progress with respect to the substantive work program of the CEC. This first year of the Commission is perhaps its most crucial, especially in terms of the influence the initial Executive Director will hold over its scope and range of authority.

In light of this importance, it will be useful for the North American Institute to build upon the foundation established by its February 1993 Santa Fe Colloquium on Trilateral Environmental Cooperation and this March 1994 Vancouver Workshop - both of which seem to have proved influential with respect to the institution and development of CEC - by convening a meeting in early 1995, perhaps in Mexico, to review the progress of the CEC in its first year and to provide recommendations for future action. In this way, the North American Institute could continue to encourage the development of this very important tri-national institution, and contribute to the continuing monitoring process that will be necessary to ensure that the CEC achieves as much as its proponents envisaged.

Such review should do more than simply ask: "has the North American environment deteriorated under NAFTA?" The North American Commission for Environmental Cooperation - with broad and intensive public participation and continuing rigorous scrutiny - has the potential to become exactly what its mandate intends: a framework for regional cooperation and a mechanism for promoting and ensuring a more sustainable North America.

Senator Jack Austin
Co-Convener Canada

Dr. George Cowan
Co-Convener United States

Lic. Emilio Carrillo
Gamboa
Co-Convener Mexico

SUMMARY OF RECOMMENDATIONS

There should be early activation of the Commission for Environmental Cooperation with a continued high level of Ministerial involvement. It is hoped that the first regular Council meeting will occur by the end of 1994, and that the Secretariat can be activated by June 5, 1994.

1. INITIAL TASKS IN ACTIVATING THE CEC

- a. With respect to the Secretariat, by June 5, a qualified Executive Director who has credibility and support among the environmental communities of all three countries should be selected, an adequate budget should be provided and the site of the Secretariat should be determined.
- b. A Public Advisory Committee, composed of distinguished individuals with expertise in environmental matters, should also have been activated by June 5.

2. PUBLIC PARTICIPATION

- a. Guidelines for the Public Advisory Committee should aim at broad public participation in the work of the CEC, as spelled out in the Agreement.
- b. The CEC needs to build public awareness of its role. This could include exploration, with member countries, of non-governmental environmental activities to be endorsed by the CEC and eligible for awards. This would also serve as a catalyst for initiatives at the grassroots level.
- c. With respect to setting up National Advisory Committees, members may prefer to use existing consultative mechanisms.

3. PRIORITY AREAS

The CEC should initially focus its efforts in the following areas:

THIS STATEMENT WAS DRAFTED AND APPROVED BY SOME, THOUGH NOT ALL, OF THE WORKSHOP PARTICIPANTS FOLLOWING THE CONCLUSION OF THE WORKSHOP.

cooperative assistance,
compliance and enforcement, and
NAFTA follow through.

4. COOPERATIVE ASSISTANCE

- a. The Council should seek lists of priorities from the Joint Public Advisory Committee and the Secretariat, as well as invite public comment on priorities. The Council should identify its initial priorities following this review.
- b. The CEC should serve as an information clearing house and catalyst to identify and promote best environmental practices, as well as industry voluntary standards.
- c. The Council should work to develop a set of indicators and benchmarks appropriate to promote and compare environmental quality and prospects for sustainable development.
- d. The CEC should give priority to mobilizing training in critical environmental problem areas, utilizing rapidly developing North American programs in this area. It should also facilitate access to remedial technology and circulate information on standards.
- e. The CEC should maintain a directory of the principal sources of environmental assistance (e.g.: private groups and NGO's, bilateral groups, and multinational and national financing sources) available to members and their entities.

5. COMPLIANCE AND ENFORCEMENT

- a. The CEC should encourage and assist member countries to hold workshops on problems of achieving compliance and enforcement, and to invite submissions by the National Advisory Committees and all interested groups.
- b. The Secretariat should develop criteria for data on enforcement programs in member country environment reports.

6. NAFTA FOLLOW THROUGH

- a. The CEC's role with respect to NAFTA, as detailed under Section 10(6) of the side agreement, should be spelled out in guidelines.

7. SUB-FEDERAL GOVERNMENTAL INVOLVEMENT

- a. In its activities, the CEC should seek appropriate sub-federal involvement in the work of the Commission.

KEYNOTE ADDRESS
FRAMEWORK FOR TRI-NATIONAL COOPERATION
ON ENVIRONMENTAL ISSUES IN NORTH AMERICA [EXCERPT]
HON. TOM MCMILLAN

THE environmental side agreement to the NAFTA creates the operating framework for tri-national cooperation on environmental issues and the means to ensure that Canada, Mexico, and the United States respect and enforce their environmental laws. The North American Commission for Environmental Cooperation (CEC) establishes the mechanism by which each of the three countries will consult one another on all relevant questions and resolve disputes that inevitably will arise. The Commission will consist of a Council comprised of cabinet-level representatives from each country, as well as a central Secretariat and a Joint Public Advisory Committee (JPAC). This multi-faceted Commission will set out a broad cooperative work program and detail the obligations of all three countries to ensure compliance with their respective domestic environmental laws and policies. The overall goal is to have a practical framework to promote sustainable development on a continental basis in the context of enhanced trade under the NAFTA.

For Canada, a particular objective among others is to enhance cooperation between Ottawa and the provinces on hemispheric environmental issues. We must all know that the environment is not the preserve of the federal government. It is shared jurisdiction, and much of the legal force belongs to the provinces. Unless there is an integrated approach by the federal government and the provinces, the structure will amount to naught. Some of the provinces are eager to participate; others are ambivalent; still others prefer that the whole business go away so they wouldn't have to decide whether to be involved.

It should be clearly understood that all of this — the Commission, the side agreement, the

FORMER MINISTER OF THE ENVIRONMENT, GOVERNMENT OF CANADA, FIRST ELECTED TO THE HOUSE OF COMMONS IN THE GENERAL ELECTION OF 1979, THE HONOURABLE TOM MCMILLAN WAS RE-ELECTED IN 1980 AND SERVED AS ENVIRONMENT CRITIC, AND THEN DEPUTY HOUSE LEADER FOR THE PROGRESSIVE CONSERVATIVE PARTY IN OPPOSITION. FOLLOWING HIS RE-ELECTION IN 1984, MR MCMILLAN SERVED AS CANADA'S MINISTER OF TOURISM. HE BECAME MINISTER OF THE ENVIRONMENT IN 1985, AND SERVED IN THAT POSITION UNTIL 1988.

environmental provisions of the NAFTA more generally is not mere window-dressing on the NAFTA facade. The CEC, through its Council, will establish limits for specific air-borne pollutants, launch environmental assessments of projects with transboundary impacts, and provide reciprocal court and legal access for injuries caused by transboundary pollution. The public will be actively involved through the Secretariat, which will support the Council in its daily operations. The Secretariat, located in Montreal, will receive submissions directly from individuals or from nongovernmental organizations that allege a law is not being enforced in a particular country at a particular time. The JPAC, comprised of five representatives from each country, will provide technical, scientific, or other advice to the Secretariat. Although its full mandate is yet to be finalized, the JPAC, presumably, will help the Secretariat prepare its annual work program and budget.

The Council will have the authority to create working groups or committees. NGOs, including NAMI, will find this a valid and very valuable route for influencing everything from broad policy to dispute resolution. If the Council is unable to resolve a trade-related environmental dispute, it may, by a two-thirds vote, convene a dispute settlement panel, whose findings will be made public. It may well be in this area that the three countries will have the most difficulty agreeing on practical arrangements. Should a panel find the offending country is persistently failing to enforce its environmental laws, it may impose multi-million-dollar fines. In the case of Mexico and the United States, it may suspend the NAFTA benefits, and even impose duties and other trade sanctions should these fines not be paid.

In Canada's case, enforcement will ultimately be provided by domestic courts; this provision was a significant gain for Canada in the trilateral negotiations that led up to the agreement. The enforcement provision agreed to for Mexico and the United States was highly offensive to the Canadian negotiators. Among other reasons, there was the fear that tariffs and non-tariff barriers would be reintroduced through the back door in the name of the environment, when, in fact, the real motivation behind such steps might not be environmental protection but protectionism. For their part, the provinces and territories of Canada are being encouraged by the federal government to participate in the implementation of the agreement, just as they had been actively involved in shaping Canada's position through prior negotiations.

In the final analysis, as is typical in all such public bodies, how the CEC functions in the real world will have less to do with formal structures than with the human element. Political will in all three countries will be the most important single factor. Environment-

minded citizens have to be vigilant. They also have to be realistic they mustn't play the role of Pollyanna. But, at this stage, at least, we have the need and cause for optimism.

