

**Literature Review on
Trade and Environment Linkages in North America**

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Part I: The Effects of Trade on Environmental Quality

Report tracks NAFTA emissions. 2002. *Chemical Week*. Unpaginated, online, LexisNexis.

Chemical producers account for the most toxic pollutants in Canada and the United States according to the CEC. Toxic emissions reporting is not mandatory in Mexico although the legal framework to do so was established in 2002. The chemical sector reduced releases from 1995 to 1999 but is still the leader in toxic pollutants, followed by primary metals and paper.

The North American initiative: A report of the North American free trade agreement technical working group on pesticides. 2001. No. 735-R-01-002. Pest Management Regulatory Agency, Canada; Comisión Intersecretarial para el Control del Proceso y Uso de Plaguicidas y Sustancias; Environmental Protection Agency, United States of America.

This report serves two purposes: first it highlights the numerous accomplishments that the NAFTA Technical Working Group on Pesticides (TWG) has made over the last several years; second, it provides a valuable perspective for setting the agenda for the future of the TWG. In addition to progressing towards the goal of establishing a North American market for pesticides, the work of the NAFTA TWG benefits North American governments, stakeholders, the pesticide industry, and the general public in a variety of ways. Benefits include using existing government and industry resources more effectively; increasing overall availability of resources needed to manage issues unique to national interests; facilitating access to a wider range of safe and effective pest management tools; minimizing barriers to the trade in food resulting from differences in pesticide residue levels; and ensuring greater consistency between regulatory decisions and the broader environmental and sustainable development goals of NAFTA.

Ackerman, F. and T.A. Wise, et al. 2003. *Free trade, corn, and the environment: environmental impacts of U.S.-Mexico corn trade under NAFTA*. Montreal, Canada: North American Commission for Environmental Cooperation.

The North American Free Trade Agreement (NAFTA) had a profound impact on corn trade between the United States and Mexico. Negotiated tariff reductions and the Mexican government's decision not to charge some tariffs to which it was entitled resulted in a doubling of U.S. corn exports to Mexico. This paper examines the environmental implications of this change on both sides of the border. For the U.S., increased exports to Mexico due to trade liberalization represent one percent of total U.S. production and should therefore be considered responsible for one percent of the environmental impacts of corn production. For Mexico, the principal potential environmental impact of the loss of a significant share of its domestic corn market to the U.S. is the threat to agro-biodiversity. The authors conclude that shifting corn trade under NAFTA is having significant negative environmental effects

on both sides of the border and could have even more profound impacts in the future if it results in the loss of significant agro-biodiversity in Mexico.

- Aguilar, D. 2001. Is the grass any greener on the other side of the Rio Grande? A look at NAFTA and its progeny effects on Mexican environmental conditions. *Currents: International Trade Law Journal*. 10: unpaginated, online, LexisNexis.
One of the most audible points of conflict resulting from the NAFTA arose from citizens from all three nations concerned about the environment. Opponents of the NAFTA argued that although many touted the agreement as the "greenest" in history between such large countries, the environmentally friendly language was no more than superficial rhetoric without any power for enforcement or for compelling Mexico to pass stronger laws to protect the environment. Advocates posit that all of the countries involved, Mexico especially, would benefit from the increased wealth the agreement would bring to each national economy. This note supports the position that without the impetus of the NAFTA and the progressive new thought in Mexico's political realm, the state of Mexico's environment would not be so vastly improved.
- Andrews, J.M. and B.A. Andres. 2002. Towards integrated bird conservation in North America: a fish and wildlife service perspective. *Waterbirds*. 25 (Suppl 2): 122-7.
- Barkin, D. 1999. Free trade and environmental policymaking in Mexico. *Borderlines*. 60(7): unpaginated, on-line:
<http://www.americaspolicy.org/borderlines/1999/pdfs/b160.pdf>.
Mexican authorities have been successful in enacting institutional changes in the last decade and international environmental groups have been successful in getting their concerns onto the policy agenda in Mexico. The CEC provides a previously unimaginable oversight mechanism, placing many important tools in the hands of Mexican environmentalists. However, it is clear that the effects of expanded liberalization, such as increased volume and speculative international financial flows, have hurt the environment in Mexico. The export-oriented development strategy being pursued by Mexico does not help it address environmental problems and is not sustainable.
- Beltran Morales, L.F. 2002. Economic and social effects caused by the NAFTA in the fisheries of tuna in Baja California Sur, Mexico. *Problemas Del Desarrollo*. 33(129): 43-53.
Even though the international trade system was originally developed without considering an environmental protection framework, efforts are being made to join environmental and political aims. The purpose of this work is to identify economic and social impacts caused by the North American Free Trade Agreement (NAFTA) in BCS Yellowfin Tuna fisheries. It was found that in the short term and mid term, the NAFTA has had no significant effects on the economic and social variables studied in the tuna fishery. The BCS Tuna fishery industry must not expect significant changes, either positive or negative, with a free trade agreement at this level of integration.

Billups, S. et. al. 1998. Treading water: A review of government progress under the Great Lakes water quality agreement (part I), a report to the international joint commission. *Toledo Journal of Great Lakes' Law, Science and Policy*. Spring: unpaginated, on-line, LexisNexis.

The Great Lakes Water Quality Agreement (GLWQA, Agreement) is an ambitious effort between Canada and the United States to restore the waters of the Great Lakes Basin to health after decades of abuse and neglect. This report by the Canadian Environmental Law Association (CELA), Great Lakes United (GLU), and the National Wildlife Federation (NWF) is an independent effort designed to gauge the progress made by the United States and Canada in implementing the Agreement's recommendations since its creation, over a quarter of a century ago. The first section provides a summary review of the state of the lakes. The remaining sections examine key provisions of the GLWQA with respect to what the governments have done over approximately the past decade. Throughout the report, a number of recommendations are made in the hope that governments can take positive action before the next assessment is made.

Blancas, A. 1999. A dynamic input-output model of NAFTA's effects on pollution.

Momento Economico. 0(104): 66-72.

This paper indicates the effects of the NAFTA on pollution in Canada, Mexico and the United States that can be considered in a well-behaved multiregional input-output model. Mexico does not have enough data on sector-based pollution emissions or pollution elimination costs to be used in an input-output model, nor does it have the technology to confront the increasing environmental deterioration that could result from the NAFTA. However, active participation by Mexican authorities is necessary to achieve a win-win result. The Mexican government should, therefore, publish sector-based pollution data and promote the development of technology for improving the environment in order to be at the level required by the other NAFTA member countries.

Carson, R.T. and D.R. McCubbin. 1998. *Emissions and development in the United States: international implications*. San Diego, CA: Institute on Global Conflict and Cooperation, University of California.

This paper is an analysis of the income-pollution relationship. The nature of this relationship played an important role in the ratification of the NAFTA. This paper first looks at the changes in air toxic emissions over the seven-year time period 1988-94. Second, it examines whether environmental Kuznets curves for different pollutants exist when various factors such as population density and industrial composition are explicitly controlled.

CEC. 1999. *Ribbon of life: an agenda for preserving transboundary migratory bird habitat on the upper San Pedro River*. Montreal, Canada: North American Commission for Environmental Cooperation.

- Dawkins, K. 2002. *Presentation on NAFTA to the fourth international seminar on environmental law*. The Fourth International Seminar on Environmental Law, Brasilia, Brazil, May 6-7, 2002. The Brazilian Council for Federal Justice and Center for Judicial Studies,
This presentation provides a brief overview of the environmental and social costs of NAFTA, illustrating the ways in which the agreement has not lived up to the promises presented by its proponents. The author then analyzes Chapter 11, itemizing the cases that have been brought under the Investors' Rights provision and stating that they do not meet the necessary requirements for "reasonable" and should be revoked. Finally, the author states that not only has NAFTA not lived up to positive expectations in the above categories, it has not led to economic benefits either.
- Elwell, C. 2001. NAFTA effects on water: testing for NAFTA effects in the Great Lakes basin. *Toledo Journal of Great Lakes' Law, Science and Policy*. Spring: unpaginated, online, LexisNexis.
The waters of the Great Lakes have been called the lifeblood of the region. This paper tests for NAFTA impacts to these important waters. This paper also tests the test for assessing NAFTA Effects. The first part introduces the research team and highlights its findings to improve the Framework for Assessing NAFTA Effects. The second part describes NAFTA impacts related to the Great Lakes Basin in three main areas: bulk water exports and use, privatization of water services and water quality, especially related to the growth in intensive livestock operations in southern Ontario. Part three contains the elements for a new Common Standard to Protect the Great Lakes that is recommended, among other things, to be listed as a paramount environmental agreement under NAFTA Article 104.
- Gan, J. and S. Ganguli. 2003. Effects of global trade liberalization on U.S. forest products industries and trade: A computable general equilibrium analysis. *Forest Products Journal*. 53(4): 29.
This study assesses the effects of tariff reductions represented by the North American Free Trade Agreement (NAFTA), the Uruguay Round (UR) of the General Agreement on Tariffs and Trade (GATT), and the World Trade Organization (WTO) negotiations on U.S. forest products industries using a computable general equilibrium model. These results indicate that the NAFTA would have very limited impacts on U.S. forest products industries and trade. Global trade liberalization under the GATT/WTO would not significantly change the output, consumption, and price of forest products, but would stimulate international trade and U.S. exports of forest products. Through altering global forest products trade patterns, trade liberalization beyond the UR would create both opportunities and challenges for U.S. forest products industries in increasingly open and competitive world markets.
- Gilbreath, J. 2003. *Environment and development in Mexico: recommendations for reconciliation*. Washington, DC: Center for Strategic and International Studies.
Throughout the 1990s the Mexican government substantially reinforced its environmental regulations and, with the help of other nations and international institutions, developed programs and techniques to address the nation's

environmental challenges. But the policy gains of the 1990s have not been in effect long enough to compensate for environmental deterioration that occurred over decades of rapid industrialization. Mexico faces serious challenges in water supply and contamination, deforestation, and desertification. This book dispassionately examines the continuing natural resource problems that threaten to undermine Mexico's future economic development and offers recommendations for reversing those resource trends.

Harbine, J. 2002. NAFTA Chapter 11 arbitration: deciding the price of free trade. *Ecology Law Quarterly*. 29(2): unpaginated, online, LexisNexis.
A North American Free Trade Agreement (NAFTA) arbitration panel's recent judgment against Mexico in Metalclad Corp. v. United Mexican States confirmed environmentalists' fear that NAFTA's Chapter 11 investor protections could undermine legitimate environmental regulations. Without considering environmental concerns, and ignoring NAFTA provisions and an environmental side-agreement that expressly promote environmental values, a NAFTA tribunal ordered the Mexican government to pay Metalclad \$16.7 million compensation for Metalclad's lost investment. The Metalclad tribunal's broad interpretation of investor protections and its failure to address environmental concerns perpetuates the aggressive use of Chapter 11 by businesses whose investments lose value due to legitimate environmental measures. It affords rights to foreign investors far beyond those of domestic companies and undermines efforts by local governments to protect human health and the environment.

Kass, S.L. 2000. Regulatory takings debate reopened; surprising, potentially significant, context is NAFTA Chapter 11. *New York Law Journal*. September: unpaginated, online, LexisNexis.
Few areas of environmental litigation have attracted more attention in the last two decades than claims by landowners and corporations that excessive environmental regulation, whether at the local, state or federal level, has effectively expropriated, or "taken," their property and that the government must therefore compensate the plaintiff for its lost investment or profits. Unexpectedly, the NAFTA has provided a new, and strikingly obscure, venue for U.S. and international firms to reopen this debate- with potentially significant implications for environmental protection around the world. This prospect so concerns even those nongovernmental environmental organizations (NGOs) that support free trade that they are threatening to withhold their support for future efforts to advance the proposed Free Trade Agreement of the Americas (FTAA) or other multilateral investment agreements that the U.S. may propose. Even if these NGO concerns can be overcome in the case of NAFTA (as seems possible, for the reasons discussed below), the potential for these new taking claims to "chill" vigorous environmental protection in developing countries remains real.

Kirton, J.J. 2003. *NAFTA's trade-environment regime and its commission for environmental cooperation: contributions and challenges ten years on*. Toronto, Canada: Center for International Studies, University of Toronto.
As NAFTA approaches its tenth anniversary in formal operation, what does the

record actually reveal? To provide an answer from a Canadian perspective this study first specifies Canada's overall foreign policy preferences and underlying distinctive national values in the trade-environment domain. It then reviews, most broadly, the results of the process and outcomes of the full set of 84 cases of "environmental regulatory protection," where trade and environmental interests and values have intersected, in North America from 1980 to mid-1998. It next explores more specifically the 28 known NAFTA Chapter 11 "investor state" cases, arising from 1994 through 2002, where firms have directly challenged foreign government's environmental and other regulations. It subsequently examines the 35 NAAEC Article 14-15 citizens' submission cases where individuals and groups have appealed directly to the CEC with allegations that governments are not systematically enforcing their own environmental regulations. It finally reviews the often-overlooked five Article 13 roving spotlight cases in which the CEC Secretariat has initiated investigations on any matter within its extensive cooperative work program.

____ 1998. The impact of environmental regulation on the North American auto industry since NAFTA. In *The North American auto industry under NAFTA*, S. Weintraub and C. Sands, eds., 184-220. Washington, DC: CSIS Press.
Even before NAFTA took effect, the automotive industry in North America was the largest component of trade among the United States, Canada, and Mexico as well as each country's largest source of manufacturing employment. The success of NAFTA and continental economic integration will depend in part on whether the agreement can foster greater competitiveness in this deeply integrated sector. This book marks the first serious attempt to gauge the performance of the auto industry under NAFTA not only by country but in North America as a whole. In addition to country-specific assessments of the agreement's effects on auto production, several chapters take the more comprehensive North American perspective, including the effect of environmental regulation on the industry. The analysis uses data not widely available to model NAFTA's economic impact and draw out the implications for policymakers, investors, and others interested in the future of the North American economy.

Line Carpentier, C. 2001. *Trade liberalization impacts on agriculture: predicted vs. realized*. Montreal, Canada: North American Commission for Environmental Cooperation.
This report reviews the economic and environmental predictions that have been made so far regarding the environmental impacts of agricultural trade liberalization in North America. The report reviews and compares ex ante analyses and ex post analyses of NAFTA, with the aim of improving upcoming modeling for the Free Trade Agreement of the Americas (FTAA). General trends of agricultural trade in the NAFTA countries are also presented. A literature review of models is then used to predict possible economic and environmental impacts of trade liberalization. The report concludes with a review of potential model development strategies to improve predictions of environmental impact following trade liberalization.

Lyke, J. 1998. The impact of the North American free trade agreement on U.S. forest products trade with Canada and Mexico: an assessment. *Forest Products Journal*.

48(1): 23-9.

A review of the trade data for 1989 to 1995 indicates that the North American Free Trade Agreement (NAFTA) has had little impact on forest products trade between Canada and the U.S. On the other hand, U.S. forest products exports to Mexico have declined and imports have grown by over 40% in value terms since 1993. In addition, the US is now importing a smaller share of wood products relative to paper products and exporting more pulp and less wood to Mexico than in 1993. The Mexican economic crisis of 1994 and 1995 and associated drastic peso devaluation has probably had a much greater effect on forest products trade between the U.S. and Mexico than NAFTA has, by altering the relative pricing structure for forest products. Likewise, the recent resolution of the softwood lumber trade dispute between Canada and the U.S. will probably have a far greater effect on forest products trade flows, and bilateral relations in general, than NAFTA will.

