

THE NEW "PUBLIC"

The Globalization of Public Participation

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The New "Public": The Globalization of Public Participation

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THE NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION: A CASE STUDY IN INNOVATIVE ENVIRONMENTAL GOVERNANCE

*Elizabeth Dowdeswell**

We live in a world where ideas cross borders as if they did not exist, where cyberspace is beyond national control, and where the speed and magnitude of capital flows is simply incredible. The powerful forces of the global marketplace and new communications technology have combined to radically reshape societies and blur national borders. This is the century of globalization. The integration of world markets and the movement of capital, goods, technology, and information has narrowed our global space and accelerated the pace of change.

Not surprisingly this phenomenon has both positive and negative impacts. The jury is still out on how to avoid a collision between economic expansion, growing ecological pressures, and significant challenges to social cohesion. Citizens around the world are now engaging in discussions about economic efficiency, the liberalization of trade, and deference to the marketplace in an effort to put a human face on globalization.

On the environmental front, practically any assessment concludes that there is no room for complacency. Sobering reviews of the ecological fate of the earth abound.¹ They tell compelling stories of a continuing assault on the Earth's life support system—of waste, pollution and poisons, and a loss of natural resources and biodiversity. They portray an urbanizing world in which two-thirds of humankind fall far short of having a decent quality of life.

There is a growing sense of alienation as citizens question whether traditional institutions and political

processes have kept pace with the changing world and continue to meet their expectations. Consequently, as we enter the 21st century, governance has become a popular topic of debate. The architecture of our institutions and the design of processes for making decisions are under review.

Ten years ago at the Earth Summit, world leaders embraced the concept of sustainable development. Bringing together environmental, economic, and social considerations promised much improved decisions. This was a response to globalization that imagined real strides forward in the health of the environment, a more equitable sharing of the earth's resources, and a much improved quality of life for more of the planet's people.

Today, as the world community prepares for the World Summit on Sustainable Development, that promise has not been fully realized. Sustainable development remains a work in progress. We know that a sustainable planet is not an unreachable goal, so why is action on the sustainable development agenda so elusive? Part of the answer may lie in international institutions that seem to be crippled, incoherent, slow to respond, and unable to engage effectively all sectors of society. To respond to such a quintessential global issue as environment and to foster the interdisciplinarity demanded by sustainable development requires enlightened and purposeful organizations and the inspiration of an empowered citizenry. The matter of improved environmental governance is clearly on the Summit's agenda.

In the search for effective models of governance, the North American Commission for Environmental Cooperation (CEC), a pioneer in linking trade and environment, has much to offer. This chapter describes a unique institutional model of cooperation designed to further environmental sustainability within a regime of trade liberalization. It documents actual examples of the manner in which the Commission for Environmental Cooperation has incorporated elements of good governance now being discussed internationally, particularly by engaging the public. Section I surveys the mandate and organizational structure of the CEC, as well as the context in which it has evolved. Section II examines some of the innovative approaches the CEC has adopted to improve environmental governance in North

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¹ See, e.g., UNITED NATIONS ENVIRONMENT PROGRAMME, GEO: GLOBAL ENVIRONMENT OUTLOOK 3 (2002), available at www.unep.org/GEO/index.htm (last visited July 22, 2002); WORLD RESOURCES INSTITUTE, WORLD RESOURCES 2000-2001 – PEOPLE AND ECOSYSTEMS: THE FRAYING WEB OF LIFE (2000), available at www.wri.org/wr2000/index.html (last visited July 22, 2002).

America, with particular attention to those activities that have enhanced public access to information, participation, and justice. This chapter concludes with a consideration of the potential relevance of the experiences of the CEC for other regions, as well as a glimpse into the future of the CEC.

I. THE PROMISE OF TRILATERAL COOPERATION: THE COMMISSION FOR ENVIRONMENTAL COOPERATION

The CEC is a unique institutional model in many ways. First, it seeks to further environmental sustainability within a regime of trade liberalization.² Second, the geographic make-up of the CEC links countries at different stages of development. Third, it has committed to meaningful involvement of all sectors of society. And fourth, the CEC has adopted and developed several innovative governance tools and techniques.

The Commission was established by the North American Agreement on Environmental Cooperation (NAAEC)³ between the governments of the United States, Canada, and Mexico. Considered to be a side agreement to the North America Free Trade Agreement (NAFTA),⁴ it has been in operation since 1994.

These three governments believed that a free trade agreement was important for the stability and prosperity of North America. By systematically promoting economic integration, wealth would be generated and technology advanced throughout the region. They also understood that there was a linkage between environment and trade, and they were convinced environmental quality could be protected and enhanced concurrently with economic integration.

While the three governments negotiated NAFTA, citizens, nongovernmental organizations (NGOs), and trade unions in the region were concerned about the potential impacts of trade liberalization. Trade unions worried about loss of jobs, and environmental organizations feared that increased industrial activity would lead to more pollution and greater pressure on natural

resources. Many feared that increased competition would encourage countries to lower environmental standards to attract investment, creating pollution havens. There was also the possibility that the integrity of multilateral standards and legal regimes and domestic environmental laws and standards could be challenged as unnecessary trade barriers. Finally, a focus on providing domestic industry with a competitive advantage in open markets could lead to a reduced emphasis on enforcement of environmental laws.

The governments sought to respond to these concerns by recognizing sustainable development as one of the goals of NAFTA itself. NAFTA specifically exempted certain multilateral environmental agreements should inconsistencies occur,⁵ and sought to address directly the issue of a race to the bottom in environmental standards. Furthermore, a parallel environmental agreement—the North American Agreement on Environmental Cooperation—was negotiated to promote cooperation in raising environmental standards and tackling regional issues of environmental concern.