It must be remembered that the side agreement on the environment was itself a product of political will. President Clinton had insisted on it as the price for signing the NAFTA negotiated by his predecessor. Mr. Clinton, in turn, was responding to pressure from the public, particularly labour unions and environmentalists concerned that the environmental provisions of the NAFTA were not strong enough to guard against pollution that might be created in Mexico as a result of the elimination of tariffs under the agreement. While, in Canada, the NAFTA debate was nothing like the debate that buzzed around the Canada-United States Free Trade Agreement (FTA) of 1988, in the U.S., there were deep-seated concerns among environmentalists, labour union leaders and the rank and file, and among the public at large that, somehow, the NAFTA would reduce the capacity of the United States to protect its own environment. The side agreement was very much driven by politics. To his credit, Canada's newly-elected prime minister, Jean Chrétien, held out signing the NAFTA negotiated under *his* predecessor's government until Chrétien's concerns about the environment and other matters were met through appropriate interpretations of the parallel accords.

Thus it is evident how political will is already very much a part of the total piece, just as it will have to be later if the thing is to work. For their part, Mexican political leaders are sensitive to American and Canadian political realities in the environmental field. The Mexican political leadership is very politically astute and aware, qualities that they apply well beyond the borders of Mexico. Mexicans are facing many of the same political realities at home as Mexico's environmental movement steadily grows. As Manuel Alguerra, a leading Mexican environmentalist, stated, "I can't imagine American companies lowering their standards in Mexico without political and social punishment in Mexico itself."

Political will needs to be reflected in the quality of personnel recruited for the Commission, not only at the staff level, but at the executive level as well. Presumably, how each country selects its representatives will be tied to its own domestic political culture, the particularities of its political system and, of course, partisan politics. But it is vital that all three countries be committed to ensuring that the very best men and women are placed in the positions that will make or break the total system. That is especially true in the early stages. The Canada-U.S. International Joint Commission, which oversees the bi-national Great Lakes Water Quality Agreement, is instructive in this connection. On the whole, the IJC has worked well, and the quality of commissioners has been high. Unfortunately, however, the U.S. and Canadian governments have occasionally appointed to the

Commission people whose main credential was loyalty to the party in power rather than commitment to the environment. NGOs and NAMI must be especially vigilant on this score. The long-term success of the Commission depends a lot on how the public views it at the outset. Once discredited, a body of this sort is rarely able to regain the public respect necessary for it to be effective. It is vital, therefore, that NGOs and the provinces be not only consulted but actively involved in the entire appointment and recruitment process, even to the point of being directly represented on the various bodies that make up the Commission.

The Canadian-American-Mexican experiment in pan-continental environmental cooperation through the NAFTA is nothing less than trailblazing. Canada and the United States have a long and relatively successful tradition in this field of public policy. So, we do not approach the CEC agreement without experience. What we have to demonstrate is a willingness and a capacity to broaden this experience. As we do so, we must avoid the temptation to have the Commission attempt more than it was devised to do, or could possibly be reasonably expected to do under any practical circumstances.

Is the Commission to be a watchdog? a policeman? a judge and jury? an enforcer? There is an element of each of those roles in its mandate. But the Commission must operate in the context of the NAFTA. It is not a stand-alone-operation. It cannot usurp the role, for example, of domestic bodies like Environment Canada or the U.S. Environmental Protection Agency. Nor should its effectiveness be judged only by whether say, ten years down the road the environment is better or worse than it was before the Commission was established.

Obviously, if the environment is not improving or is deteriorating in ten year's time, that would be *prima facie* evidence that something is not working very well. But that is not the only criterion. The overall health of the environment on the continent in the years ahead will depend on the effectiveness of many other entities. What is relevant is whether the Commission succeeds in ensuring that the NAFTA is implemented in a way that respects the environment of all three countries. We have to keep our eye on the ball. We are talking about free trade, the NAFTA, and the environment as integrated pieces of a total puzzle. As then-Canadian International Trade Minister Tom Hockin said following the signing of the legal text of the North American environment and labour side agreements, "while the NAFTA sets the stage for economic growth through exports, the two agreements help to ensure that this growth will not come at the expense of workers' rights or the environment. They are important parts of a positive, future-oriented approach to growth, sustainable development, and human dignity."

Many environmentalists oppose the FTA and the NAFTA on the grounds that free trade and environmental protection are allegedly exclusive values. This is false. There is nothing inherently environmentally dangerous about free trade. It depends on the particular trade agreement in question and how it is implemented. Indeed, to the extent that a free trade agreement makes a country or a continent more competitive with the rest of the world, environmental goals can, in fact, be advanced by the agreement, provided the proper safeguards are woven into the very fabric of the agreement itself. It can be argued that only a society that is competitive can afford to care for the environment by the highest possible standard.

During the debate on the FTA, many environmentalists in Canada feared it would force Canadians to harmonize their environmental laws with American environmental laws, based on the lowest common denominator, which was commonly thought to be the American standard. Canadian environmentalists said much less along the same lines in the context of the NAFTA, but the same fears remain in some quarters to this day. Forget for a moment that American laws are often stronger than those in Canada. In fact the FTA, under the section on exemptions, stated in clear, concise language that either Canada or the United States would be free to take any import- or export-control measures otherwise prohibited by the agreement, such as measures to protect the environment or endangered species, if they could be shown to be necessary to protect human, animal, or plant life or health.

The same spirit pervades the NAFTA. Indeed, the language is even stronger to that effect. So, in no way will the CEC be engaged in harmonizing, let alone reducing to the lowest common denominator, environmental laws and standards throughout North America. Even if such were the intent, the exercise would be futile from the start. Environmental laws in Canada and the U.S. and Mexico are typically too specific to local conditions, as they have to be, to be readily and easily harmonized, even from state to state or from province to province within a country, much less from one country to another. A more legitimate concern to which the Commission will need to be sensitive has to do with the huge discrepancy between Canada and the United States on one hand and Mexico on the other regarding not so much the strength of environmental laws as the vigour with which they are enforced. Mexico does not lack strong environmental laws; it may lack strongly-enforced environmental laws.

The environmental havoc wreaked by the maquiladora already in operation along the

U.S.-Mexico border causes people to worry that the NAFTA might turn all of Mexico into one large maquiladora. The argument is that Canadian and U.S. companies eager to avoid environmental regulations in their own countries would move their factories to Mexico, thereby excreting air and water contamination throughout the continent. This argument, of course, ignores the fact that Canadian and U.S. plants have been relocating to southern climes like Mexico even without the NAFTA. Over the years, there has been a steady erosion of the industrial base from the north to the south, including Mexico, because production costs are generally lower there for reasons that have little to do with the environment.

As we assess how the Commission is going to operate, we have to take into account some of these realities. The NAFTA actually makes it easier to deal with this phenomenon, as far as Mexico is concerned, because now, through the side agreement, there are specific environmental rules and mechanisms to address the problem. Also, as the Mexican economy grows, Mexico will be better able to afford the high cost of fighting pollution. The playing field will then become more level for all three countries, in so far as the environment is concerned. To the extent that there is any incentive for a Canadian or American firm to move to Mexico because standards are lower there, that incentive will gradually wear thin. Economic growth and protection of the environment are not alternatives, but complementary. By removing economic distortions and by encouraging more efficient use of resources, free trade should make good environmental as well as good economic sense.

Let me conclude by suggesting some general principles by which the CEC should operate. First, it is vital that the Executive Director be familiar with environmental laws and policies throughout North America. He or she should not be a mere political or partisan tool of the host government. The individual should also have credibility in the partnership countries.

Second, representatives of each of the countries on the Commission and on each of its bodies should be selected for their commitment to the environment. A combination of experts and citizen-activists would be ideal.

Third, NGOs must be plugged into the entire system, both through direct representation in the formal structures and through consultative arrangements. Such arrangements will be meaningless, however, unless intervenor-type funding is made available for this purpose by all three governments.

Fourth, in all three countries, the responsibility for the environment is shared to a greater or lesser extent between the national government and the constituent jurisdictions. The provinces or states must be actively involved in all facets of the Commission's operations. Federal-provincial consultation in the area of personnel recruitment will be especially important, particularly at the outset.

Fifth, this is a new era in the multilateral management of the continent's environment. So, new approaches will need to be developed. Most important, we all need to be thinking in a continent-wide context.

A lot of thinking has gone into the CEC and a certain amount of detail has been worked out and agreed upon by all three partners. Many details, however, remain to be sorted out. Some of the details will become clear only after the beast is actually off and running.