Mann, H. 2002. *Review of the decision on jurisdiction of the Methanex tribunal.* Winnipeg, Canada: International Institute for Sustainable Development.
The Methanex Tribunal decision on jurisdiction is a fairly complex one on some levels, yet a fairly straightforward one on others. The key findings and their impacts are discussed in this report.

Maravilla, C.S. 2001. The Canadian bulk water moratorium and its implications for NAFTA. *Currents: International Trade Law Journal*. 10: unpaginated, online. LexisNexis.
This article: (1) documents the coming global water shortage crisis and its effects; (2) documents the history of the Canadian bulk water export ban; and (3) analyzes whether NAFTA prevents Canada from taking unilateral measures to prevent the export of its freshwater resources.

Marchak, M.P. 1998. Environment and resource protection: does NAFTA make a difference? *Organization and Environment*. 11(2): 133-55.
Claims made by the US and Canadian governments to the effect that the North American Free Trade Agreement (NAFTA) is beneficial for the North American environment are contested with reference to the actual text of the NAFTA and its side agreements and to cases and current history related to it. The argument is that although NAFTA has more to say about environmental issues, in fact, it is not protective of the environment. Provisions in the agreement for environmental and resource protection are weak or nonexistent. Its primary objective is to promote trade and investment, and these take precedence over environmental concerns.

Mikulas, N. 1999. An innovative twist on free trade and international environmental treaty enforcements: checking in on NAFTA's seven-year supervision of the U.S.-Mexico border pollution problems. *Tulane Environmental Law Journal*. 12: unpaginated, online, LexisNexis.
This article compares the progress of our most recent treaty, the North American Free Trade Agreement (NAFTA) and its environmental supplement with the previous attempts. These newest treaties implement some of the most progressive adaptations in treaty making and provisions premised on advice from scholarly critics for what is

necessary to effectuate environmental change in the international arena. This article examines the progress of these innovations in their clean-up of the United States-Mexico border area.

Mumme, S. 1999b. NAFTA's environmental side agreement: almost green? *Borderlines*. 7(9): unpaginated, on-line: <http://www.us-mex/borderlines/1999/bl60/bl60naft.html>. *Nearly six years after entering into force, the North American Free Trade Agreement's (NAFTA) impact on the trilateral environment continues to be a source of controversy. It is clear that NAFTA has significantly boosted regional trade. Yet assessments of NAFTA's environmental effects remain sharply divided, reflecting many of the schisms leading up to its adoption. To an important degree, Public Citizen's trenchant 1996 critique of NAFTA as a "betrayal" of environmental promises still has bite. Many environmental indicators in the North American region are worsening, and these alarming trends are particularly evident at the U.S.-Mexico border, an area that figured prominently in the political debate leading to NAFTA's adoption. Other groups, such as the Environmental Defense Fund, argue that many of NAFTA's presumed short-term environmental effects may be more properly attributed to macroeconomic and social trends already well in play in 1994, that regional trade integration would have intensified with or without the agreement, and that NAFTA strengthened governmental commitments to environmental protection within the North American region. There is some merit to both perspectives.*

Nadal, A. and F. Aguayo, et al. 2003. *Seven myths about NAFTA and three lessons for Latin America*. Silver City, NM: Interhemispheric Resource Center, Americas Program. *This report debunks the myths that NAFTA had a positive impact on the economy in Mexico. According to the authors it has not led to economic growth, export expansion, or increases in foreign investment. Nor did it assist in Mexico's recovery from the 1994 peso crisis or contribute to macroeconomic stability, job creation, or poverty reduction. The authors recommend that other Latin American nations look to other models of economic integration and economic development as opposed to following the NAFTA blueprint in the form of the FTAA.*

Pashley, D. 2001. An introduction to the NABCI bird conservation regions. *Birding*. 33: 30-3.

Poynter, R. and S. Holbrook-White. 2002. NAFTA transportation corridors: approaches to assessing environmental impacts and alternatives. In *The environmental effects of free trade*, S. Vaughan, ed., Montreal, Canada: North American Commission for Environmental Cooperation.

Price, M. and J. Bennett. 2002. *America's gas tank: the high cost of Canada's oil and gas export strategy*. New York, NY: Natural Resources Defense Council and The Sierra Club. *Government deregulation of the Canadian energy sector began in the mid-1980s and led a decade later to energy provisions in the North American Free Trade Agreement*

(NAFTA). *In the name of free markets, Canada has limited its capacity to influence energy production and consumption and fostered a takeover of much of the Canadian energy industry by U.S. companies. Canada's wilderness faces an onslaught of oil and gas development that is right now destroying and degrading habitat for endangered species. Greenhouse gas emissions from Canada are escalating rapidly, largely because of the fossil fuel industry. Canada has a weak or non-existent legal framework for protecting endangered species and controlling carbon emissions or air pollution. As a result, Canada currently has no legal remedies for these high environmental costs. To reverse this damage, Canadian federal and provincial governments will have to take concerted action to shift their policies away from the current tilt to fossil fuel production and toward renewable energy production instead.*

- Rabindran, S. 2001. *Does Mexico specialize in polluting and injurious industries? empirical evidence from NAFTA-related U.S.-Mexican trade expansion.* Cambridge, MA: Massachusetts Institute of Technology.
Trade expansion along with weaker environmental protection in developing countries has raised concerns that developing countries have specialized in the more polluting and injurious industries. The author examines the pollution intensity of the NAFTA-related expansion in U.S.-Mexican bilateral trade in the manufacturing sector using new detailed measures of air, water, metal and toxic pollution intensities and injury rates at the 4-digit Standard Industrial Classification level. Based on this resolution of pollution and injury measures, the author does not find strong evidence of greater growth in the shares of U.S. net imports from Mexico in the more polluting or injurious industries between the pre and post-NAFTA periods.
- Reinert, K.A. and D.W. Roland-Holst. 2001. NAFTA and industrial pollution: some general equilibrium results. *Journal of Economic Integration*. 16(2): 165-79.
In this paper, the authors utilize a three-country, applied equilibrium (AGE) model of the North American economy and data from the World Bank's Industrial Pollution Projection System (IPPS) to simulate the industrial pollution impacts of trade liberalization under NAFTA. They find that the most serious environmental consequences of NAFTA occur in the base metals sector. In terms of magnitude, the greatest impacts are in the United States and Canada. The Mexican petroleum sector is also a significant source of industrial pollution, particularly in the case of air pollution. For specific pollutants in specific countries, the transportation equipment sector is also an important source of industrial pollution. This is the case for both volatile organic compounds and toxins released into the air in Canada and the United States. Finally, the chemical sector is a significant source of industrial toxin pollution in the United States and Mexico, but not in Canada.
- Sizer, N. and D. Downes, et al. 1999. *Free trade - liberalization of international commerce in forest products: risks and opportunities.* Washington, DC: World Resources Institute.
Unless countries that export forest products improve forest protection policies, laws, and practices, further trade liberalization poses a significant threat to efforts to conserve and sustainably manage forests. The acceleration of tariff elimination--the

current proposal under discussion for forest products in preparation for the World Trade Organization (WTO) Summit--is unlikely to have a large impact on net global trade because most tariffs are already quite low. But eliminating tariffs could have a significant impact on some products and some markets. Removal of some non-tariff barriers could have far greater negative consequences. There are major concerns about weakening phytosanitary standards, threats to efforts to label forest products, and proposals to outlaw measures that some local and national governments have taken to reduce the negative environmental and social impacts on forests of consumption of forest products within their territories. Trade liberalization that could threaten forests or interfere with their protection should not go forward until mechanisms are put into place to ensure parallel progress on forest protection. We highlight five recommendations, many of which should be implemented independently of the trade policy debate because they make economic and environmental sense in their own right.

USDA. 2002. *Effects of North American free trade agreement on agriculture and the rural economy*. No. WRS-02-1. Washington, DC: United States Department of Agriculture, Economic Research Service.

U.S. agricultural trade with Canada and Mexico has nearly doubled since the implementation of the North American Free Trade Agreement (NAFTA). While only a portion of this overall increase can be attributed solely to the agreement, NAFTA has allowed competitive market forces to play a more dominant role in determining agricultural trade flows among the three countries. By dismantling numerous trade barriers, the agreement has contributed to an expansion in U.S. agricultural exports and increased the domestic availability of various farm and food products. In addition, NAFTA has established rules and institutions that mitigate potential trade frictions and promote foreign direct investment. Conversely, many of the initial trepidations that were voiced concerning declining agricultural employment and environmental degradation have not materialized. Thus, NAFTA should be judged not just in the context of the trade gains associated with the agreement's agricultural provisions, but also in terms of the benefits derived from "locking in" key trade, investment, and institutional reforms in an increasingly integrated North American market.

Varady, R.G. and M.A. Moote, et al. 2000. Water management options for the upper San Pedro basin: assessing the social and institutional landscape. *Natural Resources Journal*. 40(2): 223-35.

The San Pedro River flows northward 300 km from its source in northern Mexico into southeastern Arizona. The upper basin, predominantly rural until recently, is now experiencing rapid residential growth. The resulting rise in urban population is raising demand for water from the area's only source: groundwater from the basin. Accordingly, issues surrounding the river's use and protection have drawn considerable attention and controversy. This paper examines water-management options for the basin and emphasizes the groundwater versus surface water nature of the resource and the social and institutional elements of the controversy.

- Vega-Canovas, G. 2001. NAFTA and the environment. *Denver Journal International Law & Policy*. 30: unpaginated, on-line, LexisNexis.
Do the last seven years since NAFTA and the parallel side agreements that went into effect justify the criticisms of environmental groups? This paper attempts to respond to this question by analyzing the terms of the North American Agreement on Environmental Cooperation (NAAEC) and its implementation history.
- Wallach, L. and R. Naiman. 1998. NAFTA: four and a half years later. *The Ecologist*. 28(3): 171-6.
NAFTA has not only failed to bring promised benefits, but has in fact led to widespread poverty, unemployment, social dislocation and environmental disruption. The few beneficiaries have been transnational corporations who benefit from deregulation that reduces their costs. A shift against public and political acceptance of the NAFTA has taken place as these real-life impacts have become understood. The rejection of a "fast track" trade authority by the US Congress in 1997 was a reflection of this. According to the author the NAFTA has proved a total failure and must be reversed.
- Weiss, A.L. 1998. An analysis of the North American agreement on environmental cooperation. *ILSA Journal of International and Comparative Law*. 5: unpaginated, on-line, LexisNexis.
Nogales, Mexico is a city along the United States and Mexico border, once a remote and beautiful city, has become home to poverty, disease and pollution. In the past twenty-five years, over two thousand manufacturing plants, called maquiladoras, have moved into the Nogales area creating jobs and economic opportunity, but also creating a "cesspool and breeding ground for infectious disease" and pollution. This environmental pollution has a damaging impact on Nogales, Arizona. Air samples from Nogales show very high levels of carcinogens. Also, there are high rates of cancer and lupus in the area. To combat border area pollution, the United States, Mexico, and Canada created the North American Agreement on Environmental Cooperation in 1993. This agreement was adopted to promote environmental protection through cooperation between the three member countries.
- Williams, S.P. and C.R. Shumway. 2000. Trade liberalization and agricultural chemical use: United States and Mexico. *American Journal of Agricultural Economics*. 82(1): 183-99.
To anticipate the likely effects of recent trade agreements with Mexico on the environment and food safety, this paper examines changes in agricultural chemical use. Econometric estimation and simulation suggest that the combined effects of the North American Free Trade Agreement (NAFTA), economic growth, research investment, and farm policy are expected to increase chemical usage substantially in the United States and undoubtedly lead to greater groundwater contamination. In Mexico, the expected effects are a substantial increase in fertilizer use but a decrease in pesticide use. Increases in private research investment are expected to increase the use of both types of chemicals, but increases in public research investment in the United States are not.

Woodall, P. and L. Wallach, et al. 2001. *The coming NAFTA crash: the deadly impact of a secret NAFTA tribunal's decision to open U.S. highways to unsafe Mexican trucks*. Washington, DC: Public Citizen.

A legal ruling by a North American Free Trade Agreement (NAFTA) tribunal will be released in February 2001. The NAFTA ruling — requiring the U.S. to permit access to U.S. highways by Mexican trucks — may not only put American motorists and communities at great risk, but could destroy NAFTA itself. The current NAFTA truck crisis is one of the most dramatic examples of how “trade agreements” such as NAFTA reach far beyond appropriate commercial issues and can threaten vital domestic health and safety standards, even when these standards are applied equally to domestic and foreign commerce. This article reviews the safety provisions currently in place in Mexico, and the evidence that Mexican trucks are significantly less safe than those subject to U.S. regulations. The authors believe that the Bush Administration must resolve the current case by agreeing to pay the NAFTA sanctions and continue to limit access until there is a meaningful Mexican truck safety system. Otherwise, the public will learn, painfully and first-hand, the dangers that an anti-democratic and anti-safety decision by a secret international trade tribunal can bring to its front door.

Yoshida, S. 1998. Yellowfin Tuna fishery and dolphin conservation: international free trade meets environmentalism. *Environs Environmental Law and Policy Journal*. 57: unpaginated, online, LexisNexis.

This article focuses on the continuing controversy over the incidental taking of dolphins by the Yellowfin Tuna fishery. Part I describes the dolphin conservation measures that led to the United States embargo of imported Yellowfin Tuna. Part II discusses the panel proceedings of the General Agreement on Tariffs and Trade (GATT) affecting the dolphin and tuna controversy. Finally, Part III examines the post-GATT results.

Part II: The Effects of Trade on Environmental Policy

- Arias, H.M. 2000. International groundwaters: The Upper San Pedro River Basin case. *Natural Resources Journal*. 40: 199-221.
Water-allocation conflicts have arisen recently on The San Pedro River, a tributary of the Colorado River system, which starts in Mexico and flows into Arizona. The role of groundwater in the conflicts between human activities and environmental issues in a transnational watershed is reviewed and recommendations that have been proposed to balance development and ecological issues are outlined briefly. Finally, a binational basin-wide strategic plan for conservation of the San Pedro Riparian National Conservation Area is proposed.
- Audley, J. and S. Vaughan. 2003. *Time for the NAFTA environmental watchdog to get some teeth*. Washington, DC: Carnegie Endowment for International Peace.
The CEC has a strong track record of research and some action, but its ability to impact policy has remained ineffectual. No environmental problems that existed 10 years ago have been solved and serious new threats, such as climate change and the effects of pesticides on children's health have emerged. The CEC mandate needs to be revised and this article proposes several ways in which to do so. The CEC's ability to garner consensus around thorny issues can help Mexico and Canada meet their Kyoto Protocol obligations in reducing greenhouse gas emissions, while building informal alliances with U.S. actors at the state, municipal and private sector levels to address climate change.
- Auer, M. 2001. Energy and environmental politics in post-corporatist Mexico. *Policy Studies Journal*. 29(3): 437-55.
No government that is serious about environmental protection will imitate the Mexican model. The undrinkable waters and defiled deserts of Mexico's northern border towns and the poisoned air of its capital city are infamous. But there are noticeable changes in the attitudes of Mexican politicians and lawmakers toward the country's environmental ills, in no small part because of changing public attitudes towards these problems. As Mexico's political system becomes more open and democratic, policy elites are increasingly attentive to environmental problems.
- Been, V. 2002. NAFTA's investment protections and the division of authority for land use and environmental controls. *Pace Environmental Law Review*. 20(1): unpaginated, online, LexisNexis.
In another article the author has explored the ways in which arbitral interpretations of NAFTA's expropriation provisions may pressure Congress and state legislatures, as well as state and federal courts, to interpret the Fifth Amendment's Takings Clause more favorably for property owners. Several scholars have noted the effect the provisions may have in preventing regulators from adopting environmental and land use measures. In this article, the author examines another implication of the provisions-the potential they have to affect the allocation of authority for land use

and environmental regulation among the federal, state and local governments, as well as their potential to shift the boundaries between environmental and land use law.