A. THE NORTH AMERICAN CONTEXT

The 2001 Report of CEC's Executive Director notes that NAFTA has defined North America as an integrated economic region producing US\$8 trillion worth of goods and services with total trade for 2000 worth US\$700 billion. Trade and economic integration challenges environmental institutions to keep pace, to understand the challenges, and to devise public policies that realize the full benefits that open markets can bring. Cooperation and partnerships with the private sector and civil society can ensure that these benefits, such as new communication networking capacities and diffusion of environmentally beneficial products, are used in the service of the shared environment.

Although North America has made progress in conserving natural resources and protecting the environment, increased economic activity, transportation, and population growth are creating additional stress. The three countries share concerns about the quality of air and water, the long-range transport of air pollutants, hazardous waste generation and disposal, declining natural resources, loss of native species, and introduction of invasive alien species.

Environmental degradation brings real economic costs. Correspondingly, investments in environmental protection can strengthen the economy by helping to

² The CEC mission statement reads, "The CEC facilitates cooperation and public participation to foster conservation, protection and enhancement of the North American environment for the benefit of present and future generations, in the context of increasing economic, trade and social links among Canada, Mexico and the United States."

³ North American Agreement on Environmental Cooperation, done Sept. 8-14, 1993, entered into force Jan. 1, 1994, U.S.-Can.-Mex., 32 I.L.M. 1480, available at www.cec.org/pubs_info_resources/law_treat_agree/naaec/naaec02.cfm?varlan=english (last visited July 23, 2002) [hereinafter NAAEC].

⁴ North American Free Trade Agreement, done Dec. 8, 1992, entered into force Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 289, available at www.nafta-sec-alena.org/english/index.htm?nafta/nafta.htm (last visited July 23, 2002) [hereinafter NAFTA].

⁵ *Id.* art. 104 (specifically mentioning the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal).

achieve efficiencies and creating predictability and stability for investors. The links between the environment and the economy are becoming particularly clear in key sectors of energy, transportation, and hazardous waste.

B. THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION

The vision of the NAAEC is three countries working together to protect a shared environment. The preamble highlights the importance of cooperation in achieving sustainable development. It links the goal of enhanced levels of environmental protection with the trade objectives of NAFTA. The role of public participation in environmental governance is emphasized. While recognizing the authority and responsibility of each country to manage resources within its own jurisdiction, it acknowledges differences in circumstances and capabilities and consequently the benefits of a cooperative framework.

The objectives of the NAAEC specifically elaborate the intent to protect and improve the environment, now and in the future through cooperation and mutually supportive environmental and economic policies. A specific objective is to avoid creating trade distortions or new trade barriers.⁶ In parallel, NAFTA recognizes that it is inappropriate to encourage investment by relaxing domestic health, safety, or environmental measures.⁷ Enhanced enforcement of and compliance with environmental laws and regulations is identified, as is the promotion of transparency and public participation. Generally, the NAAEC obligates the three member countries to:

- prepare periodic reports on the state of the environment,
- develop emergency preparedness measures,
- promote education,
- further scientific research and technology development,
- assess environmental impacts, and
- promote the use of economic instruments.

Many of these commitments and activities are discussed in further detail later in this chapter.

In addition, countries assume specific obligations to provide high levels of environmental protection; to publish their laws, regulations, and procedures regarding matters covered by the agreement; to effectively enforce laws; to ensure access to remedies for violations of environmental laws; and, to establish procedures for judicial and quasi-judicial proceedings. There are two particularly innovative and noteworthy provisions: the opportunity to hear submissions from persons or non-

governmental organizations asserting that a country is failing to effectively enforce its environmental law; and an extensive process articulated for consultation and resolution of disputes, including suspension of benefits. Finally, cooperation and provision of information are highlighted.

C. THE ARCHITECTURE OF THE COMMISSION FOR ENVIRONMENTAL COOPERATION

The CEC consists of a council, a secretariat, and a public advisory council. The Council of Ministers is the governing body of the CEC. It is composed of cabinet-level representatives from the environment departments of the three countries. The Council meets at least once a year to identify priorities, discuss issues, approve the annual budget and work program, and meet with the public. Through its alternate representatives, it oversees the Secretariat and implementation and interpretation of the Agreement. The Council has created a general standing committee—a North American committee on enforcement, compliance, and cooperation—and a North American working group on the sound management of chemicals.

The Secretariat implements the work program of the Council, including initiatives and research on matters pertaining to environment and trade, the North American environment, and environmental law and standards. It also processes citizen submissions on enforcement matters. Article 11(4) of the NAAEC prescribes the independence of the Secretariat and obliges each Party to “respect the international character of the responsibilities of the Executive Director and the staff.” The executive director is appointed for a three-year term, which is renewable once. She is assisted by a director from each other country. The Secretariat has created consultative, expert, and project advisory groups as appropriate to issues under study.

The Joint Public Advisory Committee provides independent advice to the Council on all matters within the scope of the Agreement. The Committee may also provide relevant scientific, technical, or other information to the Secretariat, including information to be used in developing a factual record under Article 15 (see below). The Advisory Committee is composed of fifteen individuals, with the government of each country appointing five. As representatives of the North American community at large, they help ensure that public concerns are communicated to the Council. On occasion, the Advisory Committee has been directed to consult with the public. Each country has also appointed national and governmental advisory committees to advise the ministers on national priorities.

As a steward of the North American environment, the CEC has organized its work program in four clus-

⁶ NAAEC, *supra* note 3, art. 1(e) (objective to “avoid creating trade distortions or new trade barriers”).

ters. These include: environment, economy, and trade; conservation of biodiversity; protecting the environment for better human health; and law and policy.⁸ An annual budget of US\$9 million with equal contributions from each country, was approved for the first three years of CEC's operation. This supports all of the CEC's work, including in the four thematic areas, as well as responding to citizen submissions and administering the North American Fund for Environmental Cooperation. The *Proposed Program Plan and Budget: 2002-2004* projected a budget of US\$14,746,000 for 2002.