WORKSHOP PRESENTATIONS

INTRODUCTION: THE TASKS AHEAD

ALAN HECHT

THERE is still a lot to be done to get the Commission up and running. We are at a very significant beginning for dealing with trilateral environmental issues. While the agreement was concluded and signed in August and then ratified in November, a lot has been left unsettled. For example, there are no agreements on the size of the Secretariat or the budget. Those two issues are small compared to the discretionary activities that need to be defined in terms of the work plan of the Council. The Council has a number of obligations to pursue, but there are a lot of discretionary activities that have yet to be decided.

So, the NAFTA debate is not really over. Phase one is over we have the agreement; phase two, the implementation phase, is the phase we are in now, and, clearly, there are a lot of issues and concerns which can only be resolved by setting the institution up and letting it run. By that we mean who is the executive director; from which country is he or she to come; how will that person interact with the three environment ministers; what role would he or she play in the course of setting the Council's program; what are the dynamics between the Council and the Secretariat; what will be the size of the budget; and what will be the degree of interaction between the Secretariat, the commission, and the public advisory group?

Behind all of this, there still is a concern over whether this will be an independent body, and, if so, how independent; and whether it will be used to provide a forum for dealing only with findings and enforcement actions flowing from the NAFTA itself.

We have to accept the fact that there is a certain amount of solidification that will come with growth. Right now, we are at the stage of trying to provide the right kind of framework within which all of this will evolve. A key to the success of the CEC is selecting an executive director, a process which will take some time.

There are a number of other issues that have to be settled. First, there are the operating

**ACTING ASSISTANT ADMINISTRATOR AND PRINCIPAL DEPUTY ASSISTANT
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rules and procedures and common issues that pertain to all three countries in their relation to the secretariat. A lot is fairly straightforward, but there is a large amount of discretion in where NGOs and the public can have access to and involvement in meetings.

The size of the budget, the work plan, and the organization of the Secretariat are crucial issues. There is a big gap among the three countries in what the proposed funding might be for the Environment, Labor and Trade Secretariats, and within discussions for the CEC. The Labour Commission has agreed to a \$200,000-per-country budget for the first year \$600,000 for 1994, a number significantly less than that proposed for the Commission for Environmental Cooperation.

The executive director is crucial. The Environment Commission cannot settle the problem alone, because it also affects the Labour and Trade commissions. There is legal documentation establishing the labour and environment side agreements. The Trade Secretariat is an oral agreement, and its function really is to coordinate among the national sections of the NAFTA trade secretariats.

Besides establishing the rules and procedures, the role and size of the Secretariat, the executive director, the work plan of the Council, the Joint Public Advisory Council (JPAC), and the budget, we have to set the date and time to hire the person, have a regular session which should be concurrent with the JPAC appropriate some funds for 1994, and get on with the work. We are talking about a process that could take us to the end of the year.

CANADIAN PERSPECTIVE ON SOME KEY POINTS
NICK MULDER

CANADA'S suggestion regarding the executive director's position is that it should be filled initially be a nominee from the host country of each of the Secretariats, and that we then wait to see where that leads. Whoever it is, it should be uppermost in our minds that the executive director must have impeccable environmental credentials and international experience.

Regarding the budget, it is important to realize that the three Secretariats are very different. The Commission on the environment side is different in substance and complexity from the labour and trade Commissions. It should have a sizable budget roughly \$6 million U.S. in the first year or so, working up to \$15 million annually enough money to allow the Commission to hire good staff and produce good results.

A lot of importance should be attached to the work plan priorities. If you set the right kind of work agenda, that also influences the size of the budget and, in particular, the kind of people you want to hire. All three countries have lists of priorities, which consist of things the Commission *shall* do versus the things that it *may* do. We should deal with such things as transboundary issues, e.g. putting limits on specific pollutants, particularly airborne pollutants and others that have transboundary implications. We also want to deal with production process issues, eco-labelling, standardization, and ensuring that we are not imposing trade sanctions.

Canada's proposal is for balanced representation among the five members from each country on the Joint Public Advisory Committee: e.g. one from environmental groups; one from business; one from the academic community; one from the aboriginal community; and, perhaps, a labour representative.

The role of the provinces and the territories is very important to Canada. Within

DEPUTY MINISTER, ENVIRONMENT CANADA.

the federal structure of Canada, the provinces have a lot more jurisdiction and clout than in the United States or the subnational governments of Mexico. We are working with the provinces in developing an understanding, an agreement, as to how they would play a role in the CEC.

If the Commission is successful, it could be used as a model for elsewhere. Over the next decade, trade and environment linkages are going to be among the top two or three issues in the international trade community. A lot of work has to be done in linking trade and environment issues. A lot of countries are looking at this model to see whether it is applicable elsewhere in terms of trade arrangements among a limited number of countries.

THE PERSPECTIVE OF ENVIRONMENTAL GROUPS
JANINE HELENE FERRETTI

THE perspectives of environmental groups on the CEC are in two categories. The first relates to the context of how the Commission has come about. The second are the tell-tale signs of success that we should look for a year from now.

To judge where the Commission is going, we should look from whence it came. Environmental groups pushed the development of the Commission for a number of reasons. First, there are regional environmental problems that have not been dealt with because - excluding those of the Great Lakes Water Quality Agreement, the IGC, and the U.S.-Mexico border - there are no existing mechanisms to do so. Second, there have been disputes in the past, and, outside of those mentioned, there are no standing mechanisms available to address those disputes. Third, when environmental groups try to propose solutions, they find that they cannot get very far because the solutions must be developed in a multilateral context. In other words, what is wanted is an institution that reflects the ecological linkages that have always existed in North America.

This is not a new idea. It has been around since the early 1900s when the three countries and the government of Newfoundland got together to propose a way to conserve resources at the continental level. But the NAFTA made the issue more immediate because we recognize that, with the integration of our economies, there needs to be some sort of counterweight against or watchdog over the increased economic pressures on the environment and on environmental policies. The negotiation of the NAFTA provided an opportunity to advance this concept. In 1991, there were about 20 organizations that signed a statement calling for this kind of mechanism to deal with trade and environmental issues.

While the Commission falls short on many fronts, there is no question that it has moved along further than any other existing international environmental institution on a number of fronts: from dispute resolution to environmental cooperation, to getting governments to enforce their laws, and to legitimizing the concerns of the civil society of NGOs. It is pointed in the right direction by providing these cooperative efforts and, ideally, it will

EXECUTIVE DIRECTOR, POLLUTION PROBE FOUNDATION.

provide an opportunity for our three countries to feel more emboldened to pursue some of the solutions that they have been reluctant to take on in the past. It will also develop an opportunity for a higher level of participation of civil society in environmental policies, and to raise the accountability of governments. Even by some of the NAFTA's more severe critics, the Commission is seen to be worthy of our best efforts to make it happen.

What are some of the tell-tale signs? The first is the executive director and staff. What kind of director and staff will the Commission have? Will it be a group of political hacks, or will the staff and director be seen as defenders of the environment in their own right, with the stature that is required to engage the ministers and move the Commission and its agenda to consensus and progress?

Secondly, do the rules of procedure of the Secretariat, the Commission and the working groups, make the widest possible inroads in terms of openness, transparency, and dynamic consultation? This can range from public access to the Secretariat, in terms of information submitted to them, to provision for opportunities to participate in hearings and so forth.

The third tell-tale sign is government enforcement and compliance, and the extent to which action in that area is documented and assessed in the annual report. Far from being an intrusion, it is a guarantee that voluntary efforts can and do work. As is known in the industry and government sectors, voluntary and cooperative efforts really can only be seen as effective and successful if they are based on goodwill and best efforts and can be explicitly measured against achievement and progress.

The fourth tell-tale sign is whether there are procedures set up for dealing with transboundary issues. This includes the opportunity for notification, assessment, and mitigation for projects that have transboundary effects, but also reciprocal access by the parties as well as by public citizens to courts.

Fifth, does the Commission have a handle on trade issues? Is it looking to document the impacts, both good and bad, of trade on the environment? Are there initiatives being promoted or developed that can address the issue of whether environmental costs are being internalized in the price of the goods and services being traded? We are a long way from that point now. When will we be at that point, and how do we do it? It is not easy to do but we must start somewhere. Could a pilot project be undertaken in a sector or with a product that can begin that internalization journey? Another idea for the trade issue is the development of guidelines. The side agreement and the NAFTA make references to standards, the adequacy of standards, without lowering the level of environmental protection. Some guidelines should be in place to ensure that the environment is protected, as well as to ensure that the public is actively involved in any discussions related to

standards.