Behre, C. 2003. Mexican environmental law: enforcement and public participation since the signing of NAFTA's environmental cooperation agreement. *Journal of Transnational Law and Policy*. 12: unpaginated, on-line, LexisNexis.
The CEC has accepted numerous submissions concerning Mexico's environmental protection record, like the American Bar Association (ABA) article on Mexico's labor laws. This paper outlines Mexico's successes and its remaining challenges in the realm of the environment. Unlike the ABA article, Behre takes a more historically comprehensive and comparative approach to outlining the trends in Mexico's promulgation and enforcement of its environmental laws. Throughout this article particular attention is paid to the role of the public and its potential to influence these critical aspects of environmental regulation at the grass roots level.

Berríos-Colón, N.R. 2001. Transboundary movement of hazardous waste from Mexico to the United States: EPA's authority to enforce RCRA requirements against Mexican maquiladoras. *Environmental Lawyer*. 8: Unpaginated, online, Westlaw.
Economic and industrial advances along the United States-Mexico border have inadvertently produced a sizeable increase in hazardous waste generation, creating a legal and administrative headache for environmental officials on both sides of the border. The increase in waste production also has legal implications for businesses engaged at all stages of hazardous waste creation and disposal. In this article, Nívea R. Berríos-Colón explores maquiladora involvement in the transboundary movement of hazardous waste from the perspective of the U.S. Environmental Protection Agency (EPA) and other U.S. environmental officials. After taking a brief look at bilateral efforts to control environmental damage in the border region, the author examines the challenges posed by maquiladora activities for federal, state, and local environmental agencies. The article concludes that maquiladoras should be held liable for RCRA violations in the transboundary movement of hazardous waste, but U.S. environmental agencies must take care to abide by Mexican procedural requirements when pursuing enforcement of foreign judgments in Mexico.

Bommer, R. and G.G. Schulze. 1999. Environmental improvement with trade liberalization. *European Journal of Political Economy*. 15(4): 639-61.
Past studies predict that trade liberalization agreements (and NAFTA in particular) harm the environment. These studies have focused on adjustments in production and have assumed that environmental policy is exogenously given. This article shows why trade liberalization and improved environmental quality are mutually compatible — when environmental policy is recognized as politically endogenous. Empirical evidence is also presented to support the basic assumptions underlying the consistency of more liberal trade policy and an improved environment.

Dubai, V. et. al. 2001. Why are some trade agreements 'greener' than others? *Earth Island Journal*. 16(4): 44-6.
The North American Free Trade Agreement (NAFTA) and the European Union (EU)

have done much towards erasing borders and boundaries between nations in the name of free trade. This movement towards a new global era, however, raises concerns on the environmental front. An examination of two toxic disposal controversies--one in Mexico and one in Greece--serves to illuminate NAFTA's and the EU's significantly different takes on environmental regulation.

Esty, D., ed. 2002. *The environment and the free trade area of the Americas: lessons from NAFTA*. Cambridge, MA: MIT Press.

_____. 1998. Environmentalists and Trade Policymaking in *Constituent Interests and U.S. Trade Policies*, A. Deardorff and R. Stern, eds., Ann Arbor: University of Michigan Press.

Hansen, P. 2001. The interplay of trade and environment in the NAFTA. In *The protection of the environment in a context of regional economic integration: the case of the European Community, the MERCOSUR, and the NAFTA*, T. Scovazzi, ed., 242-88. Milan, Italy: Guiffre Editore.

This chapter is divided into 3 parts, focusing separately on NAFTA's rules on regional trade rules, its rules on investment, and the side agreement on environmental cooperation. Since the NAFTA is still quite new and not yet well known or understood even in North America, the author begins each section with a brief review of the relevant provisions. She then discusses the early results that have emerged as a result of these provisions, and the impact these provisions are likely to have on environmental and health regulation in the NAFTA countries. The conclusion sets forth some preliminary suggestions regarding changes that might help to reduce some of the tensions that have begun to arise in the NAFTA framework for resolving conflicts between economic and environmental interests.

Harrington, J. 1998. *Environmental issues in Mexico under NAFTA*. Washington, DC: United States-Mexico Chamber of Commerce.

One concern raised by opponents of NAFTA was that increased trade would lead to further environmental degradation in Mexico, as companies would move their operations to Mexico to avoid strict environmental enforcement in the United States. This report describes the efforts in Mexico to enforce stricter environmental regulations to minimize further degradation. These efforts include an environmental plan by the Zedillo administration, the cooperative agreements between Mexico and the U.S., including multilateral institutions such as the NACEC, and the existence and enforcement of Mexican environmental laws.

Herzog, L.A., ed. 2000. *Shared space: rethinking the U.S.-Mexico border environment*. La Jolla, CA: Center for U.S.-Mexican Studies.

Hodges, B.T. 2001. Where the grass is always greener: foreign investor actions against environmental regulations under NAFTA's Chapter 11, *S.D. Myers, Inc. v. Canada*. *Georgetown International Environmental Law Review*. 14: unpaginated, online, LexisNexis.

In November 2000, an arbitral panel, convened under the investor-state dispute

mechanism of Chapter 11 of the NAFTA, held that Canada had acted inconsistently with its obligations under Articles 1102 and 1105 by prohibiting the transboundary shipment of hazardous waste to S.D. Myers, a private American company. The panel's decision leads to two conclusions regarding NAFTA's investor-state dispute mechanism: first, capital investment will be protected to a higher degree than the environment, and second, international investment agreements shall take priority over national legislation. Part II of this note sets forth the factual and historical underpinnings of the dispute. Part III explains the pertinent provisions of NAFTA's investor-state dispute mechanism. Part IV provides an overview of relevant conventions and principles of international environmental law and demonstrates that Canada was acting under its obligations pursuant to treaty law, customary international law, and principles of international law. Part V focuses on the analysis used by the arbitration panel and provides a critique of the analysis when viewed in the context of existing international environmental law. Part VI concludes that the intersection between public and private international law represented in the S.D. Myers decision has led to a crisis in public international law.

Hogue, C. 2001. Investors versus environment: NAFTA commission wrestles with part of pact that threatens environmental policies. *Chemical & Engineering News*. 81(15): 31-2.

NAFTA intended to ease restrictions on the flow of goods and services between Canada, the U.S., and Mexico. However, the drafters of this treaty evidently did not take into consideration local environmental regulations. So, companies outside of a country have successfully sued to overturn restrictions, while companies within that country had no similar recourse.

Hufbauer, G. and D.C. Esty, et al. 2000. *NAFTA and the environment: seven years later*. Washington, DC: Institute for International Economics.

Does the NAFTA record on the environment since 1994 justify the criticism by environmental groups? Six years is too short a period to redress decades of environmental abuse, but it is not too soon to assess the NAFTA's achievements and shortcomings in meeting its environmental objectives and its impact on environmental conditions in Canada, Mexico, and the United States. To that end, this report reviews (1) the environmental provisions of the NAFTA; (2) the NAAEC; (3) the situation at the U.S.-Mexico border; and (4) the trends in North American environmental policy.

Hufbauer, G. and R. Jones, et al. 2001. *NAFTA and the environment Americas: lessons for trade policy*. Washington, DC: Institute for International Economics.

This speech presents a short history of NAFTA environmental provisions, including the serious transborder environmental problems that inspired them and a brief discussion of the side agreement. Also included is a description of the CECs handling of submissions concerning possible violations of environmental practices and the role of the BECC in providing technical assistance. Recommendations for improvement are made for NAAEC and the U.S.-Mexican border. Conclusions are reached that the CEC, NADB and BECC need to be strengthened but that the environmental problems in North America are not the result of the NAFTA.

Husted, B.W. and J.M. Logsdon. 2001. The impact of NAFTA on Mexico's environmental policy. In *The economics of international trade and the environment*, A.A. Batabyal and H. Beladi, eds., 291-307. New York, NY: CRC Press, LLC. *A major controversy during the debate over the North American Free Trade Agreement focused on the impact of NAFTA on Mexico's environment. This chapter examines the evidence of impact specifically in Mexico's environmental policy. Criteria of impact are developed, and comparisons made for three periods: before 1990 as the baseline period; 1990-1993 when NAFTA was being negotiated; and beginning in 1994 when NAFTA came into effect. Much evidence indicates that Mexico's environmental policymaking and enforcement did improve in the early 1990s while NAFTA was being debated. Some evidence also suggests that the NAFTA-influenced environmental commitment was sustained during the 1995 financial crisis. Thus, it is concluded that NAFTA has contributed significantly to Mexico's environmental policy.*

Husted, B.W. and J.M. Logsdon. 2000. Mexico's environmental performance under NAFTA: the first 15 years. *Journal of Environment & Development*. 9(4): 370-84. *This article presents research examining the environmental policies implemented in Mexico during the North American Free Trade Agreement and their effects during the period 1994 - 1998 is presented. It is concluded that the environmental policies of Mexico during this period have improved.*

Johnson, P.M. 2000. Five windows for the future of NAFTA's environment commission. In *Free trade: risks and rewards*, L.I. MacDonald, ed., 213-21. Montreal, Canada: McGill-Queen's University Press. *In its first five years, NAFTA's Commission for Environmental Cooperation experienced the growing pains of a new institution: cultural adaptation, interpreting a broad mandate and difficulty to focus. If it can narrow the range of its activities, it stands to make useful contributions in five areas: data-gathering and research; raising awareness; capacity-building; encouraging enforcement of environmental laws; and fostering cooperation both within and beyond NAFTA. Its biggest challenge in the medium term will be to expand from three to 30 members, as NAFTA evolves into a hemispheric free trade association. Whether such a potentially top-heavy commission can function remains to be seen.*

Kass, S.L. and J.M. McCarroll. 2000. The new environmentalism of Latin America. *New York Law Journal*. August: unpaginated, online, LexisNexis. *The FTAA debate, when it begins early in the next Administration, is likely to yield surprises both for the business community and for many environmentalists. While U.S. attention has been focused on Mexico, significant changes have been taking place in Central America and in the southern cone, where Brazil, Argentina and Chile are transforming both their economies and, far more haltingly, their environmental enforcement practices. While there are many, many miles to go before this journey is completed, it is no longer the case that Latin America's nominally protective environmental statutes can be safely ignored by domestic or transnational investors or even by governmental agencies. This is a significant development for U.S. corporations, wholly apart from the future of FTAA.*

- Kibel, P.S. 2001. The paper tiger awakens: North American environmental law after the Cozumel reef case. *Columbia Journal of Transnational Law*. 39: 395-482.
This article examines the citizen submission process created under the North American Agreement on Environmental Cooperation (NAAEC). The article details the historical evolution of North American environmental law and diplomacy in the hundred years prior to the adoption of NAAEC. It proceeds to analyze the environmental provisions of NAAEC and the citizen submissions that have been filed since NAAEC went into effect, and undertakes an in-depth case study of the citizen submission relating to coral reefs in Cozumel, Mexico. The article then compares the enforcement record of NAAEC with the enforcement record of NAFTA, and argues that the legal status of North American environmental law needs to be strengthened so that it is equal to that of North American trade law.
- Kirton, J.J. and A.M. Rugman. 1998. Regional environmental impacts of NAFTA on the automotive sector. *Canadian Journal of Regional Science*. 21(2): 227-54.
Despite fears that NAFTA would generate a regulatory "race to the bottom" in terms of environmental standards and practices, the outcome in the automotive sector has been a "push to the top" inspired by NAFTA's consciousness-raising, institutions, dispute settlement mechanisms and incentives. This paper reviews North American environmental regulatory regimes before and after NAFTA. Progress in the NAFTA era is due to three factors: 1) an intensified move to full scale rationalisation and integration of the industry with a corresponding production incentive to have a uniform set of relevant environmental standards in all three countries; 2) a new wave of high level regulatory harmonisation; and 3) the rapid spread of harmonisation from the assembly to the parts and then aftermarket sectors, and from manufacturing standards, to fuel standards and then inspection, maintenance and other operating standards.
- Kiy, R. and J.D. Wirth. 1998. *Environmental management on North America's borders*. College Station, TX: Texas A&M University Press.
The complex dynamic of conflict and cooperation shows up most vividly along the continent's internal borders. On the southern border of the U.S., the depletion of natural resources shared with Mexico--water, especially--has led to seemingly intractable problems and disputes. And on the northern border with Canada, problems of air and water quality persist despite a massive and partially successful effort, starting in the 1970s, to clean up the Great Lakes. What follows is a discussion of common values, some thoughts about specific conditions on the borders, a brief history of trinational perspectives, and a concluding section on policy implications, including the role of civic and business organizations. The first part of the book focuses on the changing social and institutional landscape across North America and on the growing influence of environmental activism. Then a number of case studies are presented in order to provide specific examples.
- Kourous, G. 2000c. NAFTA governments flirt with selling out environmental side accord: backslide averted as NGOs and citizen groups rally to question move. *Updater*. Unpaginated, online:
<http://www.Americaspolicy.org/updater/2000/june14NAFTA.html>.

In 1999 the governments of the 3 NAFTA nations were discussing changes to the environmental side accord that would undermine transparency and public involvement. Specifically, discussions were underway to further restrict NAFTA Article 14/15, the "citizen submission" process. This article ostensibly offers a way to balance corporate pressures and lessen the impacts of free trade on the environment, but it has been criticized as "lethargic" and "hamstrung by political pressures" such that even NGOs with considerable resources have difficulty maneuvering through its procedures. The governments were proposing to set limits on the ability of the CEC Secretariat to undertake investigations on environmental complaints. As a result of NGO pressure the governments have been forced to open these latest and future negotiations to public scrutiny, but the CEC remains a gatekeeper.

Kourous, G. 2000a. Border Article 14 submission to CEC recommended for factual record. *Updater*. Unpaginated, online: <http://www.us-mex.org/borderlines/updater/2000/april25persp.html#bookmark3>. *The CEC Secretariat announced April 10 that it is recommending that a factual record be developed regarding an Article 14/15 "citizen's submission" made by environmental groups in Tijuana-San Diego... It's common knowledge that there isn't much built into the Article 14 submission process that is guaranteed to produce results. In cases like this one, where the CEC does decide to follow up on citizen submissions, investigations culminate in the publication of toothless "factual records" and do not result in sanctions of any sort.*

Kourous, G. 2000b. Metales y Derivados update: CEC submission wins a victory for the entire border, but no closer to a cleanup. *Updater*. Unpaginated, online: <http://www.Americaspolicy.org/updater/2000/june14NAFTA.html>. *In a victory for San Diego-Tijuana environmentalists, a submission to the CEC related to the abandoned Metales y Derivados smelting facility in Tijuana has not only been recommended for the development of a factual record by the CEC, but has also prompted the Mexican and U.S. governments to agree to clean up similar, contaminated properties along the U.S.-Mexico border. These are only partial victories, however. The situation is a case study in how the CEC Article 14/15 submission process can be made to work, but also illustrates the relative toothlessness of the NAFTA environmental side agreement.*

Krontoft, M. and W. Testa. 2002. NAFTA and the great lakes: how can we achieve both economic and environmental sustainability? *Toledo Journal of Great Lakes' Law, Science & Policy*. 4: unpaginated, online, LexisNexis. *The rewards for cooperative, timely, cost-effective and innovative policies to manage the fragile Great Lakes ecosystem are now greater than ever. At the same time, owing to the sudden changes that can accompany globalization and technological advances, and owing to the additional pressures that accompany recreational demands on the ecosystem, the penalties for failing to put innovative and timely policies in place will be severe. In addressing these concerns, the challenge is to fashion and craft the political and institutional frameworks that will address the role of economic growth in the Great Lakes environment. Although the passage of the North American Free Trade Agreement (NAFTA) creates additional stress on the*

region's ecosystem, it also presents an opportunity to create these frameworks. This paper addresses the impact of NAFTA and economic progress on the Great Lakes region, and its relationship to environmental sustainability.