II. GOVERNANCE INNOVATIONS AT THE COMMISSION FOR ENVIRONMENTAL COOPERATION

Changing global circumstances have caused the international community to examine the institutions, instruments, and processes that will guide our transition to sustainability. Although the understanding of governance varies from region to region, consensus is developing about the attributes of an effective system of governance. A new generation of international environmental organizations will undoubtedly evolve to incorporate these attributes.

The CEC demonstrates that a regional model of cooperation, built on a foundation of good governance principles, can be developed to promote sustainable development. In an integrated way, it pursues environmental cooperation, addresses environmentally related trade and economic issues, and promotes public participation and accountability.

The following examples of the Commission's work provide insight into how the CEC has recognized and attempted to be guided by emerging standards of effective governance as discussed in international fora, such as the UNEP Intergovernmental Environmental Governance process. The CEC's experiences are clustered according to eight different facets of good governance: information and accountability, coherence, coordination, compliance, capacity building, inclusiveness, consensus, and continuous learning. However, it is worth noting that most of these eight attributes can in fact be found to varying degrees in most of the work pursued by the CEC.

A. ACCOUNTABILITY AND INFORMATION

The Commission's commitment to accountability is drawn from the Agreement itself. Transparency, public participation, provision of information, and report-

ing are specific objectives and obligations.⁹ These core values are reflected in the design and operation of CEC.

Internally, the CEC has put in place governing structures for reporting on financial and program results.¹⁰ Furthermore, an *Evaluation Framework of the CEC—Principles and Procedures* has been designed to measure the results and effectiveness of the Commission's work.¹¹ The CEC management continues to review the existing accountability and reporting mechanisms to determine if they are sufficient and responsive.

Public consultation is institutionalized at every level of Commission activity from the formally mandated Joint Public Advisory Committee (JPAC) to opportunities provided for stakeholders to address members of the Council at the annual meeting.¹² There are also provisions for citizens to submit petitions and countries to establish national advisory committees. The JPAC has been particularly successful in facilitating public discussion and input, playing an assertive role in providing advice to the Council. Similarly, making information available to the public is a normal course of events through databases on the CEC website; consultation on draft reports and papers; an annual report which includes reporting not only on the actions of CEC, but also the actions of the three governments as they respond to the policies and programs of CEC; and independent reporting by the Secretariat under Article 13. Moreover, it is a requirement to publicly release environmental noncompliance information.¹³

1. Pollutant Release and Transfer Registers (PRTRs)

Pollutant release and transfer registers provide an overview of the on-site releases of industrial pollution directly into the air, water, and land as well as chemicals sent off-site for treatment or disposal. *Taking Stock* is a North American inventory of releases and transfers of specific pollutants.¹⁴ It provides data on the type, location, and amount of 210 chemical substances from sectors such as primary metals, chemical manufacturing, electric utilities, and hazardous waste management. Although not all chemicals, sources of pollution, or re-

⁹ For example, NAAEC Article 7 notes that in all procedural matters, parties shall seek to ensure that proceedings are "open to the public, except where the administration of justice otherwise requires."

¹⁰ Report of the Executive Director, regular session of the CEC Council (June 18-19, 2002) (quoting a statement of the auditor).

¹¹ See *id.*

¹² See, e.g., Framework for Public Participation in Commission for Environmental Cooperation Activities, NAAEC Doc. C/DIR/01/Rev.11 (Oct. 22, 1999), available at www.cec.org/files/pdf/GUIDE19E_EN.PDF (last visited July 23, 2002).

¹³ NAAEC, *supra* note 3, art. 5(1)(d).

¹⁴ *Taking Stock* is available on the CEC website at www.cec.org/takingstock/ (last visited July 24, 2002).

⁷ NAFTA, *supra* note 4, art. 1114(2).

⁸ See www.cec.org.

leases from the mining sector are included, the latest report shows an increase in reported data. The report allows citizens to compare national pollutant release and transfer registers. *Taking Stock*, and PRTRs more generally, is based on the belief that the public has a right to information that can identify opportunities to reduce waste, cut costs, and create a safer environment for workers and local communities. By improving transparency and dissemination of information, this tool also makes North America a leader among the OECD members¹⁵ in pollutant inventory development and in the regional integration and use of such information.

In recent years, the CEC has made it a priority to support government, industry, and NGO efforts to develop pollutant release and transfer registers in Mexico. In addition to technical support, the CEC has distributed guidance material and a CD-ROM on release estimation techniques for industry. Data from Mexico will be included as it becomes available. In fact, 117 Mexican facilities reported 1999 data voluntarily. In December 2001, new legislation was passed in Mexico that provides for a mandatory, publicly accessible program.

With the production of its fifth *Taking Stock* report, CEC will upgrade its website to be interactive. The new website will allow users to generate comparisons and track trends for particular chemicals, sectors, or geographic regions of interest.

2. Citizen Submission Process

The NAAEC states that each country shall ensure that its laws and regulations provide high levels of environmental protection and that these environmental laws and regulations shall be effectively enforced. Articles 14 and 15 of NAAEC provide perhaps one of the most novel governance mechanisms by which the public can assess how NAFTA governments are living up to their environmental commitments.¹⁶

This “whistleblower” mechanism in Article 14 empowers members of civil society to submit an allegation to the CEC Secretariat and request an independent review of the facts if they believe that a NAFTA party is not effectively enforcing its environmental law. Based on a recommendation from the Secretariat, the Council decides whether to instruct the Secretariat to develop a factual record and whether to release it to the public when it is completed (Article 15). A factual record outlines the history of the issue, the obligations of the party

and its actions in fulfilling those obligations as well as any other facts relevant to the assertions made in the submission. Over the lifetime of the Commission, 22 cases have been dealt with, an additional 12 are currently under consideration, and 3 factual records have been released.¹⁷

While this procedure has no legal consequences, it makes governments more accountable to citizens for their performance in enforcement. Information is power. By putting these assertions of ineffective government action under a spotlight citizens and civil society organizations have access to information that might otherwise be unavailable to them. Armed with this information they can then influence government and industry processes of decisionmaking. Media attention plays its part in bringing local environmental issues to the attention of a continent-wide audience. Furthermore, the factual records can actually improve the enforcement of national government activities by objectively and independently highlighting gaps.