This is a key initiative because environmental values and priorities and thinking have to pervade and practically intrude on mainstream economic policies and thinking to protect the environment. The hidden coup of the whole NAFTA and the GATT/World Trade Organization debate has been that people in the business and trade communities have had to sit up and pay attention to environmentalists and their concerns. That is a good thing, and this inroad must be maintained and advanced; environmental interests must be secured in the trade area.

The sixth tell-tale sign is whether there is some environmental meat on the agenda. One of the issues in Canada, especially in the Great Lakes area, is the long-range transport of airborne toxins that come from as far as the southern part of the United States and Central America. There should be some sort of monitoring regime that helps identify the effect and flow of these toxins, with the intention of future identification of some actions to be undertaken.

An idea closely related to this is toxic release inventories and national pollutants release inventories. Canada and the U.S. have undertaken to do this, and there is some initial interest in Mexico as well. It would be very beneficial to have a common framework developed for the inventory, for the reporting standards, and for public access to that kind of information. A closely-related issue is what to do about toxins being emitted. This question needs to be addressed with the intention of phase-out and elimination of persistent toxins. Should some objectives for phase-out of some of the more recognized substances of concern, and, eventually, reduction targets for others, be established?

Another area where some environmental work can be done is in the energy conservation and efficiency sector. Perhaps the Commission can help identify economic instruments to be implemented by the three countries to encourage energy efficiency and conservation.

The last sign is how many provinces in Canada have signed on, especially those whose economic activity has significant impacts on the environment. A province that has not signed on can inhibit an NGO that is organized or incorporated in that province from contributing to a factual record. It could also bar Canada from playing its role in assuring that the laws of other parties are enforced. This would feed into the concerns of many environmental groups in Canada that pollution havens would be created. In addition, if key provinces do not sign on, it would weaken the ability of the Commission to bring in the new era of cooperation that this continent so badly needs. From the perspective of an

environmental organization, the failure of provinces to sign on would raise a number of questions. Is it to signal a lack of interest in environmental cooperation? Is it to signal fear of increased public scrutiny? Or is it environmental isolationism? If it is an issue of there being better alternatives, these should be brought forward.

HOW TO GET THE CEC UP AND RUNNING
STEWART HUDSON

THE overall concern is that, when the CEC is up and running, it create the proper image for itself: an image that is welcoming to the public; an image that suggests it is not an international police squad, but rather that it is designed to assure that our three governments meet the commitments they have already negotiated.

The CEC has many parents. It is important to understand that this is something that came from NGOs, not governments, and it is significant in that regard. Also it emerged from all three countries.

In the spring of 1992, there were two currents of thought regarding the CEC. One was that we needed to create a countervailing force to the NAFTA Trade Commission. We needed to ensure that environmental issues would not be forgotten in the implementation of this agreement. There was another stream that wanted to create a commission that would cover the waterfront of environmental issues, in terms of reporting on the status of these issues in all three countries. With the CEC we have both, and it is both a reactive and a proactive commission. It is an extremely *important* institution because economic integration is taking place in this hemisphere with or without NAFTA.

Negotiations were carried out in a context of not only what the process could produce, but what was appropriate to produce. This is important because there are those who will suggest that either this does not go far enough or it goes too far; and there were those who thought it wasn't going to accomplish anything. The positive image of the CEC is that it is about a \$15-million-a-year North American environmental institution which will lead to improved cooperation on environmental issues, enhanced enforcement, will insist on following through on the other provisions of the side agreement, and will improve citizen participation on environmental issues in North America. It will undertake that task under the leadership of environmental ministries. Also, the Secretariat that runs this undertaking is largely independent; it is free from any governmental effort "to seek to influence them in the discharge of their responsibilities." That is a significant advance, and projects a

**SENIOR LEGISLATIVE REPRESENTATIVE, INTERNATIONAL PROGRAMS
DIVISION, NATIONAL WILDLIFE FEDERATION.**

positive image for the CEC as a whole.

There are those who feel that the CEC is not a good idea, and those who will try to help it grind to a halt. But let's be clear: the CEC does not determine what a jurisdiction's environmental laws should be, and it does not inhibit their ability to set standards higher.

Even with groups ardently opposed to NAFTA, their desire is to move this initiative forward. So, the NGO resolution that was adopted in Mexico City in February, 1994, was endorsed not only by pro-NAFTA groups but by groups like Greenpeace Mexico, Greenpeace U.S., Friends of the Earth-Canada, the Sierra Clubs in the U.S. and Canada, and others.

We need to decide how to jump-start the momentum and ensure the commencement of this institution. The quality of the staff here is important. We have been engaged in a lengthy effort to try to get the World Bank to fund proper projects in developing countries. One small mechanism there is to assure that, rather than moving first class, they go coach. This Secretariat should go coach whatever gets the job done. We are not just looking at professionals who have been in the business for 10 years; we are looking at people just getting into the business. That is the way you reach out to communities from the Yukon to the Yucatan.

Funding will be an important issue. Also, it is important that people in Canada realize that they can't be pushed around on this by the U.S. There is a two-thirds vote of Council decisions, and a lot of decisions are to be by consensus. So, the provinces must be in on this agreement. It is in their interests because the federal government of Canada cannot take action on the agreement, cannot go after countries that do not enforce their laws, unless provinces representing 55 per cent of the GDP of Canada sign on.

We also have to talk about priorities for the Council. Possible priorities are spelled out in Article 10 of the agreement. The best way to start is to pick things that the governments can do cooperatively. Here are some examples:

The governments can pull together work that is already being done in all three countries on "greening" national income accounting.

The second thing is moving to determine the environmental conditions for accession to the NAFTA. We do not know how fast this is going to move but other countries, such as those in the Caribbean, and Chile, are moving as quickly as they possibly can to be part of NAFTA. It is important now to establish the precedent that the CEC is to be involved in this process.

It is obvious that the procedures by which the Council will address enforcement issues needs to be dealt with as soon as possible.

A fourth thing is procedures for assuring that the Council enforce important articles of the side agreement such as Articles 6 and 7 which deal with access to remedies and other judicial procedural guarantees within each of the countries.

Fifth, it is important that we know the relationship between the CEC and NAFTA trade operations. This was an important reason for forming the CEC, to provide environmental expertise in cases of disputes involving the environment and trade.

Sixth, inevitably the Council is going to have to deal with tough issues. One of the toughest has to do with life-cycle analysis of products, and process and production methods (PPMs). This should be a priority of the CEC.

Seventh is public outreach, and mechanisms for inviting greater public participation.

Following are four new ideas on how the Commission can engage in public outreach:

One unconventional idea for publicizing the CEC and involving people in creating their own image of what it should be would be an art contest. That will help people buy into this process, and find themselves "in the picture".

Another idea is a youth corps: it is very important to draw on activities already taking place, that bring together kids from our three countries. This builds a positive image of the CEC and pays long-term dividends.

Related to this are some internships for the CEC.

Finally, the need for community-outreach experts.

We need to reject the idea of environmental isolationism. There will be those who say the CEC is an intrusion on federal or state/provincial sovereignty. The CEC is exactly the opposite.

Secondly, we have to restore the momentum to this process. We need to reinvigorate the commitment at the top. We should not characterize this as the second phase of negotiation. This is a mopping-up exercise; it is mostly about administrative details; most of the work plan is already spelled out. It is about picking from the menu.

Finally, we should never forget that the CEC is an original piece of North American institution building. The regional aspect of the CEC is extremely important in dealing with issues of sustainable development in any of our three countries. It works three ways in a cooperative fashion that does not undermine environmental protection efforts at a national or sub-national level.

CHALLENGES FACING SUBNATIONAL JURISDICTIONS

JAMIE ALLEY

ENVIRONMENTAL matters in Canada are a shared responsibility between the federal and provincial governments. Most of the levers and mechanisms for delivery "on the ground" in environmental programs rest at the provincial level. The provinces and territories are sovereign jurisdictions with statutory responsibilities. Activities of sub-federal governments are coordinated in Canada by the Canadian Council of Ministers of the Environment (CCME), which may serve as a model for some of the things the CEC may want to do.

As international trade and environmental protocols are implemented over the next decade, we must ensure they are established from a legitimate environmental policy perspective and not solely from a trade policy perspective. There is a worldwide movement towards devolving responsibilities to the lowest level of government possible. This devolution will create unique and special challenges to subnational governments as we create international mechanisms.