- La Londe, K.W.A. 2003. All the president's acts: the APA, NAFTA, and NEPA, which one should matter when it comes to the environment? *The Environmental Lawyer*. 9(2): 495-520.
- Liverman, D. and R. Varady, et al. 1999. Environmental issues along the United States-Mexico border: drivers of change and responses to citizens and institutions. *Annual Review of Energy and Environment*. 24: 607-43.
The U.S.-Mexico border region illustrates the challenges of binational environmental management in the context of a harsh physical environment, rapid growth, and economic integration. Public policy responses to environmental problems on the border include binational institutions such as the IBWC, BECC and CEC, the latter two established in response to environmental concerns about the North American Free Trade Agreement (NAFTA). Environmental social movements and nongovernmental organizations have also become important agents in the region. These new institutions and social movements are especially interesting on the Mexican side of the border where political and economic conditions have often limited environmental enforcement and conservation, and where recent policy changes also include changes in land and water law, political democratization, and government decentralization.
- Mann, H. 2003. *The free trade commission statements of October 7, 2003, on NAFTA's Chapter 11: never-never land or real progress?* Winnipeg, Canada: International Institute for Sustainable Development.
On Tuesday, October 7, 2003, the NAFTA Free Trade Commission (FTC) issued a series of statements concerning the NAFTA Chapter 11 arbitration process. The Commission, composed of the trade ministers of Canada, Mexico and the United States issued a final communiqué on "NAFTA at 10", as well as specific texts on transparency in the Chapter 11 process. In addition, Canada and the United States issued unilateral coordinated statements on public participation in Chapter 11 arbitrations, noting the need to continue working "with" Mexico on this issue before an agreed trilateral statement could be issued. This brief comment on the statement will look first at what was not done here, then at what was done.
- Powell, F.M. 2000. The North American commission for environmental cooperation's San Pedro report: A case study and analysis of the CEC process. *Environmental Law*. 6: 809-38.
This article utilizes the Upper San Pedro River Initiative as a case study to evaluate the CEC's complaint process under Articles 14 and 15, and the mechanisms for producing advisory reports under Article 13. Part II of the article discusses the background and basic elements of the NAAEC. Part III explores the shortfalls of the NAAEC and Part IV discusses its accomplishments. Part V examines the San Pedro River dispute and the CEC process that ultimately produced the San Pedro River

Report. The article concludes that the CEC process fosters public participation in and education about cross-boundary environmental disputes.

Public Citizen's Global Trade Watch. 2001. *NAFTA Chapter 11 investor-to-state cases: bankrupting democracy*. Washington, DC: Public Citizen.

In 2001 Public Citizen released a series of reports on NAFTA's actual performance over its seven years in existence. This report, NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy, analyzes NAFTA's groundbreaking investment chapter, which granted expansive new rights and privileges for foreign investors operating in the three NAFTA signatory nations: U.S., Canada, and Mexico. It is often said that NAFTA was more of an investment agreement than a trade agreement. NAFTA's investor protections are unprecedented in a multilateral trading agreement. Since the agreement's enactment, corporate investors in all three NAFTA countries have used these new rights to challenge a variety of national, state and local environmental and public health policies, domestic judicial decisions, a federal procurement law and even a government's provision of parcel delivery services as NAFTA violations. While most cases are still pending, some corporations have already succeeded with these challenges. This report reviews the major NAFTA investment cases of public interest and the potential for a massive acceleration of cases if similar investor rights are incorporated into the FTAA. As these cases are decided behind closed doors in NAFTA tribunals, information about the cases is difficult to obtain. Researchers must rely upon the final panel reports that are sometimes released by the tribunal at the end of the process and on the few other documents that have made it into the light of day, the majority of which have been written by the plaintiff corporations themselves.

Richardson, S. 1998. Sovereignty revisited: sovereignty, trade, and the environment-- the North American agreement on environmental cooperation. *Canada-United States Law Journal*. 24: unpaginated, on-line, LexisNexis.

The NAAEC has its most constraining effects on national governments through practice and observed behavior brought about by efforts to reach consensus and the adoption of procedures relying on public participation and requiring transparency. However, influencing the behavior of governments is not the same as constraining the sovereignty of states. Some commentators would argue that the NAAEC, with its emphasis on mandating the domestic enforcement of domestic environmental law as opposed to promoting harmonization among the three Parties, actually strengthens national sovereignty. This article will explore these arguments.

Rueda, A. 2000. Tuna, dolphin, shrimp & turtles: what about environmental embargoes under NAFTA? *Georgetown International Environmental Law Review*. 12: unpaginated, on-line, LexisNexis.

As in the Tuna-Dolphin and Shrimp & Turtle cases, the critical NAFTA environmental issue relates to productive processes. To what extent does NAFTA allow the United States to impose so-called environmental embargoes, or sanctions on Mexican or Canadian goods for process-related reasons? And to what extent is that an improvement over WTO jurisprudence as developed by the Tuna panels and the Appellate Body in the Shrimp & Turtle decision? These crucial questions

determine whether NAFTA is, as claimed, truly an environmentally friendly agreement. This note concludes that, despite the impassioned pleas to the contrary by NAFTA proponents during the debate leading to the treaty's adoption by the U.S. Congress, NAFTA's advantages on environmental issues are illusory -- including the much-heralded founding of the North American Commission for Environmental Cooperation (CEC).

Rugman, A. and J. Kirton, et al. 1999. *Environmental regulations and corporate strategy: A NAFTA perspective*. New York, NY: Oxford University Press.

This volume reports pioneering research on the strategies of firms faced with environmental regulations. In particular, the linkage between environmental regulations and their capture by rival foreign firms, who use them as entry barriers, presents a new challenge to managers. To secure shelter firms try to capture the administration of domestic environmental regulations. The industries seeking shelter (usually in agriculture, forestry and fishing), often form alliances with environmental groups and seek protection through the discriminatory application of national and local environmental regulations. This book develops a political economy model of complex institutional responsiveness to guide firm strategy in the arena of environmental regulation. It applies this model to NAFTA and explores its implications for Europe and Asia. Drawing on the disciplines of management studies, economics, political science and law, it examines 84 relevant cases, based on 230 confidential interviews with senior executives and officials in companies, governments, environmental groups and research centers. Corporate strategies of both a market-oriented and politically-directed nature are examined as they relate to environmental regulations.

Schorr, D. 2000. NAFTA and the environment: A review of basic issues. In *Free trade: risks and rewards*, L.I. MacDonald, ed., 226-36. Montreal, Canada: McGill-Queen's University Press.

This short paper reviews some of the key issues raised by environmentalists in the context of the NAFTA debate, and offers a brief catalogue of how the NAFTA system was crafted in response. The paper closes with a few comments on the experience the authors had to date with this system and takes the stubbornly optimistic view that, despite the significant environmental shortcomings of the NAFTA system, there is more reason to hope than to despair that the NAFTA model will ultimately prove its environmental worth.

Smith, K.L. 2001. Habitat protection for the new millennium: an analysis of domestic and international regimes in North America. *Georgetown International Environmental Law Review*. 13: unpaginated, on-line, LexisNexis.

This paper will focus on protection regimes for habitat of endangered and threatened species, as protection of these species is vital. It will examine existing systems in the United States, Canada, and Mexico to protect habitat. The United States has a very comprehensive habitat protection program under the Endangered Species Act. However, the U.S. program has tended to take a species-centered approach instead of one that focuses on the protection of ecosystems as a whole. Canada has failed to pass federal endangered species legislation, which has resulted

in a patchwork of ineffective protection. Lastly, although Mexico's Ecology Law provides for the protection of endangered species and their habitats, there are indications of problems with the effectiveness and enforcement of environmental laws.

Stevis, D. and S. Mumme. 2000. Rules and politics in international integration: environmental regulation in NAFTA and EU. *Environmental Politics*. 9(4): 20-42. *Globalization and regional development have initiated new public policies and proposals. Common dynamics in these policies can be observed through a comparative study, which is applied to the environmental policies relevant to the North American Free Trade Agreement, and the European Union. The policies are compared with respect to procedure and substantive rules and political contexts. There are clear differences in rules and content according to region, however, environmental regulations and policies from both NAFTA and the EU show a tendency toward market-based policies and what is characterized as "weak ecological modernization".*

Westbrook, K. 2001. The North American free trade agreement's effects on Mexico's environment. *Currents: International Trade Law Journal*. 10: unpaginated, on-line, LexisNexis.

Six years after its passage, there is still no conclusion to the debate on whether the North American Free Trade Agreement is positive or negative. The predictions of resounding failure of six years ago may still come true if the trade agenda is not continually informed and tempered by consideration of environmental protection a sustainable development. Because of new data offered by various papers discussed at the North American Commission for Environmental Cooperation's first North American Symposium on Understanding the Linkages between Trade and Environment, people have a better understanding of how free trade has effected Mexico's environment and now undertake steps of assessing the situation and providing remedies. Currently, there is no meaningful public participation; there is, however, a civil society process that provides information to the public. There is no single answer to the question of the environmental impacts of free trade, but with public awareness, a common free trade goal can be maintained without degrading Mexico's environment.

Wong, H. 2000. *The crumbling of a fragile alliance: the latest chapter in the Tuna-Dolphin conflict*. New Haven, CT: Global Environment and Trade Study (GETS). *A federal court ruled on April 11, 2000 that the new United States "dolphin safe" label, which would apply to tuna caught by chasing and netting dolphins as long as they were not seriously hurt or killed in the process, is invalid. The environmentalists who sued the Clinton Administration successfully argued that the scientific evidence suggests that these methods have a significant and unobserved impact on dolphin populations in the Eastern Tropical Pacific Ocean (ETP). The ruling throws a wrench into years of meticulously negotiated international agreements between the U.S. and Latin American countries involved in tuna operations in the ETP. Without the "dolphin safe" label in the U.S., Latin American countries cannot get what they truly want: market access to the U.S. This report first goes through the history of*

dolphin protection in the ETP to show why cooperation became the preferred path to resolution instead of continuous confrontation between dolphin lovers and tuna fishers, between the US and developing Latin American countries, and between environmentalists and free trade advocates. Next, the author looks at how new scientific evidence raise serious doubts about the effectiveness of the internationalist approach in saving dolphins, leading to the US Federal court decision. Finally, this report considers whether the tuna-dolphin debate will come to a satisfactory resolution for all sides involved or if it is destined to indefinitely continue its existence as the poster child of the clash between trade and the environment.

Part III: Institutional and Policy Responses to the Trade and Environment Problem

North American free trade agreement: U.S. experience with environment, labor, and investment dispute settlement cases. 2001. Washington, DC: United States General Accounting Office.

This report reviews the environmental and labor side agreements of the NAFTA as well as Chapter 11 on investment. In particular the submissions filed under these side agreements are reviewed to determine how the process is functioning and what the results of various filings have been.

Assessing environmental effects of the North American free trade agreement: an analytic framework (phase II) and issue studies. 1999. Montreal, Canada: North American Commission for Environmental Cooperation.

This framework is being developed by the Commission for Environmental Cooperation (CEC) to analyze major environmental changes under NAFTA taking place within North America. It identifies and traces four major processes through which activity generated by NAFTA's rules and institutions and associated trade and investment can affect the natural environment. It also highlights areas where further analytical development, monitoring of key indicators, and policy, technical and institutional changes may be appropriate.

Selling Clean Air: Market Instruments for Climate Protection, October 15-16, 1998. West Coast Environmental Law. Online: <http://www.wcel.org/wcelpub/1999/12729.html>.

These proceedings are the summary of Selling Clean Air: Market Instruments for Climate Protection, a two-day workshop on market instruments for climate change organized by West Coast Environmental Law Research Foundation. The workshop was held October 15 and 16, 1998, in Vancouver. This workshop brought together approximately 100 participants. The first day examined market instruments and the pros and cons of using different market instruments for reducing Canada's greenhouse gas emissions. The second day was aimed at improving the capacity of municipalities, environmental groups, small businesses, and community groups to develop projects that reduce greenhouse gas emissions in a quantifiable way that achieves other social benefits and can generate gas emissions reduction credits.

Abel, A. 2003. NAFTA's North American agreement for environmental cooperation: A civil society perspective. Silver City, NM: Interhemispheric Resource Center. *NAFTA has been hailed as the first international trade agreement to include environmental provisions. These provisions were included in a supplemental environmental agreement called the North American Agreement for Environmental Cooperation (NAAEC). While tangible improvements have been made under the NAAEC, NAFTA has not lived up to its promise of a sustainable development model that balances environmental and economic considerations.*

Ahern, R.J. 2001. *Trade and the Americas*. Washington, DC: The National Council for Science and the Environment.

The Summit of the Americas, held in Miami during December 1994, led to ongoing Congressional interest bearing on three inter-related trade policy issues. The first involves an invitation extended to Chile to join the North America Free Trade Area (NAFTA). The second focuses on preferential tariff treatment for countries of the Caribbean and Central America. The third concerns movement towards a Free Trade Area of the Americas (FTAA). In addition, a fourth issue has arisen concerning a request by the Andean countries to extend the Andean Trade Preferences Act (ATPA) beyond its scheduled December 2001 expiration date.

Ansson, R. 1998. The North American agreement on environmental cooperation and Native American tribes: how can tribal interests best be protected? *UMKC Law Review*. 66: unpaginated, on-line, LexisNexis.

Because Indian tribes are not Parties to the NAFTA's Environmental Side Agreement, they have no recourse if they are negatively impacted by the NAFTA. This article maintains that the United States has a legal duty to actively support the tribes' complaints in its role as the trustee of tribal property. This concept, commonly known as the federal trust doctrine, obligates the United States to assist Indians in the protection of their property and their rights. As this paper will demonstrate these duties require the United States government to either bring a tribe's claim or to actively support a claim brought by a tribe within the structures created by the Side Agreement. The United States representative to the Commission on Environmental Cooperation (CEC) must act as the tribes' trustee and, as such, is obligated to support a tribe threatened with environmental degradation due to either Mexico's or Canada's failure to enforce their environmental laws.

Appleton, B. *Comparing NAFTA and the MAI*. Toronto, Canada and Washington, DC: Appleton & Associates International Lawyers. Online:
<http://www.appletonlaw.com/MAI/MAI-NAFTA.html>.

While the Multilateral Agreement on Investments (MAI) was based on the investment provisions in the NAFTA, the MAI differs substantially from the NAFTA. This summary compares the substance and implementation of the two agreements on the bases of type, coverage, definition, subsidies, performance requirements, national treatment, government procurement, investment incentives, reservation and withdrawal, and provincial jurisdiction.