Safeguarding the integrity of the process has been the subject of much interest and debate, and will remain an important factor in CEC’s credibility. The Council has established a public and transparent process for examining issues related to interpretation and implementation of Articles 14 and 15, and the JPAC has a pivotal role in this review process. The Council asked the JPAC to conduct a review of the history of citizen submissions including issues raised and actions taken and report on the lessons learned. In partial fulfillment of this request, JPAC has issued a call for public comments and organized public workshops. Only when this review has been completed will the pattern of real impact and remedial action be evident from the CEC citizen submission process—Have laws and regulations been revised? Has enforcement been strengthened? Have sensitive sites been given protected area status?

3. The North American Mosaic: A State of the Environment Report

This report—*The North American Mosaic: A State of the Environment Report*¹⁸—is the first comprehensive effort to assess the environmental condition and outlook in the region. It reflects “an incredibly complex, dynamic and interconnected system in which humans play a dominant and decisive role.”¹⁹ Using the frame-

¹⁵The Organisation for Economic Co-operation and Development (OECD) includes 30 member countries from Europe, North America, and Asia and the Pacific. For more information on the OECD’s work on PRTRs, see www1.oecd.org/ehs/ehsmono/#PRTRS (last visited July 23, 2002).

¹⁶ See, e.g., David L. Markell, *The Citizen Spotlight Process*, ENVTL. F., Mar./Apr. 2002, at 32.

¹⁷ The inventory and status of submissions is available at www.cec.org/citizen/status/index.cfm?varlan=english (last visited July 24, 2002).

¹⁸ COMMISSION FOR ENVIRONMENTAL COOPERATION, *THE NORTH AMERICAN MOSAIC: A STATE OF THE ENVIRONMENT REPORT* (2002), available at www.cec.org/files/PDF/PUBLICATIONS/soe_en.pdf (last visited July 24, 2002).

¹⁹ *Id.* at vi.

works of sustainability, the ecosystem approach, and pressure-state-response analysis, the *Mosaic* includes comparative data, commissioned reports, and background papers. Assembled in the *Mosaic*, this information paints a picture of an ever-growing ecological footprint. While it identifies some unsustainable trends, it also highlights many examples of the positive results of individual and collective efforts.

The report was released in late 2001, making headlines in North American media. It was disseminated to stakeholders in hard copy by mail and to the CEC's networks in an electronic version, in the three languages of the commission (English, French, and Spanish). The drafting of this first report about the state of the environment in North America involved hundreds of experts and resource centers, as well as cooperation with various research groups and the United Nations Environment Programme (UNEP).

B. COHERENCE

Achieving political coherence between the objectives of an organization and all of its related activities is a challenge. The core mission of the CEC concerns the complex and dynamic trade and environment relationship. The language of the NAAEC, the established operational processes, and the work program of the Commission all provide clear evidence of a logically integrated framework. Political coherence is assured, and integration is a fundamental operating principle.

1. Environmental Assessment of Trade Agreements

It is now common practice to undertake project-based environmental impact assessments which incorporate public notice, a comment period, hearings, and perhaps modification of the project before acceptance or licensing. Less common are environmental impact assessments of policies.

The CEC has an explicit mandate to monitor the effect of trade on the environment.²⁰ In 1995, the CEC began by identifying and trying to understand the linkages between environment and trade. It undertook four studies: an examination of the operation of NAFTA's environment-related institutions; an issue study on maize in Mexico; an issue study on cattle feedlots in Canada and the United States; and an issue study on electricity in the three countries.²¹ This led to the devel-

opment of assessment methodologies and tools to evaluate the environmental effects of trade liberalization.

The 1999 "Final Analytical Framework"²² sets out a method for analyzing the links between changes in economic activity and changes in environmental quality. The framework is the foundation for current and future attempts to identify changes in environmental quality trends and whether they are linked to trade liberalization in North America. The CEC's work has also made a contribution beyond its borders. That framework is now being used by others to look at other trade accords within the jurisdiction of the World Trade Organization and the negotiations of a Free Trade Agreement in the Americas.

Through a public call for papers, issued in late 1999, the public was invited to submit research proposals that would translate the framework into action. Fourteen research groups or experts were then selected by an Advisory Group to comment and provide direct advice. All of this was shared with 300 citizens, academics, and industry experts. A North American symposium on *Understanding the Linkages between Trade and Environment: Assessing the Environmental Consequences of NAFTA* examined the extent to which domestic environmental laws have changed in design, stringency, or enforcement and whether such changes are linked to NAFTA. Planning for a second symposium and additional commissioned papers is underway.

The Commission is tasked to work with the appropriate trade bodies under the NAFTA Free Trade Commission to ensure that environmental concerns are taken into account should there be a potential for conflict between trade and environment policies. Moreover, Article 10(6) of the NAAEC calls upon the CEC Council to cooperate with the NAFTA Free Trade Commission in order to help resolve or prevent environment-based trade disputes. Thus far, it does not appear that this foreseen cooperation has been realized. Developing a collaborative working relationship has been slow, but opportunities exist to reach decisions that are mutually supportive, such as in the working groups on automobile standards and pesticide registration.

2. Shade Coffee

Lack of success in implementing sustainable development is often attributed to a failure to be integrative. The CEC's shade coffee project illustrates an innovative model that integrates the promotion of sustainable agriculture, the sustainable use of biodiversity, support

²⁰ See www.cec.org/programs_projects/trade_envir_econ/project/index.cfm?projectID=12&varlan=english (last visited July 24, 2002) (describing the CEC's Environment, Economy and Trade program).