British Columbia and other provinces critical of the NAFTA and the CEC are very supportive of efforts to increase inter-jurisdictional cooperation. To read this criticism either as a desire to isolate or hide from scrutiny would be a mistake. The intent is simply one of ensuring that what we do is done for the right public policy reasons, and does not unduly impinge upon the exercise of statutory responsibilities.

Those at the subnational level have had a variety of growing pains in dealing with trade policy. They are not always certain whether what they are seeing is the greening of trade policy, or the intrusion of trade policy into the traditional jurisdictional mandates of environment ministers. Environment ministers in Canada are in danger of losing control over some of the innovative policy mechanisms and tools that they had planned to be using over the next decade.

Discussions among environmental policy people in a variety of forums can be characterized as a shared commitment to openness, participation, a search for consensus,

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and a willingness to put ecological principles first. As Gary Hufbauer pointed out so well at the last NAMI workshop of this kind a year ago, trade policy people usually operate in a very different manner. Their practices are often secretive, and are based on winners and losers getting the best possible deal.

To a certain degree so far, participants at the subnational level in Canada have been spectators in this marriage of trade and environmental policy, and what they find seems puzzling and confusing. They have had mixed experiences in dealing with the federal government on international protocols. They had some particularly unhappy experiences during the 1980s in dealing with air management protocols, where the federal government agreed to caps on emissions of certain gasses without consulting the provinces, and without establishing a budget to cover the implementation. It is a very different scenario experienced in the U.S. where there is usually an appropriation of funds to help subnational governments carry out some of the international commitments made by the federal government. In Canada, there is an assumption that the provinces will absorb the costs to fulfil international commitments.

There was a dynamic change during the UNCED process, popularized as "the Rio way," which is the label used to describe the process of consultation, openness, and inclusion in developing national positions. This experience led many to believe they had achieved a more satisfactory level of cooperation in international matters. They were very dismayed, then, when the latest round of trade and environment debates on the NAFTA reverted to that old, unhappy kind of experience prior to UNCED, when those leading the negotiations for the federal government were very slow to recognize provincial jurisdictional responsibility for environmental protection.

When dealing with the free trade agreement between Canada and the United States, protection of the environment was not an issue because, by and large, the environmental management regimes were seen to be largely comparable. Canadian provinces now find themselves being caught up with the NAFTA by a mechanism being used to solve a particular problem to which they might not even be a party.

Most provincial governments are committed to increasing inter-jurisdictional cooperation, but wish to do so for environmental reasons and not necessarily for trade reasons, and certainly not when the trade imperatives are being forced upon them.

Some provinces were disillusioned in the latest round of federal/provincial negotiations when some of what they considered legitimate objections threatened to lead to a potential creation of two classes of provincial citizens: signatories and non-signatories. Provincial

governments have pre-existing rights on international obligations. If subnational governments find themselves becoming non-signatory parties, they do not want to see these existing rights fettered.

B.C. has had a series of negative experiences with trade disputes. With the softwood lumber dispute, the U.S. has lost every case, yet there is continual harassment. The log export question becomes fundamentally critical. For B.C. to do what it wants with its Protected-Area Strategy, it needs to ensure the maximization of jobs for every tree that is cut in its woods, and it will resist any compulsion to export raw logs. The province does not understand why trade mechanisms are being used to block what it considers very legitimate environmental, economic and social goals. On the other hand, B.C. has had very good experiences in creating appropriate cross-border cooperation mechanisms directly with state governments.

With the federal-provincial-territorial agreement that has been drafted, the federal government has made it very clear that, if subnational governments wish to be a part of the CEC, they will have to pay their own way, thus putting an additional strain on already scarce environmental management budgets.

In light of these observations, then, the following suggestions are offered for the operation of the CEC:

First, walk softly; find your goal carefully, and beware of those who may urge you to use the new powers of the Commission with less than purity of purpose.

Second, use the tools carefully, and be sure that the actions will further mutual objectives of improvement of the North American environment.

Third, be sensitive to regional differences and different approaches to the same goals.

Fourth, make use of existing forums or mechanisms, such as the CCME, as much as possible.

Finally, it is time to cut the strings from trade policy and the trade policy agenda. Let us collectively agree to make the CEC a true environmental commission rather than an add-on to a trade agreement. Let us make sure that this is a preventive and not a punitive mechanism, and that it is cooperative and not coercive.

WESTERN STATES' PERSPECTIVE

PAUL ORBUCH

The Western Governors' Association (WGA) is an independent non-partisan organization of eighteen western states, one Pacific Commonwealth, and two Pacific Territories. Established in 1984, its purpose is to strengthen the policy making and management capacity of member states and their role in the federal system. It serves the interest of the governors across a range of functional concerns, including environmental management, water, public lands and coastal waters, international trade, fiscal policy, human services, economic development, energy, and related issues.

The governors have asked the WGA to help build up their state's capacity and provide technical assistance to address trade and environment issues. Sub-national environmental, resource management, and public health measures are likely to be increasingly impacted as international trade rules expand, and the governors want to be prepared to address conflicts as they arise and prevent them if possible. The governors also want the WGA to assist them in making full use of U.S. - NAFTA implementing legislation that sets forth procedures for state involvement in NAFTA issues relevant to them.

The CEC will serve to increase vitally needed sub-national environmental cooperation in North America, but states must have a role in its functioning. President Clinton will reportedly be issuing an executive order in the near term that will address sub-national participation in the CEC. State participatory procedures will supposedly parallel procedures in NAFTA implementing legislation that establish a federal-state consultation process between states and the United States Trade Representative (USTR). For the CEC, state participation will reportedly be facilitated by an Inter-governmental Committee to be established by the EPA that includes state representatives. States will receive information on CEC activities from the EPA and will be able to submit information and participate in policy development on CEC issues that relate to or potentially will have an impact on states.

States do not have the constitutional resource ownership questions that exist in Canada that were detailed prior to my presentation by Mr. Alley of British Columbia. Therefore, more support for the CEC will come from U.S. states. States are anxious to contribute to

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the success of the CEC and hope that the expected executive order provides the most complete process possible for state participation.

States need to be involved in setting the agenda and priorities of the CEC. Some of the CEC issues important to states include trans-boundary pollution, compliance with and enforcement of environmental laws, dispute proceedings on environmental enforcement, eco-labelling, and process and production methods (PPMs). CEC efforts to establish an environmental impact assessment agreement between the NAFTA countries in the next three years should include sub-national input. In addition to its clear environmental benefits, a trans-boundary EIA process can help to foster sub-national contacts across borders. Another key issue for states is the standards comparability provision in the North American Agreement on Environmental Cooperation. This provision is not well defined and states want to have a role in determining its meaning in subsequent discussions.

Despite the concern of our Mexican colleagues here about accession, the CEC cannot ignore the fact that accession to NAFTA may occur soon. Presently, the USTR is preparing a report that will set some priorities for U.S. trade policy with respect to free trade agreements with other nations. Free trade negotiations with Chile, for example, may begin later this year. Accession is a likelihood and the CEC should play a role. The sooner it develops environmental guidelines and requirements for acceding countries, the better.

Finally, the North American Agreement on Environmental Cooperation sets forth some obligations that are not within the mandate of the CEC, but that are important and should be supported by NAMI. These obligations concern improvements and reform of judicial and administrative mechanisms that address environmental law. Many of the reforms call for access to information, public participation, and rights of review for adverse rulings. Full implementation of these obligations will not only enure to the benefit of the environment, but also will help to strengthen vital democratic institutions and processes.

THE IMPORTANCE OF THE JPAC
JACOB SCHERR

IT is extraordinarily important that the CEC be open and friendly to the public in all three societies so that it becomes both credible and effective in dealing with North American environmental issues. Independence, openness, and accountability are the three themes that should guide the public participation aspects of the Commission. We have a choice with the CEC in terms of its orientation. The question is: is it oriented towards the past - is it really just a slight improvement over the types of intergovernmental cooperative arrangements we have had in the past - or is it really a new type of transnational institution that is accountable and open to the public throughout North America? In other words, is it really a prototype of an institution that, someday, would have greater authority and involvement in dealing with resource issues throughout North America?

The agreement will establish a number of advisory committees. The Joint Public Advisory Committee (JPAC) will be comprised of 15 members, five from each party. In addition to the JPAC, each party will have the option of establishing a national advisory committee (NAC). The U.S. is planning to create an NAC and has already been accepting nominations for members from the NGO community. It is not yet clear whether Mexico or Canada will do so. As each country will only have five members on the JPAC, it is important that NACs be set up in order to draw a large number of people, perhaps representing a number of interests (they cannot all be represented on the JPAC itself), into this process. JPAC members can be selected by the NACs. This is a way of creating an accountability that would flow from the JPAC to the members of the NACs and then from the NACs to each one of their constituencies.