Bickel, L.C. Baby teeth: an argument in defense of the commission for environmental cooperation. *New England Law Review*. 37: unpaginated, on-line, LexisNexis.
This note contributes to the ongoing debate over whether or not supranational institutions are an effective means of coping with the continued destruction of the environment. The ability of the North American Commission for Environmental Cooperation (CEC) to promote compliance with international environmental law for a cleaner planet has been the subject of criticism. This criticism is undue. First, this note evaluates the submissions process of bringing forth claims to the CEC as an international forum, and suggests methods to overcome the obstacles that can disqualify a complaint. Second, it suggests that the supranational agency's

managerial function is vastly superior to its role as a tribunal, and provides numerous peripheral benefits that have yet to be fairly evaluated. In short, the success of the North American Free Trade Agreement's (NAFTA's) environmental commission, as a trailblazing institution of international environmental cooperation, outweighs its shortcomings, and it extends unprecedented opportunities to environmentalists, both now and in the future.

Blair, D. 2003. The CEC's citizen submission process: still a model for reconciling trade and the environment? *Journal of Environment & Development*. 12(3): 295-30.

This article examines the citizen submission process administered by the Commission for Environmental Cooperation that is part of the NAFTA agreement between Canada, the U.S., and Mexico. This paper specifically examines how changes made by these countries could result in fewer CEC filings because of disillusion by people towards the process and outcome.

Block, G. 2003. Trade and environment in the western hemisphere: expanding the North American agreement on environmental cooperation into the Americas.

Environmental Law. 33: unpaginated, online, LexisNexis.

This article reviews the operation and record of the NAFTA and its environmental side accord, with a view toward evaluating its suitability as a model elsewhere in the Western Hemisphere. The author introduces key negotiating objectives relating to the environment in the FTAA and considers how such objectives can be met in light of the lessons learned from the NAFTA. A series of measures are recommended to strengthen and improve the North American Agreement for Environmental Cooperation model as it is expanded throughout the Americas. The author concludes that unless the NAFTA model for protecting environmental values in the context of free trade is strengthened and provided with adequate financial resources, efforts to protect human health and the environment and to promote the enforcement of environmental law in Latin America will likely fail.

Blum, J. 2000. The FTAA and the fast track to forgetting the environment: A comparison of the NAFTA and the MERCOSUR environmental models as examples for the hemisphere. *Texas International Law Journal*. 35: unpaginated, on-line, LexisNexis.

This paper presents a blueprint for an FTAA environmental model based on an amalgam of characteristics from the MERCOSUR and NAFTA environmental regimes. Part II of this paper discusses the current barriers to an environmental regime through a description of the status of the FTAA negotiations, including the loss of fast-track authority and the resultant role of the environment after the loss of American influence. Part III illustrates how the proposed FTAA environmental model falls short of the MERCOSUR model. Part IV describes how the United States could advocate an environmental regime similar to the NAAEC regime under the NAFTA. In conclusion, it is explained how a combination of the MERCOSUR and the NAFTA models will permit the FTAA to achieve a beneficial, yet practical, environmental regime.

Bordreau, J.A. and R. Hinojosa Ojeda. 1998. *The role of the new NAFTA institutions: regional economic integration and cooperation*. June 19-20, 1998. Los Angeles, CA: United States Department of Labor and North American Integration and Development Center, Online: <http://www.dol.gov/ilab/media/reports/nao/ucla.htm>. *The purpose of this conference was to comparatively assess the effectiveness of all the newly created NAFTA institutions: the Commission for Environmental Cooperation (CEC), the Commission for Labor Cooperation (CLC), the Border Environmental Cooperation Commission (BECC), and the North American Development Bank (NADB). In particular, the organizers were interested in evaluating the incorporation of a key feature that has recently been placed high on the agenda of international organizations: public participation and accountability. Building on this evaluation, the organizers also wanted to create a forum for discussing potential future agendas for transnational, inter-institutional, and cross-issue cooperation in North America. Looking to the future, the conference focused on the challenges of sustainable and equitable development, transnational institution building, and enhancing the role of civil society. In addressing these issues, we sought to take advantage that this conference's character served as a unique milestone opportunity that brought together for the first time the heads of all these new NAFTA-related institutions, with unions, NGOs, academics, and concerned citizens from all three countries.*

Bugeda, B. 1999. Is NAFTA up to its green expectations? Effective law enforcement under the North American agreement on environmental cooperation. *University of Richmond Law Review*. 32: unpaginated, on-line, LexisNexis. *This article will begin with a brief examination of the dispute resolution process established in Part V of the NAAEC. The article then gives a more detailed description of the Citizen's Submission Process, highlighting the aspects of this procedure that have proven to be controversial in the eyes of both nongovernmental organizations and the parties to the NAAEC. Part III of the article examines the first submission that has resulted in a factual record: the Cozumel Submission.*

Byrne, J. 2000. NAFTA dispute resolution: implementing true rule-based diplomacy through direct access. *Texas International Law Journal*. 35: unpaginated, online, LexisNexis. *This paper argues that the failure to grant direct access to dispute resolution to affected companies and private citizens results in the unfortunate incorporation of an unnecessarily large degree of "power-based" diplomacy into a trading regime acclaimed as being "rule-oriented." In Part II, the author briefly explains the theoretical underpinnings of, and differences between, rule-based and power-based international relations and shows why Chapter Twenty overly emphasizes the power of nations, thereby decreasing predictability and equity for the concerned entities. Part III demonstrates that there are some encouraging results from the operation of direct access. In Part IV, Byrne offers additional arguments for extending Chapter Eleven direct access to all trade disputes. Finally, Part V addresses the most salient counter-arguments to the author's proposal of extending direct access to disputes arising under Chapter Twenty.*

Charnovitz, S. 2002. The economics of energy and the environment: reflections on North American environmental cooperation. *Canada-United States Law Journal*. 28: unpaginated, on-line, LexisNexis.

This article offers some reflections on what has been accomplished on the environment in North America and about the many challenges that lie ahead. There is a great tendency to overlook the CEC because it is small, underfunded, and has no clout. Yet the Commission is truly a treasure. The three NAFTA countries inaugurated a regional policy back in 1909, but it took eight decades to accomplish it. Indeed, that simple step would not have happened without the stimulus from the politics of the NAFTA negotiation. This article mentions Chapter 11-B because it provides such a good example of the overall thesis: that success in promoting economic prosperity and environmental sustainability depends, in a general sense, on the way that society uses institutions and markets.

Condon, B. 2002. Multilateral environmental agreements and the WTO: is the sky really falling? *Tulsa Journal of Comparative & International Law*. 9(2): 533-68.

This article begins with a review of the approach taken in the Tuna and Shrimp cases to the extraterritorial application of United States environmental policy using trade restrictions. This analysis will consider to what extent the GATT permits the use of trade measures to implement international environmental obligations, and the distinction between measures taken pursuant to international agreements and measures taken unilaterally. Next, this article considers the application of the least-trade-restrictive rule to trade measures taken to pursue international environmental goals as it has been applied under the GATT and in NAFTA Article 104. Finally, this article considers whether reforms to the WTO are really necessary to avoid conflicts between international trade law and international environmental protection.

Da Silva, A.D. 1998. NAFTA and the environmental side agreement: dispute resolution in the Cozumel port terminal controversy. *Environs Environmental Law and Policy*. 21: 43-62.

Two primary concerns influenced the NAFTA negotiation process. First, the negotiators attempted to alleviate the threat that United States industries would relocate to Mexico to avoid expensive environmental regulation in an attempt to minimize production costs. Second, the discussions attempted to reduce the risk that industrial flight to Mexico might add to the environmental problems plaguing the United States- Mexico border. These negotiations resulted in the North American Agreement on Environmental Cooperation, often referred to as the Environmental Side Agreement (Agreement). This article analyzes the Agreement's resolution process with reference to a recent controversy over the Mexican government's approval of a new pier on Cozumel Island. This article demonstrates that the Agreement works with respect to notice procedures but fails in other specific respects. The Agreement's successes in providing public notification and access as well as its deficiencies in failing to definitively resolve the dispute shape the following analysis.

de Mestral, A. The significance of the NAFTA side agreements on environmental and labor cooperation. *Arizona Journal of International and Comparative Law*. 15(1): 169-85.

During the negotiations for the NAFTA there was no disposition in the U.S. Congress to allow any further restriction on American sovereignty, and the history of economic and political relations with the United States made Mexican and Canadian negotiation of a free trade agreement with their neighbor a perilous exercise. The essential characteristic of the modern free trade agreement is to increase the degree of economic integration existing among the states of a region. A free trade agreement is essentially grounded in the law and the structure of the World Trade Organization and the GATT 1994. They reflect the fact of ever-increasing economic integration between the three North American countries and the consequent need to reconcile the values represented by trade with those of environmental protection and maintenance of high labor standards.

Deardorff, A.V. 2000. Trade and environmental quality: comment. In *Social dimensions of U.S. trade policies*, A.V. Deardorff and R.M. Stern, eds., 162-5. Ann Arbor, MI: University of Michigan Press.

This brief article is a comment on a paper by J.J. Kirton in the same publication. The author believes that Kirton's chapter is a major contribution to the NAFTA literature but Deardorff has a number of concerns. Most importantly he believes that Kirton's paper could provide more information on ex post analyses of NAFTA along the lines of channels identified by Grossman and Kruger in their 1993 book on NAFTA.

Deere, C.L. and D.C. Esty, eds. 2002. *Greening the Americas: NAFTA's lessons for hemispheric trade*. Cambridge, MA: MIT Press.

With the overarching goal of trying to find ways to make trade arrangements and environmental protection more mutually reinforcing, this volume explores and evaluates the traditional hostility of the Mexican government under the Salinas and Zedillo administrations to trade-environment linkages generally and to the environmental provisions of the NAFTA in particular.

DiMento, J. 2000/2001. Lessons learned. *UCLA Journal of Environmental Law and Policy*. 19: unpaginated, on-line, LexisNexis.

The contributions in this volume focus in several different ways on effectiveness of international environmental law. Are promising new compliance promoting strategies for international environmental law adopted at the expense of creating solid commitment to behavior change within parties? With new forms of soft law it is virtually impossible to know if a nation state is meeting the goals of an instrument, whether its principles are being carried out. JPAC under the NAFTA regime should include representatives of the business sector, environmental non-governmental groups, and academics. Yet if there is to be a meaningful element of criminal sanctioning for global environmental violations, it will need to come from nation states implementing the goals of an international treaty into the framework of its domestic environmental law.

- DiMento, J. and P. Doughman. 1998. Soft teeth in the back of the mouth: the NAFTA environmental side agreement implemented. *Georgetown International Environmental Law Review*. 10: 651-752.
This article evaluates implementation of the Environmental Side Agreement to the NAFTA. Context is provided for the development and adoption of the Agreement and then the positions taken in the debate over the relationship between environment and free trade are reviewed. Next, an overview of the goals and objectives of the Agreement and the activities and obligations it effects is provided. The strategies employed for dispute resolution among the Parties are described, and the Agreement's private submission process under Articles 14 and 15 is explained. Several issues addressed in the development of the submission procedures are enumerated. Section II describes and presents evaluations of the implementation of the Agreement in its first two years of operation. Section III analyzes and explains implementation, focusing on five important factors linked to the success of international agreements.
- DiMento, J. and H. Ingram, et al. 2001. Implementation of the NAFTA institutions – the record and potential. In *The protection of the environment in a context of regional economic integration: the case of the European Community, the MERCOSUR, and the NAFTA*, T. Scovazzi, ed., 289-306. Milan, Italy: Guiffre Editore.
In this paper the authors highlight the major results of their early work (Soft teeth in the back of the mouth: The NAFTA environmental side agreement implemented, 1998) and update that work where new information and data are available. They then present conceptual work on their next level of inquiry about trade and the environment and the NAFTA institutions. Here they lay out important indicators that need to be monitored in considering whether the NAFTA regime has been successful, evaluated by criteria related to fostering international cooperation to protect the natural environment.
- Dove, C. 2002. Can voluntary compliance protect the environment? The North American Agreement on Environmental Cooperation. *Kansas Law Review*. 50: unpaginated, on-line, LexisNexis.
The goal of this Comment is to examine the NAAEC and the effectiveness of a voluntary compliance enforcement mechanism. It is concluded that, while voluntary compliance may not be capable of ensuring rigorous short-term adherence to the goals of the treaty, the NAAEC is an important instrument. The NAAEC codifies the intent of the NAFTA members to maintain environmental protection in the face of free trade. Even in its currently criticized form, the NAAEC remains valuable because its outlined goals represent the starting material for the evolution of either customary international practices that respect the environment or a more effective environmental treaty. Case studies explore the historical development of the Montreal Protocol on Substances that Deplete the Ozone Layer and the Antarctic Treaty. Both treaties started as "soft" treaties enforced through voluntary compliance but eventually evolved into more successful treaties as more countries began participating in and respecting the obligations in the treaties. It is concluded that the NAAEC must become more textually refined and garner the full support of its signatories before the treaty can make its first evolutionary step.

Dreiling, M. 2001a. Solidarity and conflict between labor and environmentalism. In *Solidarity and contention: the politics of security and sustainability in the NAFTA conflict*, M. Dreiling, ed., 15-32. New York, NY and London, England: Garland Publishing, Inc.

This chapter introduces a conceptual framework for thinking about how and why differences in unionism and environmentalism boost political opportunities for mobilization. In an effort to trace the origins of the labor-environmental alliance against NAFTA, and the birth of an alliance and conflict system over neoliberal trade in the U.S., the framework helps define the conditions and potential for inter-movement alliances and solidarity. Furthermore, a brief history of alliance and conflict between unions and environmental groups is presented in order to contextualize the political-organizational concepts used to explain the divergent practices among organizations in the respective movements.

Emilady, S. 2001. A step in the right direction: how to make the free trade area of the Americas a cohesive agreement that will better serve integration of free trade in the western hemisphere. *Currents: International Trade Law Journal*. 11: unpaginated, online, LexisNexis.

This note takes an in depth look at the three main areas of concern that need to be stabilized before successful FTAA negotiations can incur. The first part of the note will address how U.S. negotiators can approach the abandonment of environmental provision in the FTAA and deal with the Latin American countries' intention of dislodging environmental provisions for the fear it will dampen their future free-trade market. The environmental provisions and goals found in Latin American agreements, coupled with NAFTA's environmental provisions, out-line a good balance for all countries involved. The second part of the note will take a look at the domestic markets and how the FTAA could negatively affect them if provisions to protect labor are ignored. The third part of this note will examine Brazil's hesitation to enter into the FTAA.

Esty, D. 2002. Free Trade and Environmental Protection, *The Convergence of U.S. National Security and the Global Environment Sixth Conference*, The Aspen Institute, May 27-June 2, 2002.

From the protests in the streets of Seattle during the World Trade Organization's 1999 Ministerial Meeting to the chaos surrounding the 2001 G-8 Summit Meeting in Genoa, the backlash against globalization is increasingly evident. One dimension of this backlash centers on environmental concerns. While economic integration and trade liberalization offer the promise of growth and prosperity, environmental advocates fear that freer trade will lead to increased pollution and resource depletion. At the same time, free traders worry that over-reaching environmental policies will obstruct efforts to open markets and integrate economies around the world. They often see environmentalists as blindly anti-free-trade and protectionist. "Trade and environment" tensions have therefore emerged as a major issue in the debate over globalization. This paper explores the contours of these

tensions and argues that trade policy and environmental programs can be better integrated and made more mutually supportive.