²¹ Several of these studies have been published as part of the Environment and Trade Series, available at www.cec.org/pubs_docs/scope/index.cfm?varlan=english&ID=14 (last visited July 24, 2002).

²² See *Assessing Environmental Effects of the North American Free Trade Agreement (NAFTA)*, Environment and Trade Series No. 6, available at www.cec.org/files/pdf/ECONOMY/engframe_EN.pdf (last visited July 24, 2002).

of local communities, and promotion of trade. For example, the CEC held several meetings with farming cooperatives, as well as with various intermediaries—including coffee millers, buyers, brokers, and financial agents involved in rural credit. The CEC recognized that a more integrated economy provides opportunities for employing economic incentives and financial instruments in support of sustainable development. With the participation of these constituencies, the CEC explored ways in which the power of the market could be harnessed to support the conservation of biodiversity and local economies, promoting practices that were viable economically and preferred environmentally.

The CEC undertook important analytical work to identify the challenges and opportunities for marketing shade-grown products, with a special focus on coffee. In collaboration with the Smithsonian Migratory Bird Center, it identified criteria for shade-grown coffee and worked with all those involved in the coffee chain to develop baseline environmental data on forest cover and land use patterns associated with coffee production in Mexico. This baseline data is also significant in understanding the strong relationship between biodiversity hotspots and coffee-growing areas. The data is also being improved to understand the rates and causes of deforestation and the effects of forest loss on biodiversity and the indigenous peoples in the tropical forest areas of southern Mexico. Ultimately, this information should provide a solid basis for effective public policy. Simultaneously, the CEC worked with coffee producers, certification bodies, retailers, and financial institutions to assess and communicate opportunities for this commodity. Financial institutions are now considering micro-loan packages to provide working capital to small-scale farmers.

C. COORDINATION

A coherent institutional framework fosters integration and coordination and avoids fragmentation of effort. Effective and efficient organizations try to harmonize policies, norms, and functions throughout their programs and ensure that a predictable process is in place to channel information to decisionmakers. Shared agenda-setting and common approaches are likely to enhance synergies and linkages between programs and strategic partners. Furthermore, coordination harnesses the energies and efforts of citizens and organizations more efficiently and enhances transparency as the parts can be seen within the context of the whole.

1. Meeting International Obligations

The CEC's efforts do not exist in isolation of related international initiatives, standards, and legal re-

gimes. In fact, much of the CEC's work makes a major contribution to effective implementation of global treaties and agreements through regional collaboration. The CEC programs that have been enhanced by public participation may well enhance the effectiveness of international initiatives, as described in some of the examples below. In addition, public access to international environmental issues and objectives has increased through the CEC's efforts. A few examples include:

- The development of the North American Biodiversity Information Network underpins the capacity of countries to further the work of the Biodiversity Convention; training of wildlife enforcement officers is of direct benefit to the effectiveness of the Convention on International Trade in Endangered Species.
- The United Nations has designated 2002 as the Year of Ecotourism. The CEC will highlight the results of its work in sustainable tourism: a report of "best practices" in North America's natural areas; development of a plan for sustainable whale watching in the Baja to Bering coastal area; undertaking, via a competitive process and with some private sector funding, a pilot demonstration project regarding whale watching; and a website. These projects are also linked to international efforts to combat land-based sources of marine pollution.
- The Commission analyzed possible climate-related investment opportunities for small and medium-sized enterprises in three industrial sectors in Mexico and analyzed the potential for greenhouse gas trading.

Some of these activities are discussed below in more detail.

2. Children's Health and the Environment

There are many examples of the CEC's attempts to coordinate and integrate its activities with the work of others, including academic institutions, international institutions, and NGOs. One such example is the fostering of partnerships with those working in the health sector. A CEC-sponsored symposium on children's health and the environment led to a Council resolution to develop a cooperative agenda for trilateral action on children's environmental health in North America. Specific project activities have been initiated, including preliminary work for the development of children's environmental health indicators.

An Expert Advisory Board of key professionals in the field has been created to offer advice on the nature of the agenda. An inventory of national, bilateral, and trilateral activities related to children's environmental health was compiled as a basis for identifying opportu-

nities for trilateral cooperation. A draft Cooperative Agenda outlines ongoing, planned, and proposed activities, focusing on asthma and respiratory disease, as well as lead and other toxics; tools for decisionmaking including risk assessment and economic valuation; and strengthening the knowledge base, public education and outreach. This agenda was circulated for public comment and followed by a public meeting in Mexico City in March 2002.

The CEC also has reached out to the World Health Organization, the Pan American Health Organization, the International Joint Commission (United States & Canada) (IJC) Health Professionals Task Force and Ministers of Health in the Americas developing a network of experts and organizations in support of an issue that increasingly is becoming an issue of public concern.

D. COMPLIANCE

Trust and confidence in an organization is influenced by the organization's efforts to promote compliance with its decisions and policies, as well as its transparency and accountability. The NAAEC creates certain compliance obligations for countries and guidance for the Commission in monitoring compliance and enforcement. The following examples illustrate how the CEC engages members of the public in the design process of the enforcement and compliance regime, how it makes information available in order that the public can monitor progress, and how access to justice is promoted.

1. Compliance Guidance

The Council has identified the importance of developing a baseline against which trends in domestic legislation and implementation may be monitored to ensure that domestic laws are being effectively enforced. The development of compliance indicators that show real changes in environmental performance and the promotion of improved performance through environmental management systems, voluntary agreements, and standards are additional areas of concentration. A guidance document entitled *Improving Environmental Performance and Compliance: 10 Elements of Effective Environmental Management Systems*²³ has been prepared, and DuPont Mexico has agreed to be the first private sector participant to use the guidance document. A special report on enforcement activities composed of three country reports has also been prepared.²⁴

²³ See www.cec.org/programs_projects/law_policy/enforce_compliance/pubs422.cfm?varlan=english (last visited July 24, 2002).