The JPAC is supposed to have an expert advisory role. So, while it is important to have a diversity of interests represented, it is also important to have a diversity of expertise represented so that that group would be able to advise the Commission effectively.

It is important to think of the Commission as being comprised of three separate but equal components: the Council, the Secretariat, and the JPAC. That is a different kind of institution from a council made up of three ministers who are served by a Secretariat but get advice from an outside advisory committee. At this point, the role of the JPAC is

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relatively undefined in the agreement. The following recommendations would help define a role for this new institution:

We should be supportive of trying to make the JPAC as strong and as independent as is feasible. It should have its own independent budget that would allow it to hire its own consultants or to undertake other projects as it sees fit.

It should be given the power to request that the Secretariat carry out additional reports or investigations.

It should be able to hold its own public meetings with members of its relevant constituencies, such as environmental groups, industry, and community organizations. It should also have the ability to make recommendations to the Council concerning the annual work program, budget, and investigation of citizen complaints.

It is also important that the JPAC have access to all Commission documents, including reports, factual records, action plans, and supporting documents. The only compelling reason to keep these documents confidential would be the protection of sensitive competitive business information or legitimate national security concerns.

As the national advisory committee is optional, NAMI could be very helpful in suggesting to all three governments that these committees be created.

The citizen complaint procedure is one of the most important and unique aspects of the

[Editor's note:] On this point, it was noted in workshop discussion that there is something to be said for not having a National Advisory Committee in Canada. "Canada now has a national and provincial roundtable process that can be built upon. One very good logistical reason for doing that is that anyone familiar with the problem of wear and tear on environmental organizations knows there are a lot of demands on people's time. There is an institutional structure in place now; moreover, it is an institutional structure that has the advantage of the provinces', at least to a degree, having bought into it. Perhaps means can be devised to have that structure play the role of a National Advisory Committee in Canada."

Commission. The agreement authorizes the Secretariat to receive submissions from NGOs which assert that a country is not enforcing its environmental laws. For this citizen complaint procedure to work in an optimal manner, it should be "user-friendly." The following procedures would ensure both its accessibility and its transparency:

All citizen complaints related to enforcement matters should be publicly available. Quarterly, or at least once a year, the Secretariat should publish an accounting of all submissions, including their responses and actions taken. The principal value of these submissions related to enforcement measures is to generate public scrutiny of compliance problems. If the watchdog function is to be fulfilled, complaints must be made public; submissions will serve little purpose if they languish without response in the files of the Commission.

The Secretariat should be required to respond in writing to all complaints.

All responses by governments related to a citizen complaint should be forwarded by the Secretariat to the complaining individual or group.

If the Secretariat determines that a first-instance-submission does not meet the criteria in Article 14, it should inform the group of the deficiencies in the submission in order to permit them an opportunity to resubmit the complaint.

It is clear that if citizen groups in various countries are going to undertake meaningful investigations of failures to enforce environmental laws, it will be an expensive process. There may be some mechanism created that would allow the Commission to provide for this sort of monitoring activity.

Eventually, participation is going to be key to the effectiveness of the Commission. The foregoing is a brief outline of some very fundamental steps that should be taken in the first instance to ensure that the Commission is an institution responsive to public concern throughout the hemisphere about the quality of the environment and the need for sustainability.

RESPONSIBLE CARE INITIATIVE FROM THE BUSINESS COMMUNITY

DAN ROCZNIAK

As we consider the establishment of the new North American environmental institutions, voluntary business community initiatives should be taken into account and encouraged. One such voluntary program is the chemical industry's Responsible Care Initiative which is underway in each of the three North American nations and is promoting continuous improvement in chemical companies environmental health and safety performance. As part of my presentation, I would like to provide a brief overview of Responsible Care, its public participation process, and how the industry is voluntarily creating mechanisms for tracking performance and assuring the exchange of information and expertise.

Before I discuss the details of Responsible Care, I would like to describe my organization -- the Chemical Manufacturers Association (CMA). CMA is one of the oldest trade associations in the western hemisphere and its 184 member companies account for approximately 90 percent of the total chemical production capacity in the United States. The other North American sponsors of Responsible Care are the Canadian Chemical Producers' Association (CCPA) and Mexico's National Industrial Chemical Association (ANIQ). CCPA has approximately 70 member companies and ANIQ's membership is made up of more than 200 companies.

The Responsible Care Initiative was first adopted in Canada in 1986. In 1988 the CMA adopted Responsible Care and three years later ANIQ began to implement the initiative. In each case Responsible Care has developed to meet the needs of each associations' membership. Responsible Care now exists in 34 countries on five continents. In order to protect the integrity of this initiative, the International Council of Chemical Associations has developed a set of criteria that each national program must include to be "considered" a Responsible Care Initiative.

In the United States, the CMA has made participation in Responsible Care an obligation of membership. Each company must agree to adhere to a set of ten Guiding Principles which set forth the philosophical basis of the Initiative. The companies are also expected to implement 106 specific management practices which make up our six Codes of Management Practices. CMA's Codes of Management Practices include: Community

Associate Director of Responsible Care, Chemical Manufacturers Association.

Awareness and Emergency Response (CAER) , Pollution Prevention, Process Safety, Distribution, Product Stewardship, and Employee Health and Safety. These Codes address virtually all aspects of a chemical company's operations. Canada and Mexico have different Codes, but they cover all of the same areas as CMA's initiative.

In addition to continuous improvement of our environmental, health and safety performance, Responsible Care also focusses on making the industry more responsive to the public by encouraging dialogue at both the national and local levels. In order to insure that the public's concerns are included in the development of Responsible Care , the CMA has created a national Public Advisory Panel (PAP). The PAP is made up of 15 individuals with a diversity of backgrounds and expertise, who serve as a gauge to the public's views on the industry's Responsible Care activities.

The PAP includes members who in the past have been critical of the chemical industry but believe that the industry is trying to change through the Responsible Care Initiative. All parts of Responsible Care are reviewed by the PAP before being adopted by the membership. The PAP also issues an annual challenge to the CMA focussing on ways to improve the Responsible Care Initiative. In the past, two specific challenges have centred around performance measures and methods of verifying company implementation of Responsible Care .

At the local level, many individual chemical facilities have created Community Advisory Panels (CAPs) to provide plant managers with a forum for dialogue with the public. In 1993, CMA members formed more than 215 CAPs. As with the PAP, individual CAPs are made up of local residents who discuss environmental, health, safety and other issues with plant officials. The CCPA also maintains a National Advisory Panel and individual facilities in Canada sponsor CAPs. The CMA and CCPA national panels have held joint meetings to discuss cross-border issues. ANIQ is currently establishing a PAP.

In response to the PAP's challenge, the CMA is developing specific Code performance measures to gauge industry improvement. Member companies report their Toxic Release Inventory data for the Pollution Prevention Code performance measure and Occupational Injury and Illness Reports data for the Employee, Health and Safety Code measure. The CMA has developed a performance measure for the process safety code which requires the reporting of information which is not mandated by federal reporting rules. Performance measures are being developed for the Distribution, Product Stewardship and the CAER Codes.

The CAER Code served as the model for the United Nations Environment Program's APPELL initiative.

The CMA is not alone in the development of Responsible Care performance measures. The International Council of Chemical Associations has adopted a resolution to create international performance measures for the chemical industry which would be reported each year. The details of this program are being developed.

Both the CMA and the CCPA are at different stages of developing a management systems verification process. The CCPA is conducting a process which verifies that companies have reached a specific level of Responsible Care implementation. The CMA is in the early stages of developing a process which will verify the existence of specific management systems. The CCPA and CMA programs both include a role for third party participation.

Finally, the Responsible Care Initiative has led to the creation of numerous mutual assistance networks in both the United States and Canada where chemical company representatives can meet to discuss environmental, health and safety issues in the context of Responsible Care. Regional networks in the U.S. have taken the lead in promoting Responsible Care to non-CMA chemical companies and to other industries.

Responsible Care is one example of a voluntary program which seeks to improve industry performance while engaging the public in a dialogue process. It may be a model for future activities in other North American industries.

RECENT DEVELOPMENTS IN MEXICO
RAMÓN PEREZGIL S.

A number of sectors in Mexico increasingly have been getting involved in environmental issues. A number of governmental entities are concerned specifically with environmental issues, some as a direct result of the Rio Convention. Also, the finance and banking sector, insurance companies, academia, NGOs, the media, labour unions, and professional associations are all actively examining their policies and activities with respect to the environment. International bodies in Mexico are now concerned with the environment, as is the business community.