____ Bridging the trade-environment divide. 2001. *Journal of Economic Perspectives*. 15 (3): 113-121.

Trade officials often seek to limit efforts to link trade and environmental policy-making, and sometimes to prohibit such efforts altogether. In this regard, the narrow focus and modest efforts of the World Trade Organization's Committee on, Trade and Environment are illustrative. The launch of negotiations for a Free Trade Area of the Americas with an express decision to exclude environmental issues from the agenda provides an even starker example of the trade community's hostility toward serious environmental engagement. Economists have been prominent among those arguing that pollution control and natural resource management issues are best kept out of the trade policy-making process. Other economists, however, have tried to set trade policy-making in a broader context and to build environmental sensitivity into the international trading system. In fact, there is no real choice about whether to address the trade and environment linkage; this linkage is a matter of fact. The only choice is whether the policies put in place to respond will be designed openly, explicitly, and thoughtfully, with an eye to economic and political logic-or implicitly and without systematic attention to the demands of good policy-making. This article seeks to explain why trade liberalization and environmental protection appear to be in such tension and to push economists to explore more aggressively what economic theory and practice might do to address the concerns being raised.

Ferretti, J. 2003. Innovations in managing globalization: lessons from the North American experience. *Georgetown International Environmental Law Review*. 15: unpaginated, on-line, LexisNexis.

While street demonstrations against globalization may have reduced in scale and lost some focus, the concerns they once expressed have not gone away and in fact have become mainstream. The NAFTA was the first trade agreement to implicitly acknowledge the link between trade and other social policy concerns, such as the environment, by making references to it. As an environmental institution associated with a trade agreement, one of the advantages the CEC has is a built-in readiness for exploring innovations in linking environmental protection with financing. The upcoming tenth anniversaries of NAFTA and the NAAEC offer a good opportunity to examine the North American experience in reconciling environmental and trade priorities in the context of globalization.

Ferretti, J. 2002. NAFTA and the environment: an update. *Canada – US Law Journal*. 28: unpaginated, on-line, LexisNexis.

This article focuses on three questions: whether trade and environment are irreconcilable; what the experience has been in North America with the North American Free Trade Agreement (NAFTA); and what the future holds in terms of environment and trade challenges in North America. First, in examining environmental effects of trade, other driving forces need to be taken into account, including domestic variables such as changes in interest rates or changes in business

cycles. Second, while it is very useful to have broad-scale macroeconomic studies providing aggregate data on a continental or national basis, these can actually, in some cases, mask important local or regional impacts. The third lesson learned, and perhaps the most important one, is how critical it is to maintain a constant investment in environmental infrastructure and protection.

Gaines, S.E. 2002. The free trade area of the Americas: lessons from North America. In *The greening of trade law: international trade organizations and environmental issues*, R.H. Steinberg, ed., 189-220. New York, NY: Rowman & Littlefield Publishers, Inc.

This chapter will assess the prospects for incorporating environmental protection measures in the hemispheric movement toward free trade. A trade-environment link in the context of an FTAA could take a number of forms, from common market structures that go beyond NAFTA to fully integrate environmental and economic issues throughout the hemisphere at one end of the spectrum to a pattern of discrete national environmental initiatives concurrent with market-access agreements through bilateral or regional arrangements at the other end. The form that will emerge will be shaped by the negotiating leverage that can be exercised by each of the parties to the negotiations, which in turn will depend on the domestic political dynamics constraining the negotiating space for key nations.

Gallagher, K.P. and F. Ackerman, et al. 2001. *Environmental reviews of trade agreements: assessing the North American experience*. Medford, MA: Global Development and Environment Institute, Tufts University.

This paper outlines how environmental reviews (ERs) have evolved in North America, and evaluates the different methodological approaches that have been employed in ERs thus far. The authors show that the ERs conducted to date have an encouraging number of strengths that can be built upon. In both Canada and the United States, ERs are becoming increasingly sophisticated in their analyses. Compared to earlier efforts, they have begun to apply rigorous quantitative and qualitative techniques in the attempt to identify the potential environmental impacts of a trade agreement. In addition, ERs have brought unprecedented levels of public participation into the trade policy-making process.

Gilbreath, J. 2001. *Environment and trade: predicting a course for the Western Hemisphere using the North American experience*. No.12. Washington, DC: Center for Strategic and International Studies.

In anticipation of a deepening public debate on the level and type of environmental protection that should be associated with an FTAA, this report addresses environmental issues associated with an FTAA. This study reviews the operation of the North American Commission for Environmental Cooperation (CEC) in an attempt to (1) determine if the CEC or a similar arrangement might benefit the Western Hemisphere (2) determine how North American environmental priorities have changed since the implementation of NAFTA, and (3) contrast North American environmental issues associated with trade to issues that are emerging as concerns in Latin America and the Caribbean.

Girouard, R.J. 2003. Water export restrictions: A case study of WTO dispute settlement strategies and outcomes. *Georgetown International Environmental Law Review*. 15: unpaginated, online, LexisNexis.

In this paper, the problem of whether a WTO member may restrict exports of its natural surface water for conservation reasons without violating its substantive obligations under the GATT is analyzed. Because multiple avenues of dispute settlement are available to WTO members, and because disputes over trade-related environmental measures raise significant conceptual and practical challenges, the secondary goal is to review the strategic options that are available to the parties in a dispute over water export restrictions, including adjudication, consultation, negotiation, and arbitration. Some of the resources available to an adjudicator charged with resolving a dispute over water export restrictions are also reviewed, including formal mechanisms for seeking advice and assistance from expert intergovernmental organizations (IGOs).

Gitli, E. and C. Murillo. 2000a. *A Latin American case for a trade and environment link in the FTAA*. Winnipeg, Canada: International Center on Economic Policy for Sustainable Development.

The purpose of this paper is present a Latin American viewpoint on the NAFTA trade and environment model and to provide some recommendations to Latin American governments for the FTAA negotiations. Our overarching objective is to make the case that governments can, and should, develop an agenda for a trade and environment link in the FTAA that simultaneously advances their environmental, economic and political agendas.

Gitli, E. and C. Murillo. 2000b. *A Latin American perspective on the NAFTA model for trade and environment issues in the FTAA context*. Winnipeg, Canada: International Center on Economic Policy for Sustainable Development.

The purpose of this article is to express a Latin America viewpoint of the NAFTA model for Trade and Environment issues in order to draw conceptual and operational conclusions for the Free Trade Agreement of the Americas negotiation process. The NAFTA mode and its Canadian-Chile version are briefly described and characterized showing their high points and shortcomings, to set the basis for a proposal that could be suited to most of the countries involved.

Goldschmidt, M.R. 2002. The role of transparency and public participation in international environmental agreements: the North American agreement on environmental cooperation. *Boston College Environmental Affairs Law Review*. 29: unpaginated, on-line, LexisNexis.

The North American Agreement on Environmental Cooperation allows a citizen of a NAFTA country to file a complaint with the Commission for Environmental Cooperation alleging that a NAFTA country is failing to effectively enforce its domestic environmental laws. In light of the citizen submissions and the factual records published to date, the NAAEC has thus far successfully achieved one of its primary goals: to promote a transparent environmental regime that emphasizes public participation. This note examines the NAAEC's citizen submission process as an example of transparency and public participation in an international

environmental agreement. Further, this note argues that the citizen submission process more effectively influences long-term domestic environmental behavior than do coercive enforcement measures.

Graubart, J. 2002. Giving meaning to new trade-linked "soft law" agreements on social values: A law-in-action analysis of NAFTA's environmental side agreement. *UCLA Journal of International Law and Foreign Affairs*. 6: 441-58.
After explaining how the NAAEC submission process works, the remainder of this article provides a comprehensive, nuanced review of the submissions to date. In doing so, it adopts a "law-in-action" approach that considers the actual uses of legal mechanisms and their effects on actors' behavior as opposed to focusing solely on the formal rulings of the law-interpreting body. Such an approach is particularly appropriate for soft law agreements, like NAAEC, because they are not designed to produce immediate, judicially mandated changes in behavior. Rather than examining the NAAEC complaints as stand-alone tools for improving environmental standards in North America, their value to activists as added tools to be used in conjunction with broader domestic campaigns on environmental issues is considered.

Grossman, P. 2000. Corporate interest and trade liberalization: the North American free trade agreement and environmental protection. *Organization and Environment*. 13(1): 61-85.
This article examines rhetoric by corporations about the inclusion of environmental issues in the North American Free Trade Agreement (NAFTA). It provides a greater understanding of corporate pressure on regulatory measures by indicating how corporate actions change in relation to social movement and state actions. The author develops a cultural political economy perspective to show how issues are not fixed but are shaped by power relations and ongoing meaning construction. In doing so, he argues for the integration of theories of the firm with theories of the state to reveal the relationship between organizations and their social and political environment.

Hauer, G. and C.F. Runge. 1999. Trade-environment linkages in the resolution of transboundary externalities. *The World Economy*. 22(1): 25-39.
As Latin American trade liberalization moves forward under its own authority, largely via the MERCOSUR treaty, one of the major questions facing negotiators is how to link, or whether to de-link, environmental issues from trade negotiations. These authors argue that many environmental dilemmas can be described as Prisoners' Dilemmas (PDs). Taken on their own they lead to inferior outcomes, and offer no internal incentives for successful resolution. The authors describe the basic incentives of the environmental and trade games and then show how linkage between the two can be used to move nations into preferable situations. An important conclusion is that while linkage is nearly always preferable for those playing an environmental PD, it leads to added risks for players of the trade game, explaining the reluctance of the trade community to engage in such linkage for fear of a 'slippery slope' toward greater protectionism.

Hemispheric Social Alliance. 2003. *Lessons from NAFTA: the high cost of "free trade"*. Alliance for Responsible Trade.

Free-trade agreements are based on an economic theory that assumes that everything will work better if left to market forces. These agreements do not just liberalize foreign trade; they are designed to eliminate all government regulation or intervention in the market. This theory has no historical backing. In no country in the world has the market alone achieved sustainability and social justice. The following articles demonstrate that NAFTA has failed to deliver on its proponents' promises to increase economic growth, to create more and better jobs and to strengthen democracy in the region. It has been devastating for working people in all three countries and has led to increased pressure on Canada and Mexico to conform to U.S. foreign policy goals. Most alarmingly, the three governments are working to extend this failed model throughout the Americas in the proposed Free Trade Area of the Americas. Before leaping into that abyss, citizens and policymakers throughout the hemisphere should stop and look at the concrete results of this model for corporate-led globalization.

Hsia, S. 2003. Foreign direct investment and the environment: are voluntary codes of conduct and self-imposed standards enough? *Environmental Lawyer*. 9: Unpaginated, online, Westlaw.

The dramatic surge of private investment capital into emerging foreign markets, while assisting developing countries in the struggle for sustainable development, has created greater pressures on the environment. In this article, Sophie Hsia argues that the only way to alter the negative environmental impact of foreign direct investment is for countries collectively to build binding global rules with appropriate compliance and enforcement mechanisms. In Part II of this article, she discusses existing models of self-regulation as set out by several multinational enterprises. Parts III and IV review the attempts of credit export agencies and the International Finance Corporation in creating workable models for self-regulation. In Parts V and VI, Hsia outlines possible alternative frameworks for effective environmental regulation in the context of foreign direct investment.

Jansen, H. 2001. Induced institutional change in the trade and environment debate: A computable general equilibrium application to NAFTA with endogenous regulation setting. *Environmental and Resource Economics*. 18(2): 149-72.

Because of the assumption of constant emission factors, economy-environment models often show that free trade has negative environmental consequences. However, this pessimistic view ignores the possibility of trade strengthening the demand for regulatory institutions. An "institutional optimism hypothesis," stating that the net environmental result of trade liberalization is benign, is thus formulated in this paper. The hypothesis is examined with a CGE model that treats institutional change as an endogenous process dependent on income. Application to NAFTA, using a broad range of scenarios, provides some support for the institutional optimism hypothesis. The net pollution effect of trade liberalization is in many cases beneficial or low, even for the country specializing in polluting industries. The implication is that in many cases environmental interests are served better by a focus

on institution building in trading partners, than on the process of trade liberalization itself.

- Jenkins, E. 2000. *The environment and the FTAA: caught in the crossfire*. New Haven, CT: Yale Center for Environmental Law and Policy.
Growing acknowledgement of trade-environment linkages has given rise to considerable pressure for the inclusion of environmental issues in free trade agreements. An important step in this direction was taken in the North American Free Trade Agreement (NAFTA), where the United States, Canada, and Mexico addressed a number of issues in the NAFTA text and dealt with other pollution and resource management issues in a "Side Agreement." Although the environmental provisions of the NAFTA seem to have helped move collaborative environmental action in North America forward without causing trade disruptions, the launch of negotiations for a 34-nation Free Trade Area of the Americas (FTAA) has been marked by considerable hostility to the trade-environment linkage. This paper examines why the hostility toward the environment in the FTAA context has emerged within the United States. It also reviews what might be done to address these concerns.
- Jinnah, S. 2003. Emissions trading under the Kyoto Protocol: NAFTA and WTO concerns. *Georgetown International Environmental Law Review*. 15: unpaginated, online, LexisNexis.
Conflicts may arise between MEAs, such as the Kyoto Protocol, and international trade agreements, such as the General Agreement on Trade and Tariffs (GATT)/WTO and the NAFTA. Conflict may emerge because Kyoto Protocol member nations may only account for emission reduction units (ERUs) created in other Kyoto Protocol member nations. Concern arises about the ability of a country that is member both to the GATT/WTO or the NAFTA as well as to the Kyoto Protocol to place trade restrictions on ERUs created in countries that are member to the GATT/WTO or the NAFTA but not party to the Kyoto Protocol. This note will focus on such conflicts with emphasis on the case of Canada and the United States. Canada and the United States are parties to both the GATT/WTO and NAFTA. However, because the current President of the United States, George W. Bush, has refused to present the Kyoto Protocol for ratification, Canada may have reason to be concerned about the trade implications associated with their participation in the Kyoto Protocol's emissions trading system.
- Johnson, P.M. 1999. Can NAFTA's environmental regime be a model for hemispheric free trade? *World Economic Affairs*. 3(1): 36-40.
- Juillet, L. 2001. Regional models of environmental governance in the context of market integration. In *Governing the environment: persistent challenges, uncertain innovations*, E.A. Parson, ed., 125-68. Toronto, Canada: University of Toronto Press.
This paper examines the institutional arrangements governing the trade-environment nexus in two international governance regimes. It is argued that the NAFTA and the European Community offer two distinctive models for reconciling trade and environmental imperatives. It is further argued that the EU approach allows for a

more complete integration of environmental and trade objectives as well as for a more balanced resolution of the tensions between trade agreements and domestic environmental measures. As such, it appears to better embody the principles of sustainable development. In contrast, the NAFTA's normative and organizational frameworks, characterized by the predominance of national sovereignties and the prevalence of free-trade principles, seem less poised to bring lasting resolution to these tensions by providing for a consistent and balanced consideration of trade and environmental imperatives.