²⁴ NORTH AMERICAN WORKING GROUP ON ENFORCEMENT AND COMPLIANCE COOPERATION, SPECIAL REPORT ON ENFORCEMENT ACTIVITIES (2000), available at www.cec.org/pubs_docs/documents/index.cfm?varlan=english&ID=430 (last visited July 24, 2002).

2. Wildlife Enforcement Training

In conjunction with the North American Wildlife Enforcement Group, a network of senior wildlife enforcement officials from Canada, Mexico, and the United States created in 1995, the CEC organized a training workshop for over 70 wildlife enforcement officers to focus on enforcement issues related to trophy hunting and game farming. Regulatory systems, inspection techniques, and species identification were reviewed. Enforcement issues relating to invasive species will be the topic for the training sessions in 2002. A two-day forum was organized to identify avenues for public participation; to explore differences in wildlife enforcement in the three countries; and to build public support for enforcement, including identifying appropriate partnerships between agencies and the public.

3. The North American Regional Enforcement Forum

A network of environmental enforcement officials from each of the three countries has been created to pursue common strategies, exchange information, and develop training programs. This North American Regional Enforcement Forum has provided guidance to the CEC on issues such as voluntary compliance initiatives and the tracking and enforcement of transboundary movement of hazardous wastes. It also has involved the JPAC in its annual meeting and is discussing citizen participation in working group projects.

E. BUILDING CAPACITY

The CEC has concluded that investment in environmental protection and the effective enforcement of environmental laws will enable countries to come to terms with any environmental challenges that are raised by liberalized trade. Financial and technical resources are required. Those of Mexico are more limited and represent a constraint to the achievement of regional environmental objectives. Accordingly, sharing expertise, facilitating transfer of technologies and funding, and the strengthening of national institutions have been built into many CEC projects.

More recently, the CEC has been exploring partnerships with the private sector in supporting the twin goals of biodiversity conservation and economic development with a focus on green goods and services. Considerable effort has been directed to developing a dialogue with public and private sector financial agents to attract capital for green goods and services, from sustainable agriculture and renewable energy technologies to green tourism. This includes working with private commercial banks and venture capitalists as well as pub-

lic agencies at the domestic and international levels. The CEC also continues to work more generally with the financial services sector to tailor the myriad of environmental information to meet the operational needs of credit and investment leaders.

1. Association of Air Quality Professionals

The CEC air quality program initiated a cooperative effort with the United States-Mexico Foundation for Science in Mexico City (established by Mexican Nobel laureate Mario Molina) to launch an association of air quality professionals in Mexico. This is the first national organization of its kind in Mexico and will help disseminate lessons learned from Mexico City and border cities and provide a focus for exchange opportunities with comparable organizations in Canada and the United States. The CEC has also sponsored a variety of meetings including air quality administrators, air emission inventory developers, experts on heavy-duty truck inspection programs, and the general public with the purpose of improving trinational air quality through the development of technical and strategic tools and facilitating coordination. Reports from these meetings are made available on CEC's website.

2. Pollution Prevention

The CEC has undertaken 10 pilot projects in Mexico to demonstrate the economic and environmental benefits of pollution prevention techniques and technologies. With the participation of Mexico's National Confederation of Industrial Chambers, a Pollution Prevention Fund (FIPREV) was set up to support the implementation of projects in small and medium-sized Mexican businesses. The revolving fund—with a contribution of US\$350,000 from the CEC and US\$650,000 from the Mexican business group Concamin—is managed by Concamin, the US Council for International Business, and the Canadian Council for International Business. The CEC reported that as of December 2001, 35 loans totaling US\$957,000 had been granted and seven more were in the pipeline. The CEC has noted that “[t]he companies implementing these projects have collectively avoided the use of 2,100 tons of chemical inputs and 113,500 cubic meters of water annually.”²⁵

In 2000, at the initiative of the CEC, a Mexican Pollution Prevention Round Table met for the first time. Its membership includes 13 different organizations and

institutions from government, industry, academia, technical and financial assistance agencies, and the nongovernmental sector. Cooperation with companion roundtables in the United States and Canada is being explored with the vision of developing specific projects, analyzing North American pollution prevention policies and linking electronically each roundtable's website.

3. The North American Fund for Environmental Cooperation

The North American Fund for Environmental Cooperation (NAFEC) has awarded 160 grants to community-based projects between 1996 and 2002, totaling US\$5.8 million. In 2001, the grants focused on marine protected areas and children's health and environment while the new round announced in 2002 will focus on projects related to renewable energy, energy conservation, and energy efficiency. This fund provides an opportunity to support action on the front lines of the environmental movement. For example, the Fund has strongly supported community-based approaches to trade in green goods and services and promoted exchange among communities involved in sustainable tourism and agriculture.²⁶

Various projects support increasing access to information and strengthening public participation. For example, a project on “Health Schools, Healthy Children” seeks to make information about pesticide use in schools in the US state of Washington available in order to empower communities to bring about a reduction in pesticide use. Another project promotes the right to environmental information in Baja California, Mexico. The Netukullimk GIS Management Project uses modern technology to preserve local knowledge in indigenous communities in Nova Scotia, Canada. The development of a management plan for conservation of Cozumel Protected Natural Area specifically seeks to strengthen public participation. Yet another project will encourage public participation in the protection of children's health and the environment among the indigenous Zapoteca communities in southwestern United States and northeastern Mexico. Initially designed to create an awareness of risks from agrochemicals, this project envisions involving in the public in conducting inventories.