The level of involvement of these groups with the environment in the past was negligible. Since NAFTA, the importance of environmental issues has grown enormously. Some groups such as ecologically oriented NGOs and other activists' groups have participated in some of the discussions that have taken place in Mexico with respect to NAFTA in particular. Agenda 21, UNCED follow up, Rio conventions and international issues like the dolphin/tuna controversy are some of the environment related discussions in which certain groups have become involved.

There are more than 700 environmental NGOs in Mexico, with three major entities that unite some of these varied organizations. They are:

UGAM, or Unión de Grupos Ambientalistas de Mexico (Mexico's Environmentalists Groups' Union)

FECOMEX, or Federación Conservacionista Mexicana (Mexican Federation of Conservationist Organizations), and

the Mexican Committee of IUCN members.

Besides the aforementioned, two of the most promising new developments in the environmental arena are the Mexican Fund for the Conservation of Nature and the Business Centre for Sustainable Development. The recently-created Fund is uniting the efforts of a number of groups that have wanted to create a trust fund to make grants for nature conservation projects. This fund has recently been established, and the Mexican government will be investing US\$30 million. The hope is to establish an endowment fund

Director General, Mexican Business Centre for Sustainable Development.

of the order of US\$100 million or more to finance environmental projects, with an initial target capitalization of US\$50 million. This is unique also in the sense that it has managed to bring to one table a lot of people who previously were not speaking to one another. Organizations from outside the country are also coming together to invest in this effort.

The business community in Mexico is organized in such a way that, regardless of the size of the enterprise, each company has to belong to a chamber. This chamber has to belong to a chamber of chambers, or a confederation of chambers, which, in turn has to belong to a higher-ranking organization, the Mexican Consejo Coordinador Empresarial or CCE, which is the business organizing body or council. This unites nine fourth- or fifth-level organizations in all the different chambers of commerce, industry, banks and insurance, agriculture and cattle-ranching, etc. A few years ago, this body created its Centre for Economic Studies. It also later created a Business Centre for Social Studies. These two "think tanks" of the CCE have been extremely valuable to the business community.

In this same vein, for the past year, this body has been considering creating a Business Centre for Sustainable Development. This initiative was finally approved and the Centre has been established. It will have relationships with a number of other bodies, but it is not subsidized or affiliated with any other organization, nationally or internationally. It is unique in that it will be a "think tank" for the business sector to help with issues of a general concern such as energy and environmental policies, financing and incentives for sustainable development, etc. The Centre hope to influence and convince many entities, including government, to adopt a more environmentally-sound and sustainable way of doing things.

Both novel initiatives will, no doubt, become important catalysts for a cascade of new environmental projects, policies, efforts and changes in the years to come in Mexico.

CHAIRMAN'S STATEMENT

Introduction

The North American Commission for Environmental Cooperation (CEC) is the first tri-national institution to emerge from the NAFTA process. It grew out of the conviction that the instrumentalities of trade and commercial relations among the three countries must be firmly set within an agreed framework of overriding environmental and social objectives.

That conviction was given expression by Governor Bill Clinton, in October 1992, during the last presidential election campaign in the United States. On the environmental side it was clearly reflected in the preamble to the North American Free Trade Agreement, and the commitment of that agreement to pursuit of the objective of sustainable development. Machinery to implement that commitment was set out in the parallel accord signed September 13, 1993, which established the CEC and set the overall environmental groundrules and guidelines within which the mechanisms of economic relations and trade policy serve the people of the North American community. As a matter of urgency, the Ministers that make up the Council on Environmental Cooperation must now put in place that machinery and carry forward its work.

The CEC is not simply an advisory body supplemental to NAFTA and the North American Free Trade Commission: it is the institutional structure which will set the groundrules and guidelines for the environmental dimensions of NAFTA - the first green trade treaty. Creation of the North American Commission for Environmental Cooperation (CEC) will bring the people of the three NAFTA countries closer together in their common effort to protect the environment and promote sustainable development.

In its first workshop, held in February 1993, the North American Institute (NAMI) issued a report on what ultimately became the CEC. This report provided an influential framework document. In NAMI's second workshop on the CEC, participants met in Vancouver to review progress in implementation of the trilateral accord on the environment, and to propose further steps toward the establishment of concrete structures and work plans for consideration by the Ministers and their officials in their meeting scheduled for Vancouver on March 24 and 25. Their meeting continues the momentum to establish the Commission and its work program. It is our hope that the results of our second workshop, reflecting a consensus among participants from Canada, the United States and Mexico, will be useful to the discussions now underway.

Participants in the NAMI Vancouver workshop recognized that all three national governments within North America face many profound and complex challenges. Yet workshop discussion was unanimous in insisting that in this interim period, it is crucial to move forcefully in putting the CEC structure in place; to establish, fund, staff and mandate the Secretariat; and to set out initial priorities in its work program. Amongst other priorities in this work program, the development of indicators of environmental quality,

environmental performance, and progress in moving toward the objective of sustainability is central, and the role of the Secretariat in providing a locus for assembly, synthesis and exchange of such data is crucial as a basis for improved understanding of the circumstances of all three countries, and the improvement of environmental policy in each. In this work, appropriate linkages with existing and future activities of sub-federal governments must be carefully nurtured. The role of the CEC and its Secretariat as a catalyst and a clearinghouse for governments and groups outside government, in the growing networking and information flows across borders, must be recognized from the outset and strengthened continuously.

Participants in the Vancouver workshop also reviewed and reaffirmed the conviction, from NAMI's 1993 Santa Fe report, that the work of the CEC offers a positive and constructive approach to a shared responsibility for stewardship of the ecological systems of North America, and for strengthened approaches to resolution of common problems. This approach is based not upon extra-territorial enforcement measures, nor upon adversarial confrontation, but on an open exchange of information, a faith in the power of "intrusive sunshine" as a force for continuing progress and "upward harmonization" of environmental objectives and standards, and a commitment to the principles of the "Rio Way" - the principles of openness, inclusiveness and accountability.

The North American Agreement on Environmental Cooperation, on which the Council of Environment Ministers begin implementation discussions this week in Vancouver, will bring important new benefits, in:

cooperative assistance,
compliance and enforcement in all three countries,
mechanisms to follow through on NAFTA's environmental clauses, and
strong public participation.

This side agreement was part of the background understandings for NAFTA, but it goes well beyond trade related matters. Significantly, it should stimulate environmental groups in the three countries to build new alliances on environmental agendas and goals. The Commission itself can make a unique contribution to the cause of sustainable development by promoting the design and development of appropriate systems of indicators of sustainability, accounting frameworks and pricing procedures.

Cooperative Assistance

The Agreement sets out broad areas for trilateral cooperation such as development of common indicators for reporting on environmental quality and performance in achieving the objective of sustainability, training of staff in critical areas of environmental protection and monitoring - drawing upon existing and rapidly developing North American programs in this area - and provision of information on environmental standard setting and selection of standards. Work on efforts to improve and apply, in illustrative applications in the North American context, ongoing research on indicators of sustainability, environmental accounting, full cost pricing and other such techniques should also be undertaken.

Compliance and Enforcement

The new Agreement calls for reports drafted by the trilateral Secretariat on each party's environmental enforcement programs, and allows presentation of complaints to the Secretariat that a party is failing to enforce its environmental laws. The Agreement commits each country to high levels of environmental protection and effective enforcement.

It has provisions to promote greater procedural regularity. By combining these provisions with follow-up procedures to monitor performance, it creates new forms of leverage in support of each country's enforcement programs.

This leverage will have effect both in the discussions of the three countries and at the national level. Ultimately, the key to progress on enforcement will lie with effective publicly supported remedies developed in each country. NGO's in all three countries recognize that both the new North American trilateral environmental institutions, and the commitments made by each country to environmental protection, require mobilizing public attention and support. This process of stimulating public and private remedies, and of building local constituencies on environmental concerns, can greatly strengthen citizen participation and awareness of environmental programs in each country.

One of the great strengths of the new Agreement is its fact-finding and public information tools. The country environmental reports, and the creation of the Secretariat to explore critical problems, will help build better understanding of environmental problems and more support for innovative responses.

The key to assuring effective implementation of the side agreement's provisions on enforcement lies in the development of effective procedures for the Council and the Secretariat. These procedures must emphasize public input in the process and, in the case

of the Secretariat, spell out its expectations with respect to the provision of relevant information from NAFTA governments.