Kass, S.L. and J.M. McCarroll. 2000. Having it all: trade, development, environmental and human rights. *New York Law Journal*. May: unpaginated, online, LexisNexis. *This column attempts to summarize the principal complaints underlying the Seattle and Washington protests and to offer a number of suggestions, both substantive and procedural, for reconciling the competing interests involved. The goal is to suggest a path toward barrier-free world trade that is compatible with the sustainable development, environmental protection and respect for human rights to which the international community is nominally committed but which it casts aside - or appears to - whenever they conflict with expanded commerce. As discussed below, the approach draws on the WTO's own experience with environmental disputes, as well as lessons from the CEC, the World Bank and nongovernmental organizations (NGOs) in the human rights and environmental fields.*

Kass, S.L. and J.M. McCarroll. 1999. NAFTA's CEC: first lessons for the Americas. *New York Law Journal*. 22: 3-4. *This article concludes that, while the CEC has made some important advances over the WTO with regards to increased transparency, the organization needs to make some important changes to become more effective. These include moving the headquarters to a more visible location, moving beyond the need for two-thirds CEC Council votes to prepare or to release to the public a factual record for environmental claims, and the consideration of a clearer and more expansive definition of "non-enforcement". Finally, it should become possible, in the not-too-distant future, for the CEC to establish independent expert panels to adjudicate NGO claims of non-enforcement of environmental laws by one of the parties, just as now permitted for party-initiated complaints.*

Kibel, P.S. 2002. Awkward evolution: citizen enforcement at the North American Environmental Commission. *The Environmental Law Reporter*. 32(7): 10769-83. *Taking the release of the CEC publication "Lessons Learned" as a focal point, this article assesses the citizen submission process under the NAAEC. This assessment is particularly timely given recent actions to curtail the NAAEC's process and current proposals to negotiate an agreement to establish a Free Trade Area of the Americas (FTAA), which would expand many of NAFTA's core trade provisions and procedures to other central and South American countries. As the FTAA debate unfolds, one of the key unresolved questions is whether and to what extent environmental rights and environmental protection will be addressed in the agreement. By examining the evolution and performance of NAAEC's citizen*

submission process, this article provides a basis for consideration of environmental issues related to the proposed FTAA.

Kirton, J.J. 2000. Trade and environmental quality. In *Social dimensions of U.S. trade policies*, A.V. Deardorff and R.M. Stern, eds., 129-58. Ann Arbor, MI: University of Michigan Press.

To provide a more comprehensive assessment of the effects of the NAFTA, this chapter pursues three approaches. First, it considers the environmental effects of NAFTA-associated trade in conjunction with the impact of FDI. Second, it considers how trade and investment liberalization is translated into environmental change through often autonomous, powerful and complex processes of production, physical infrastructure, social organization and government policy. Finally, it explores the autonomous environmental impact of the trilateral institutions created or catalyzed by both the core NAFTA and its accompanying NAAEC, with the express purpose of enhancing the favorable ecological impact of NAFTA's trade liberalization regime.

Kirton, J.J. and V.W. Maclaren, eds. 2002. *Linking trade, environment, and social cohesion: NAFTA experiences, global challenges*. Hampshire, England: Ashgate. *This volume examines in turn the overall record of NAFTA in its global context, the record of its investment, environmental, and labor institutions to which civil society actors have direct access, and the various ways to assess the impact of international trade agreements at the global, regional, national, and local levels. This latter section is of vital concern to those in the environmental community, and to citizens as a whole, who want to know just what environmental and social impacts of trade-investment liberalization as pursued thus far has been.*

Kirton, J.J. and A.M. Rugman. 1998a. Multinational enterprise strategy and the NAFTA trade and environment regime. *Journal of World Business*. 33(4): 438-54. *The North American Free Trade Agreement (NAFTA) is the first international trade treaty to explicitly incorporate a process to accommodate political aspects of the natural environment. It does this primarily through the creation of the Commission on Environmental Cooperation (CEC), but also through associated committees and regulations. In this paper the authors use "regime" analysis from political science to assess these institutional aspects of NAFTA as they affect the strategies of multinational enterprises (MNEs). They draw out implications for public policy and corporate strategy based on extensive interviews of relevant government and business leaders; as well as senior bureaucrats involved in the administration of NAFTA trade and environment policy.*

Kirton, J.J. and A.M. Rugman. 1998b. *Trade and the environment: economic, legal and policy perspectives*. Northampton, MA: Elgar. *These nineteen previously published papers provide economic, legal, and policy perspectives on trade and the environment. Paper topics include the problem of social cost; methodological approaches in the analysis of trade and the environment; the interface between environmental and trade policies; NAFTA and the North American Agreement on Environmental Cooperation; the fair-trade-free-trade debate; differences in national environmental standards and the level-playing-field;*

the demand for international regimes; trade measures and the design of international regimes; trade protectionism and environmental regulations; environmental protection and the creation of a single European market; NAFTA's lessons for reconciling trade and the environment; and North American environmental cooperation--bilateral, trilateral, and multilateral.

Knox, J.H. 2002. The myth and reality of transboundary environmental impact assessment. *The American Journal of International Law*. 96: unpaginated, online, LexisNexis.

In part I of this article, the author describes two stories of transboundary EIA: the mythic view of transboundary EIA as a corollary to Principle 21, and a more mundane view of transboundary EIA as an offshoot of domestic EIA laws. In part II, the author shows how the two regional agreements on transboundary EIA do not support the mythic view of transboundary EIA and, instead, extend domestic EIA in accordance with the principle of nondiscrimination. The author also examines the International Law Commission's draft articles on prevention of transboundary harm, which hew much more closely to the mythic view. In part III, the author defends the usefulness of the regional EIA agreements. The author concludes with some brief observations on the danger of confusing the myth of Principle 21 with the reality of international law.

Knox, J.H. 2001a. A new approach to compliance with international law: the submissions procedure of the NAFTA environmental commission. *Ecology Law Quarterly*. 28: unpaginated, on-line, LexisNexis.

The NACEC procedure has the potential for success but this does not mean that it will be successful in practice. Whether it does prove to be successful is important in ways that extend beyond its contribution to the success or failure of the NAAEC. By revitalizing international adjudication of environmental disputes in a managerial context, the NACEC submissions procedure may provide an example for those seeking to promote compliance with other international environmental agreements. Part I of this article argues that the managerial model and supranational adjudication should be reassessed, taking into account the dual role of complaint-based monitoring. Part II reviews the monitoring mechanisms prevalent in international environmental agreements and describes the innovative NACEC submissions procedure. Part III evaluates the potential effectiveness of the NACEC procedure as a quasi-supranational tribunal and as part of a managerial regime. It concludes that the procedure has the potential to be effective both as a form of quasi-supranational adjudication and as an integral part of a managerial approach to compliance.

Knox, J.H. 2001b. Federal, state, and provincial interplay regarding cross-border environmental pollution. *Canada-United States Law Journal*. 27: unpaginated, on-line, LexisNexis.

Why is there no agreement on transboundary environmental impact assessment? The author proposes that the problem is federalism; that is, specifically, the fact that in Canada and the United States environmental impact assessment at the federal level is required only for federal projects: projects that are either carried out, funded or

authorized by the federal government. Other projects, any project that does not fit within that federal box, can be subject to environmental impact assessment if the state or province decides that it should.

Lichtinger, V. 2000. NAFTA and the environment: five years later. In *Free trade: risks and rewards*, L.I. MacDonald, ed., 222-5. Montreal, Canada: McGill-Queen's University Press.

This chapter offers a brief summary of the activities of the CEC, including the ways in which it has been successful, avenues in which it can specialize further, and the ineffectiveness of Articles 14 and 15. The lack of strength of these articles is a result of opposition to them by the council of the three NAFTA countries.

Mann, H. 2001. *Private rights, public problems: A guide to NAFTA's controversial chapter on investor rights*. Winnipeg, Canada: International Institute for Sustainable Development and World Wildlife Fund.

This guide goes back to the beginning, looking first at why international agreements on investment came about, and then at why this trend was extended to NAFTA. The guide then briefly lays out the main components of Chapter 11. It then tries to explain why foreign investment law—an area that has been developing for over 50 years without much public controversy—has suddenly become a flash point for international concern. The guide then looks in detail at the main components of Chapter 11: what they cover, the obligations they impose and the enforcement tools they provide. From this analysis, it concludes that Chapter 11 does indeed threaten governments' ability to protect the public interest in terms of environmental, human health and other social issues.

Mann, H. 2000a. *Assessing the impact of NAFTA on environmental law and management processes*. North American symposium on understanding the linkages between trade and environment, Washington, DC, October 11-12, 2000. Washington, DC: Commission for Environmental Cooperation,

This paper undertakes a survey of the application of trade law rules to environmental management and decision-making by governments. It correlates five generic stages of environmental management against seven major trade law disciplines that are particularly relevant to measures for the protection of the national environment.

Mann, H. 2000b. NAFTA and the environment: lessons for the future. *Tulane Environmental Law Journal*. 13: unpaginated, on-line, LexisNexis.

This article considers the results of the NAFTA environmental negotiations that concluded in the signing of the NAAEC. Part II of this article begins with a look at the conceptual approach to international law, trade, and the environment that underlies this article, focusing on these relationships in the context of the ongoing formulation of international law for sustainable development. Part III then discusses the events that led to the side agreements. Next, Part IV focuses on some precise examples of the linkages made between trade and the environment through the special environmental side agreement, with an eye to an initial evaluation of their success. These examples lead to some specific conclusions on the successes and

failures of the NAFTA/NAAEC model as an integrative approach to trade and environmental issues. The article concludes with some suggestions for integrating the trade and environmental issues in future negotiations.

Mann, H. and K. Von Moltke. 2001. Misappropriation of institutions: some lessons from the environmental dimension of the NAFTA investor-state dispute settlement process. *International Environmental Agreements: Politics, Law and Economics*. 1(1): 103-20.

This article looks at problems encountered with the investor-state dispute settlement process established by the North American Free Trade Agreement (NAFTA). The institutional dimension of this process is largely drawn from the General Agreement on Tariffs and Trade (GATT), and existing international institutions for commercial arbitration. The article traces some of the difficulties encountered in attempting to use institutions designed for a specific purpose and implemented in one organizational context, to achieve a different purpose in another organizational context. It discusses the problems that arise when institutions appropriate for settling commercial disputes between private actors are used as the basis for balancing private interests and public goods, the environment in particular.

Mann, H. and K. von Moltke. 1999. *NAFTA's Chapter 11 and the environment: addressing the impacts of the investor-state process on the environment*. Winnipeg, Canada: International Institute for Sustainable Development.

The objectives of this paper are to review the provisions and processes of NAFTA specifically relevant to investor protection and environmental regulation, identify the problems that they might raise, consider the opportunities to address these problems, and draw some lessons for future negotiations on investment agreements. This introductory section includes a summary of our findings and recommendations. Section 2 of this paper then provides an overview of the scope and significance of the investor-state process. Section 3 analyzes the substantive legal provisions in Chapter 11 relevant to these issues, and articulates potential responses to the environment-related concerns they raise. Section 4 reviews the specific procedural issues that arise from the investor-state process, with a particular focus on transparency and public access concerns. Section 5 considers the process issues associated with developing the potential responses to these problems. Section 6 then draws some broader conclusions on the implications of Chapter 11 for the development of future international agreements on investment.

Markell, D. 2000. The Commission for Environmental Cooperation's citizen submission process. *Georgetown International Environmental Law Review*. 12: unpaginated, online, LexisNexis.

This article reviews one of the more innovative features of the CEC, its citizen submission process. It begins by providing a brief overview of the origins, structure, and responsibilities of the CEC. Second, it describes the citizen submission process. Third, it provides an update on the current status of the process. Finally, the article offers a few observations concerning the future evolution of the process and it identifies several fertile areas for future research.

- Markell, D.L. and J.H. Knox, eds. 2003. *Greening NAFTA: the North American commission for environmental cooperation*. Stanford, CA: Stanford University Press. *The effort to reconcile environmental protection and economic integration has become one of the flashpoints of international discourse. At the same time, the international community has become more aware of the interdependence of ecological systems and the need for international institutions to protect the environment. Despite the proliferation of environment policies effectively and the handful of regional environmental organizations are relatively powerless. With respect to economic integration and environmental protection, as well as many other areas of international cooperation, nations are struggling to respond to the demands of their citizens to participate in the development and implementation of international policies that affect them. The Commission is important because it provides creative answers to each of these issues. The agreement creating the CEC has already been used as a model for bilateral agreements between Canada and Chile and between the United States and Jordan. Surprisingly, however, the Commission has received relatively little scholarly attention. Although political scientists and lawyers have described its relationship to NAFTA and have analyzed its submissions procedure, there are few comprehensive analyses of how it is fulfilling, or failing to fulfill, its mandates. This book is intended to fill that gap.*
- Mayer, F.W. 2001. *Negotiating NAFTA: political lessons for the FTAA*. No. SAN01-17. Durham, NC: Sanford Institute of Public Policy, Duke University. *This paper examines the involvement of U.S. interest groups in the debates and negotiations about the formation of the North American Free Trade Agreement. It outlines the process by which side agreements regarding labor and environmental protections came to be considered in the negotiations though none of the three countries originally intended to include them. It also examines the Canadian and Mexican response to these proposals by the United States.*
- Moreno, I.S. and J.W. Rubin, et al. 1999. Free trade and the environment: the NAFTA, the NAAEC, and implications for the future. *Tulane Environmental Law Journal*. 12: unpaginated, on-line, LexisNexis. *This article identifies free trade and environmental protection principles found in the NAFTA and the NAAEC, and examines how such principles may be applied to the FTAA Agreement under negotiation. Part II sets the stage for the discussion by examining the background of the NAFTA and the NAAEC, and focuses on those provisions applicable to environmental protection. Part III examines the NAAEC's framework, objectives and programs implemented under the Agreement. Part IV introduces the FTAA process and explores contemporary developments in the interplay between trade expansion and environmental protection. Part V identifies a number of themes and principles that emerge from the NAFTA and the NAAEC, and considers lessons learned from the NAFTA and the NAAEC that maybe applicable to the FTAA. The article concludes by discussing the possible relevance of these themes and principles to the FTAA, and identifying matters that may need to be considered during the FTAA negotiations.*

- Mumme, S.P. 1999. NAFTA and environment. *Foreign Policy in Focus*. 4(26): Unpaginated, online: <http://www.fpif.org/briefs/vol4/v4n26nafta.html>. *This brief report summarizes the controversy over the impact of NAFTA on the trilateral environment. It finds that the environmental side agreements to NAFTA are flawed because trade and investment are prioritized over environmental protection. The CEC is viewed as a positive institution that has provided useful monitoring capabilities and the BECC and NADBank have provided important resources for environmental protection in border communities. However, overall the institutions are too weak and lacking in governmental support.*
- Mumme, S.P. and P. Duncan. 1998. The commission for environmental cooperation and environmental management in the Americas. *Journal of Interamerican Studies and World Affairs*. 39(4): 41-62. *This article examines the CEC's contribution to the North American environmental management system and explores the implications of its expansion across the hemisphere. The study proceeds in four parts. First, the authors trace the structure of the pre-1994 (that is, pre-NAFTA) system for international environmental cooperation in North America. Second they look at the CEC's mandate and operational structure, emphasizing its unique characteristics and potential contributions to North American environmental management. Third, they examine the CEC's institutional and political constraints and show how these affect mandate implementation. Fourth, they consider the problem of accession to the North American Agreement for Environmental Cooperation (NAAEC), arguing that the CEC's institutional and political constraints currently limit its capacity to accommodate the demands of other nations in the hemisphere to accede to the agreement.*
- Nordstrom, H. and S. Vaughan. 1999. *Trade and environment*. Geneva, Switzerland: World Trade Organization. *Several key questions are addressed in this study. First, is economic integration through trade and investment a threat to the environment? Second, does trade undermine the regulatory efforts of governments to control pollution and resource degradation? Third, will economic growth driven by trade help us to move towards a sustainable use of the world's resources? The authors argue that economic integration has important environmental repercussions. Most importantly, perhaps, is that economic integration has, or at least is perceived to have diminished the regulatory power of individual nations.*
- Perrin, M. 2000. Sustainability assessment of trade liberalization agreements. In *Assessing the environmental effects of trade liberalization agreements: methodologies*, Organization for Economic Co-operation and Development, ed., 67-82. Paris, France and Washington, DC: OECD Proceedings. *How can the environmental effects of trade liberalization agreements be assessed? Are available methodologies sufficiently tuned to current concerns? In order to take stock of the state of the art in assessment methodologies, the OECD organized a two-day technical workshop to focus on past practice and new tools for assessing the environmental effects of trade agreements. Some two dozen experts from*

governments, international organizations, universities international organizations, universities and NGOs active in this area presented lessons from past practice and results of the considerable advances made in recent years.