The Fund enhances the capacity of organizations and the public to participate in the work of the CEC by providing funding as well as other types of support such as technical assistance, facilitating networking, and sharing of information. In 2000, the Fund brought together nongovernmental organizations involved in PRTRs and

²⁵ Press release, North American Commission for Environmental Cooperation, CEC's Innovative Pollution Prevention Fund Spotlighted at Prague UNEP Meeting (April 30, 2002), available at www.cec.org/news/details/index.cfm?varlan=english&ID=2471 (last visited July 24, 2002).

²⁶ See www.cec.org/grants/index.cfm?varlan=english (last visited July 24, 2002). Projects are also profiled in the CEC's newsletter *Trio*.

environmental management systems together with government and industry to develop approaches that could meet the needs of all stakeholders. The Fund will also offer a workshop on North American environmental issues in association with the Concordia University Institute on Management and Community Development Summer Program which attracts representatives from 800 community organizations.

The CEC also promotes networking and exchange among Fund grantees and other stakeholders in order to build capacity in understanding environmental management issues and to develop common approaches to supporting community-based initiatives. It shares information about the Fund, organizes workshops, and collaborates informally.

F. INCLUSIVENESS

The merits of involving citizens, NGOs, and the private sector in seeking and implementing solutions to environmental problems is increasingly obvious. First, the capacity to create partnerships and strategic alliances is essential when faced with an expanding agenda and limited resources. In addition, some of the problems the three countries face are exceedingly complex and demand the best minds from a variety of sectors. Ultimately, a broad range of input should improve the quality of decisions taken. The CEC draws significantly on expertise in universities, NGOs, business groups, and government agencies; and this interaction allows the CEC to remain current and relevant. Individual citizens often can provide the necessary ground-truthing of academic concepts, pointing the way to pragmatic and innovative solutions. Furthermore, public participation in the CEC's work builds a constituency ready to take direct action themselves in local communities on local problems and confident enough to influence decisionmakers.

Communication is key to building these relationships. The CEC uses all the tools at its disposal: a quarterly newsletter *Trio*, attractive and readable reports, a live audio web-cast of symposia, and a website that seeks to be engaging and current.

1. North American Biodiversity Information Network

Working with collectors of biodiversity information in academia, government and the nongovernmental sector, the CEC has helped establish the North American Biodiversity Information Network (NABIN). This new on-line tool enables unprecedented access to a virtual museum of biodiversity information through a web-based portal that links species-oriented search tools to other environmental and socio-economic data-

bases.²⁷ It involves the participation of 53 institutions, 75 data sets, and 45 million data points. The CEC leveraged over US\$1 million, primarily through the (US) National Science Foundation, to develop the network. In response to the Council's emphasis on improving public access to biodiversity information, attempts are being made to unify and simplify NABIN's applications.

2. A Biodiversity Agenda for North America

The development of a 15-year strategy for conservation of biodiversity in the region²⁸ has been the result of extensive collaboration with public and private stakeholders, including indigenous groups and leading ecologists. The process began with the development of an Integrated Baseline Report²⁹ to identify concrete opportunities. A broad spectrum of North American stakeholders reviewed the Report and provided crucial information in developing the strategy. This was followed by a workshop of 21 leading ecologists who identified geographic priorities according to biological continental significance and the level of threat. The result is a framework of aims, objectives, and priorities for action.

Specific areas of collaboration exist in the North American Bird Conservation Initiative and among those interested in species of common concern and the grasslands of the prairie ecoregion. As a matter of practice and policy, all reports and documents have been made available through the CEC website. Moreover, collaborating partners are free to disseminate the information to their networks as well.

3. Marine Protected Areas

The Marine Protected Areas (MPA) initiative is designed to use networks to mobilize action and build capacity of governments, institutions, NGO partners, and interested individuals throughout the region to protect critical marine habitats. The network attempts to answer three questions: What species at risk are of common concern, and what collaborative action can be taken? Where are the high priority marine and coastal habitats most in need of conservation? What are realistic conservation objectives and targets, and how will effectiveness be measured over time? Activities range from the conceptual to the practical. They include mapping marine and estuarine ecosystems of North America and valuing their economic benefits, as well as integrated management planning and the development

²⁷ See www.cec.org/programs_projects/conserv_biodiv/project/index.cfm?projectID=21&varlan=english (last visited July 24, 2002).

²⁸ See www.cec.org/programs_projects/conserv_biodiv/project/index.cfm?projectID=15&varlan=english (last visited July 24, 2002).

²⁹ See www.cec.org/files/pdf/BIODIVERSITY/draftstatus-e_EN.pdf (last visited July 24, 2002).

of protection standards. One focus is to develop and implement crosscutting conservation initiatives in areas with shared ecological links such as the marine region stretching from Baja California to the Bering Sea.

Fostering an ocean ethic among citizens and their institutions will be an important component of the plan. The CEC recognizes that success will depend on public awareness and participation in the planning and management of MPAs from the network design to local implementation at specific sites. The public has been and will continue to be involved. Multisectoral working groups involve and consult with the academic community, indigenous groups, and NGOs. The network will be supported by a web-based inventory using a state-of-the-art information system that will rely on content and data from existing sources in the three countries.

G. BUILDING CONSENSUS

Sustainable development is an integration of environmental, economic and social considerations. Thus, the capacity to shape a consensual definition of the problem, the direction to be pursued, and a range of means to achieve results is essential. It also requires significant skill and effort. For example, one CEC consultative process began with an expert panel of 40 scientists, moved to a consultative group of 50 public and private sector participants to give advice regarding the scope and direction of the initiative, and was followed by a smaller policy committee of 20 professionals experienced in the development and ultimate implementation of air pollution policies to identify elements of a strategy.