NAFTA Follow Through

New monitoring activities promoted by the Agreement can help insure both that the environmental components of NAFTA are effectively implemented and that there is no downward harmonization of standards. The Secretariat must develop a work program which will enable the CEC to play the roles with respect to environmental matters contemplated in the North American Free Trade Agreement, as detailed under Section 10(6) of the Agreement on Environmental Cooperation.

Public Participation

Public participation is the lifeblood of the CEC. The non-governmental parties involved in the Workshop recognize the need for their building links among comparable groups in all three countries. They have already embarked on this process and are exploring what contribution they can make in the Public Advisory Committee and the National Advisory Committees. They expect to strengthen their own dialogue with their national environmental agencies and to make an input to the national and Secretariat reports on enforcement and other environmental issues.

Initial CEC Meeting in Vancouver

The initial meeting of the Council of the three Environment Ministers has the responsibility to launch an adequately funded Secretariat, led by an Executive Director who has support among the environmental communities of all three countries. Similarly, the Council needs to lay the foundation for a broad based Public Advisory Committee that will draw in the multiple sources of advice needed for responsive decisions. The Council itself needs to shape an agenda that reflects priority concerns, that will build public support for its work, and which will maximize cooperation among the parties. This agenda setting process should involve both the Secretariat and the Public Advisory Committees. The Secretariat will play an important part in promoting public understanding and support for this agenda.

Conclusion

The North American Agreement on Environmental Cooperation presents an unusually wide variety of opportunities for environmental cooperation among the three countries. The Workshop has focussed on the key startup issues, and the stake which all citizens in all three countries have in its success. Constituencies who want to see the Agreement succeed do not expect instant results, but they will insist that the parties persist and progress in achieving the goals set out in this precedent setting exercise in North American cooperation, and move forcefully and expeditiously in initiating its work.

PRESS RELEASES

North American Environment Commission Launched

At an historic meeting today of ministers responsible for the environment in Canada, Mexico and the United States, key steps were taken to implement the North American Agreement on Environmental Cooperation.

This agreement, which was developed to supplement the environmental provisions of the NAFTA, established a Commission for Environmental Cooperation. The Commission will promote sustainable development, encourage improved pollution prevention policies and enhance compliance with laws and regulations.

At the inaugural meeting of the new Commission, Deputy Prime Minister and Environment Minister Sheila Copps; SEDESOL Secretary Carlos Rojas; and Environmental Protection Agency Administrator Carol Browner, took the necessary steps to launch the Commission. The Commission is a milestone in the history of environmental cooperation among Canada, Mexico and the United States.

Specifically, the Ministers agreed that:

- the Executive Director who will head the international Secretariat supporting them will have, amongst other things, international experience and impeccable environmental credentials;
- they will work through a cooperative process to review candidates for the position and announce their choice within 60 days;
- they will each announce their five members to the Joint Public Advisory Committee at the same time or sooner;
- the Commission will operate in an open and transparent manner;
- the initial priorities of the Commission will include initiatives in the following areas: conservation and ecosystem protection; NAFTA effects and consultation; enforcement; pollution prevention; economic instruments; technology cooperation and capacity building; and transboundary environmental issues;
- they will determine interim funding level necessary to initiate the work program and other aspects of the Commission by May 2, 1994;

North American Commission for Environmental Cooperation, Secretariat - news release. Vancouver, British Columbia, March 24, 1994.

the first regular session of the Council, including a public meeting, will take place the week of July 25, 1994 in Washington, D.C.

Substantial progress has been made on developing rules and procedures for the Council and the Joint Public Advisory Committee and they will be finalized by May 2, 1994.

The headquarters of the Commission will be located in Canada. Twenty-five communities have indicated an interest in hosting the Commission and an independent assessment is being completed. Minister Copps indicated that a decision on the host community will be made within the next month.

The Ministers agreed that, on a provisional basis, communications to the Commission will be received by:

Gilles Lamoureux
10 Wellington Street
Hull, Quebec K1A 0H3
Canada

The communications will be logged, acknowledged and held for consideration pending assumption by the Executive Director of her or his duties.

For further information:

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819 997 1441

Government Chooses Montreal as Site for NAFTA Environmental Commission

Deputy Prime Minister and Minister of the Environment Sheila Copps today announced that the Government of Canada has selected Montreal as the site for the Secretariat of the North American Commission for Environmental Cooperation established under the North American Free Trade Agreement (NAFTA).

The Secretariat will serve as headquarters for the Commission and will employ a full time staff of approximately 30 people, divided among the three NAFTA nations.

The choice of Montreal follows an extensive examination, on behalf of the government, by KPMG Management Consultants of 25 submissions from communities across Canada. This independent examination looked at transportation accessibility, the sustainable development record of the community and availability of support services and amenities. The government today released the KPMG report.

"Montreal was considered the most appropriate host community from among a large group of very impressive candidates," said Minister Copps. "Careful and thorough consideration was given to all the proposals and all the applicants have reason to be proud of their communities."

Among the key qualifications of Montreal for the Secretariat are its central transportation access, its commitment to sustainable development, its history as a centre for international organizations, its wealth of quality post secondary learning institutions and its large multicultural population.

This announcement follows an earlier agreement among the NAFTA nations that the Labour Commission would be located in the United States, the Trade Commission would be located in Mexico and the Environmental Commission would be located in Canada, with sites in each nation to be selected by the host government. The United States recently announced that Dallas, Texas has been designated as the home of the Labour Commission.

The Environmental Commission will address, in a cooperative way, a wide range of environmental objectives shared by the three countries including: promoting sustainable

Environment Canada - news release. Ottawa, March 28, 1994.

development; encouraging pollution prevention; and enhancing compliance with environmental laws and regulations.

At an inaugural meeting of the Council of the Commission - hosted by Minister Copps in Vancouver last week and attended by Carol Browner, EPA Administrator and Carlos Rojas, SEDESOL Secretary - the Ministers agreed on initial priorities for the Commission. These priorities include: conservation and ecosystem protection; NAFTA effects and consultation; enforcement; pollution prevention; economic instruments; technology cooperation; and transboundary environmental issues. Ministers also agreed to announce the selection of the first Executive Director for the Secretariat within two months as well as to nominate the five members from each country to the Joint Public Advisory Committee.

For further information:

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WORKSHOP PROGRAM

IMPLEMENTATION OF THE NORTH AMERICAN
AGREEMENT ON ENVIRONMENTAL COOPERATION

Simon Fraser University, Harbour Centre Facility
Vancouver, British Columbia

Tuesday March 22, 1994

11:30AM Objectives, Organization, Schedule - Policy Room, 2270

12:00-1:30PM Lunch and Keynote Address - Segal Room

Hon. Tom McMillan

Former Minister of Environment, Government of Canada

Afternoon Session: The North American Commission for Environmental Cooperation

1:30-4:30PM Panel Discussions - Policy Room, 2270

1) Status report on implementation plans and progress

Alan Hecht, U.S. Environmental Protection Agency

Nick Mulder, Environment Canada

Council: formation, schedule, priorities

Secretariat: formation, schedule, priorities

2) Driving mechanisms initially

Janine Ferretti, Pollution Probe

Stewart Hudson, National Wildlife Federation

Annual report and reporting obligations of
Council

Reports of the Secretariat

Procedures for handling charges of non-
enforcement

Role of CEC in environmental aspects of trade
issues and cases

3) State and provincial mechanisms/linkages with Commission processes

Jamie Alley, BC Ministry of Environment

Paul Orbuch, Western Governors' Association

Evening Session: Public Advisory Committees, NGOs & Business Groups

5:00-7:00PM Panel Discussions - Segal Room

1) Joint Public Advisory Committees and NGOs

Jacob Scherr, Natural Resources Defense Council

Owen Saunders, Canadian Institute of Resources Law

Trilateral public advisory committee

National advisory committees

NGO submissions

Use of local systems of environmental complaint

2) Initiatives by the business community

Dan Rocznik, Chemical Manufacturers Association

Industry practices in North America

Enforcement oversight and comment

Upgrading of environmental standards

Public communication programs

Ramón PEREZGIL, Business Centre for Sustainable

Development

Environmental Initiatives in Mexico

7:30PM--> Light Dinner and Drafting of Workshop Report - Segal Room

Wednesday March 23, 1994

7:00-8:30AM Working Breakfast to Approve Draft of Report - Delta Hotel

8:30-10:00AM GLOBE'94 Regulation, Trade and Competitiveness Stream: Trilateral
Panel on NAFTA, Trade and the Environment [Workshop Report to be
Presented At Panel]

Workshop Closes

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