Pettigrew, P.S. and R.B. Zoellick, et al. *NAFTA at eight: A foundation for economic growth.*

Despite the slowdown of the world economy in 2001 and the terrible events of September 11, the North American Free Trade Agreement (NAFTA), in its eighth year, continues to provide benefits to consumers, farmers, workers and businesses in Canada, Mexico and the United States. The NAFTA partners are cooperating to advance trade liberalization within North America, in the negotiations for the Free Trade Area of the Americas, and the World Trade Organization. Inspired by the impressive gains made thus far by this catalyst of economic growth, we are committed to the full implementation of the Agreement.

Sanchez, R.A. 2002. Governance, trade, and the environment in the context of NAFTA. *American Behavioral Scientist.* 45(9): 1369.

The increasing importance of ideas and practices of free trade in the world economy requires a better understanding of the role of trade in creating opportunities for development. This study analyzes new forms of governance created in the context of the North American Free Trade Agreement (NAFTA). It finds that environmental groups' participation in NAFTA's implementation has declined while market actors have become increasingly empowered. The study finds that 8 years after NAFTA's passage there are generally diminished expectations that the agreement's environmental provisions and institutional frameworks will help control negative environmental consequences of increased trade between Canada, Mexico, and the United States. This brings into question NAFTA's reputation as a "green" trade agreement. The narrow and technical interpretation of the NAFTA's provisions has been oriented toward avoiding trade barriers rather than understanding and improving the complex interactions between trade, the environment, and development.

Schoen, D. 1999. Profiling the Commission for Environmental Cooperation.

Environmental Science and Technology. 33(19): 416A-20A.

Following the ratification of NAAEC in 1994, many observers regarded the CEC as an important opportunity to advance environmental protection in North America. Five years later, the results of the institution's early programs are open for scrutiny, as the debate continues on whether environmental protection and liberalized trade are indeed reconcilable. This article concludes with a review of the positions taken by scholars such as J.J. Kirton and S. Charnovitz.

Shrybman, S. *The council of Canadians and the Canadian union of postal workers launch a constitutional challenge to NAFTA investment rules.* Ottawa, Canada: Sack Goldblatt Mitchell Barristers & Solicitors.

In March of 2001, the Council of Canadians (the Council) and the Canadian Union of Postal Workers (CUPW) joined forces to launch a legal challenge to the validity of NAFTA investor-state procedures. The investment provisions at issue empower

countless foreign investors to sue Canada and its NAFTA partners to enforce the exclusive rights the treaty accords them. In most cases these broad investor rights have no domestic analogue, and could not be enforced before national courts. Moreover, when claims are made, they are determined by secretive international arbitral tribunals, which operates entirely outside the framework of domestic law, national courts, and constitutional guarantees of fairness, fundamental justice, and equality. While efforts to establish the MAI were turned back by public opposition, the prototype for that treaty remains firmly entrenched in the NAFTA, literally hundreds of bilateral investment treaties, and may now be expanded as part of the Free Trade Area of the Americas (the FTAA) initiative.

Sinclair, S. 2003. *FTAA: A dangerous NAFTA-GATS hybrid. Canada's initial offer threatens vital interests.* No. 4(2). Ottawa, Canada: Canadian Centre for Policy Alternatives.

On February 14, 2003 Canada publicly released its "initial offer" to cover services and investment under the Free Trade Area of the Americas (FTAA). Canada's so-called offer is merely a list of draft reservations copied almost entirely verbatim from Canada's list of NAFTA reservations drawn up in 1994. These draft reservations, together with previously obtained drafts of the services and investment chapters, indicate that the Canadian government is pursuing an FTAA that combines some of the worst features of the NAFTA investment chapter and the GATS services provisions.

Slaughter, A. 2003. Focus: emerging fora for international litigation (part 2) A global community of courts. *Harvard International Law Journal.* 44: unpaginated, online, LexisNexis.

This Focus section examines emerging fora of transnational litigation, encompassing both international tribunals and domestic courts. The very label "transnational litigation," as applied to many of the dispute resolution processes that are discussed in this section--the World Trade Organization (WTO), North American Free Trade Agreement (NAFTA), the Law of the Sea Tribunal--reflects a deep conceptual shift. These arbitral tribunals and international courts were once addressed in courses on "international dispute resolution," beginning with the International Court of Justice, then moving to various regional courts such as the Inter-American Court and the European Court of Human Rights (ECHR), and finally covering a series of more specialized processes such as the General Agreement on Tariffs and Trade (GATT), the International Centre for Settlement of Investor Disputes (ICSID), and ad hoc claims tribunals.

Stephan, P. 2000. Citizen submission process of NAFTA under attack: guidelines renegotiations underway without public notice. *Updater.* Online: <http://www.us-mex.org/borderlines/updater/2000/april25persp.html#bookmark3>.

At issue are the "guidelines" that help decide when citizens can bring petitions alleging failures by NAFTA governments to enforce their environmental laws. Since the beginning, the guidelines have been controversial. When first negotiated five years ago, citizen participation helped produce a process that is relatively open and strong. Two years ago, the guidelines were formally reviewed--again in a process

that included public participation from the start. During this review, citizens groups were virtually unanimous in calling for no change to the guidelines. But now it has been learned that since the ministerial meeting, the governments have been negotiating another set of written guidelines--this time without public participation. It appears all this is happening principally at the insistence of Canada, with the government of Mexico also pushing for some changes, and the United States apparently agreeing that more written guidelines are necessary.

Stone, M. 2003. NAFTA article 1110: environmental friend or foe? *Georgetown International Environmental Law Review*. 15: unpaginated, online, LexisNexis. *This note begins with an explanation of NAFTA Chapter 11 with a focus on Article 1110, which provides for investment protection from measures that are "tantamount to expropriation." It also addresses other clauses within Chapter 11 that are potentially relevant to determinations of expropriation, as well as NAFTA's preamble and the NAAEC. Part II also describes other sources of an international definition of expropriation, including the Restatement on Foreign Relations, multilateral investment agreements, and bilateral investment treaties. Part III discusses decisions made by NAFTA Tribunals and other international decision-making bodies about whether an expropriation occurred. The note concludes that, while concerns about the effect that NAFTA Chapter 11 will have on the environment are legitimate, Chapter 11 is unlikely to have significant environmentally damaging consequences.*

Strazzeri, J.A. 2002. A Lucas analysis of regulatory expropriations under NAFTA Chapter Eleven. *Georgetown International Environmental Law Review*. 14: unpaginated, online, LexisNexis. *This note presents one conclusion and offers one proposal. First, it asserts that the clear language of the NAFTA, supported by its arbitral jurisprudence and by the negotiators' intentions, requires the payment of compensation for any government measure that substantially and adversely effects the investment of a foreign entity, regardless of any noble public purpose for such regulation. The note, however, also proposes the application of a principle, which although best articulated in U.S. domestic law, still aptly functions independently under international law. This note acknowledges that a NAFTA party must always compensate when it expropriates, regardless of the regulation's purpose or its non-discriminatory application; however, the government may tighten controls on individuals that are acting outside of their property rights inherent and acquired in the title to their investment without providing any compensation. Again, this does not suggest U.S. domestic law has any authority over a NAFTA dispute.*

Tollefson, C. 2002. Games without frontiers: investor claims and citizen submissions under the NAFTA regime. *Yale Journal of International Law*. 27: unpaginated, online, LexisNexis. *There is an asymmetry between how NAFTA Parties perceive and respond to threats to their Westphalian sovereignty in relation to transnational investors, on the one hand, and civil society organizations, on the other. A goal of this article, therefore, is to document and reflect on this asymmetry; an asymmetry that, in the author's view,*

lends support to Krasner's organized hypocrisy thesis. Based on the foregoing analysis, the author concludes by arguing that if states are to reap the potential social and economic benefits of trade and investment liberalization, they must abandon their tendency to regard engagement with civil society in sovereignty-protectionist terms. Instead, they must strive to collaborate more closely with civil society in order to more effectively incorporate environmental, public health and other social values into trade law principles and decision making.

Torres, B. 1999. Environmental cooperation before and after NAFTA. In *Economic integration in NAFTA and the EU: deficient institutionalism*, K. Appendini and S. Bislev, eds., 106-23. New York, NY and London, England: Macmillan Press. *In this chapter it will not be attempted to enter into the discussion about possible impacts of increasing trade on environment. Nor is it intended to deal with US-Canadian handling of the issue before and after NAFTA. Instead the author will focus on explaining Mexico's unwillingness to include environmental provisions in NAFTA and to widen cooperation on the issue, which not only contributed to the shaping of the NAAEC but are still relevant to the performance of the newly created environmental institutions in North America in the short-run. Though it is too soon to evaluate the role of these institutions, their possible contribution to the opening of new avenues of cooperation between Mexico and its two developed partners, particularly the United States, is also discussed.*

van Hoogstraten, D. 2000. Trade and environmental quality: comment. In *Social dimensions of U.S. trade policies*, A.V. Deardorff and R.M. Stern, eds., 159-61. Ann Arbor, MI: University of Michigan Press. *The author comments upon the paper by J.J. Kirton in the same publication. In general the author views the paper as an excellent analysis of the NAFTA institutions. However, a point that van Hoogstraten feels was insufficiently addressed is why interest in the environmental issues raised by NAFTA developed in the U.S.*

Vaughan, S. 2000. Final analytical framework to assess the environmental effects of NAFTA. In *Assessing the environmental effects of trade liberalization agreements: methodologies*, Organization for Economic Co-operation and Development, ed., 57-60. Paris, France and Washington, DC: OECD Proceedings. *How can the environmental effects of trade liberalization agreements be assessed? Are available methodologies sufficiently tuned to current concerns? In order to take stock of the state of the art in assessment methodologies, the OECD organized a two-day technical workshop to focus on past practice and new tools for assessing the environmental effects of trade agreements. Some two dozen experts from governments, international organizations, universities international organizations, universities and NGOs active in this area presented lessons from past practice and results of the considerable advances made in recent years.*

Wallach, L.M. 2002. Globalization and sovereignty: accountable governance in the era of globalization: the WTO, NAFTA, and international harmonization of standards. *Kansas Law Review*. 50: unpaginated, online, LexisNexis.

Past attempts to raise the vital questions of the appropriate venue for different categories of decision-making in the context of today's expansive international commercial agreements have been systematically dismissed as ill-informed or derided as protectionists gambits. Ironically, this strategy of dismissal is most dangerous to the interests who are enjoying the benefits of the status quo rules. The failure to recognize or admit the many real, severe flaws in the design of our current international commercial rules has led to a broad crisis of legitimacy not only for the specific flawed institutions such as the WTO and NAFTA, but for the very concept of trade. As the WTO and NAFTA have accumulated real life records, some people are taking notice of the more high profile rulings against domestic environmental and other policies, such as the rulings under NAFTA's investment rules and WTO rulings against elements of the U.S. Clean Air Act and Endangered Species Act. However, there is no awareness of a much more subtle, but pervasive way in which the current international commercial rules are affecting a slow motion coup d'etat against accountable, democratic governance.

Wickham, J. 2000. Toward a green multilateral investment framework: NAFTA and the search for models. *Georgetown International Environmental Law Review*. 12: unpaginated, online, LexisNexis.

This article will examine each of the Multilateral Agreement on Investment's three "anchors," evaluating them for their likely effectiveness. It next will look at other environmental proposals made during the MAI negotiations, including the "Chairman's Proposals on Environment and Related Matters," from which the three anchors were drawn but on which complete agreement was not reached. The article concludes, in sum, that the MAI was structurally deficient, invoking the historical trade discipline of national treatment for international investors and investment when what, from an environmental perspective, is needed today for global commercial enterprises is international treatment, or the application of international environmental principles and law. The article finishes by exploring the contours of a possible future multilateral investment instrument. It does so because, although the MAI did not succeed, an urgent need to facilitate capital flows to developing countries to foster sustainable development still exists.

Wise, T.A. 2003. *NAFTA's untold stories: Mexico's grassroots responses to North American integration*. Silver City, NM: Interhemispheric Resource Center. *NAFTA is no model for sustainable development despite its success in transforming one of the world's most protected economies into one of its most open. Since 1985, when Mexico began its rapid liberalization process, exports have doubled and foreign direct investment has nearly tripled. According to the NAFTA model, with inflation significantly in check, Mexico should have reaped the rewards of liberalization. It hasn't.*

Wise, T.A. and K.P. Gallagher. 2002. *NAFTA: A cautionary tale*. Silver City, NM: Foreign Policy in Focus and the Interhemispheric Resource Center. *Three years ago, the authors set out to study the social and environmental impacts of NAFTA and the broader economic integration process of which it is a part. They looked at data not just from the NAFTA period but from the mid-1980s, when Mexico*

first began to open its economy. One of their goals was to inform future trade policies and treaties, such as the FTAA, so that developing countries could better assess the promise and the perils of entering into agreements modeled on NAFTA. Consistent with the public record, their research suggests that Latin American and Caribbean governments should think twice about signing on to the FTAA in its proposed form. This article outlines why.

- Wise, T.A. and H. Salazar, et al, eds. 2003. *Confronting globalization: economic integration and popular resistance in Mexico*. Bloomfield, CT: Kumarian Press. *Is the current model for economic globalization good for the poor or the environment? Are there alternatives? Amid rising worldwide protests that corporate elites wield too much influence over global economic governance, this book on Mexico's experience under the North American Free Trade Agreement offers insights into both questions. With a focus on labor, agricultural, and environmental issues, Confronting Globalization tells globalization's untold stories: its social and environmental costs and the grassroots search for alternative paths.*
- Woods, W.D. 1998. Law and civil society: transnational litigation of comprehensive general liability coverage in environmental impairment cases and the NAFTA. *Arizona Journal of International and Comparative Law*. 15: unpaginated, online, LexisNexis. *This note will examine the insurance coverage problems involved in tort and environmental impairment liability for insurers and policyholders in the United States and Mexico within the context of the NAFTA. Many authors have written notes pertaining to transnational litigation of tort claims, but little has been written on the underlying effect on insurers and policyholders. This area of litigation is of great import in the United States, and will likely become important transnationally. As American insurance carriers are moving into the Mexican market in unprecedented numbers, a greater number of actions between those carriers and their policyholders is inevitable.*
- Wyrick, A.M. 1999. Successful citizens' submissions under the North American Agreement on Environmental Cooperation. *Tulsa Journal of Comparative & International Law*. 6: unpaginated, on-line, LexisNexis. *With the dawn of the North American Free Trade Agreement in 1993 came the birth of "side accords" meant to deal with other issues of concern between the parties of Mexico, Canada and the United States. The North American Agreement on Environmental Cooperation was the agreement proposed to legally manage economical concerns the United States and Canada had with Mexico and the new economic incentives NAFTA created. This particular side accord set up a system to monitor the environmental enforcement of the three parties, involving a detailed procedure in which citizens of any nation-member to NAFTA may complain and pursue "judgments" against parties for possible violations. Since its conception, this mini-judiciary has heard several petitions, and it appears to be effectively consistent in laying out the "law" as it applies to environmental issues between parties. The following pages will attempt to outline a prima facie violation of the environmental accord and how to successfully prevail in a citizen submission.*