1. The Silva Reservoir

In the winter of 1994-95, some 20,000 to 40,000 waterfowl on their migratory route died in the Silva reservoir in Guanajuato, Mexico. The CEC convened a panel of scientists to determine the factors that may have contributed to the deaths. An extensive process of research, public participation, and collaboration to determine causes of the die-off and potential solutions was necessary to facilitate scientific and policy consensus. The results of the exploratory study revealed a complex situation requiring a coordinated solution involving social, industrial, legal, infrastructural, and ecological components.

The CEC worked with the government of the State of Guanajuato in Mexico, industries (particularly those in the tannery sector), and NGOs to develop a plan to restore the reservoir. A study of government structures was undertaken and environmental training courses were given to government, industrial and business personnel as well as the public. A Council for Public Participation was created to enhance involvement in state environ-

mental procedures. A state environmental program was developed that included the creation of a system of protected natural areas, and the Silva Reservoir was designated one of those protected areas.

The National Water Commission undertook an integrated program to clean up the reservoir. This program included construction of industrial collectors, a wastewater treatment plant, and the establishment of an industrial park for the relocation of 120 tanneries. The CEC promoted pollution prevention initiatives and demonstrated that through low cost technologies the chromium discharges could be reduced significantly, benefiting both industry and society.

Today, there have been significant pollution prevention advancements in the tannery sector and the reservoir has been declared an ecological preserve. Once again, the reservoir is a healthy habitat for migratory birds of North America while also supplying agricultural users with a cleaner source of water. International cooperation, local government vision, public participation, and business commitment all contributed to this success story.

2. Sound Management of Chemicals

In response to the more than 70,000 chemicals in commerce in North America, few of which have been tested for their toxic effects, the CEC launched the Sound Management of Chemicals (SMOC) program in 1995. The CEC established a process by which government officials—in consultation with NGOs, industry, and sub-national governments—identify chemical pollutants of common concern and develop North American regional action plans (NARAPs) to reduce or phase out such pollutants. The process is an inclusive, consensus-building one involving different levels of government, industries and industry associations, environmental NGOs, and the academic community.

The SMOC working group is composed of two senior officials with duties pertaining to regulation or management of toxic substances from each country. They have encouraged active stakeholder participation at working group meetings, usually on the first of a two-day meeting. On the second day, the group reviews the input received and conducts its business. Additionally, all draft NARAPs and selection criteria reports are made available on the website and subject to public scrutiny through a broad stakeholder consultation meeting and a call for individual comments before being recommended to Council for action. Although each action plan is unique, there are some common steps in its development: workshops to determine the state of scientific knowledge; the creation of databases; the communication of best practices; and the development of an education awareness strategy.

Action plans have been developed for PCBs, DDT, mercury, and chlordane with concrete and compelling results. Chlordane is no longer produced or used in North America. Mexico has moved in deliberate fashion to virtually phase out the use of DDT, instituting other means to control the threat of malaria. North America is now a "DDT-Free Zone." Plans now being developed to reduce dioxins, furans, and hexachlorobenzenes. Finally, Mexico is considering identifying the CEC as an "executing agency" for purposes of developing its national implementation plan to meet its obligations under the Stockholm Convention on Persistent Organic Pollutants.

H. CONTINUOUS LEARNING

The pace and extent of change require an organization with agility and adaptive capabilities. Knowledge production and dissemination is at the center of the CEC's approach. Rigorous conceptual development and analysis has allowed the organization to seek the most current scientific information, design frameworks in which that information can be understood and used to provide early warning of emerging issues, build consensus with stakeholders about policy responses, and communicate effectively with the public. For example, in the green goods and services sector, the CEC is demonstrating the importance of linking assessment work on environmental characteristics with better use of social science tools (to understand consumer interests) and economic analysis (to understand producer challenges and financing opportunities).

The CEC has developed comparative and comparable monitoring tools, inventories and sophisticated predictive models that can work in the different political, economic, and social contexts of the countries and communities in North America.³⁰

1. Environmental Challenges in the Evolving North American Electricity Market

Developing sustainable approaches to energy remains a complex challenge, as well as an essential aspect of response strategies to climate change. Early in 2000, the CEC Secretariat launched an initiative under Article 13 of the NAAEC, comprising analytical reports and working papers as well as public events. The CEC Electricity and Environment Advisory Board, which brings together senior representatives of the utilities sec-

tor together with environmental and regulatory experts, was established to advise on the development of this initiative. They developed a statement and recommendations that were provided to the Council in 2002.

With its working paper on North America's integrated electricity market,³¹ the CEC has recognized a critical emerging issue in the North American context. It has developed a process to examine the environmental effects of restructuring and increased development and trade and then to explore the consequent required policies that would facilitate cross border collaboration. All working papers were made available on the CEC website. A call for comments was posted on the website, and over 10,000 organizations and individuals were invited to comment during a six-week period.

The CEC also sought to foster a dialogue and get input from industry experts, academia, government and the nongovernmental community through three symposia and workshops on the environmental challenges and opportunities of the North American electricity market, emissions trading, and emerging renewable energy in North America. This initiative focuses on demand-side efficiency and incentives. An on-line database describes key developments in restructuring of the sector, as well as environmental and renewable portfolio standards.³²

The final report, *Environmental Challenges and Opportunities of the Evolving North American Electricity Market*, was transmitted to the Council in April 2002, and the Council agreed to further work in this field.³³

III. A WORK IN PROGRESS

In creating and developing the CEC, the leaders of Canada, Mexico, and the United States have articulated a vision that seeks to deepen a sense of community, promote mutual economic interest, and ensure that NAFTA benefits extend to all regions and social sectors. They have sought to develop and expand hemispheric and global trade, with increased trilateral and international cooperation in the trade and environment sectors. A central tenet of this integration has been promoting and ensuring public access to information, participation, and justice.

Responding to that vision will bring opportunities and challenges for the CEC. The organization was built on the foundation of the pursuit of prosperity through open markets and sustainable development. That mission has not changed.

³⁰ One example has been the development of state-of-the-art techniques to model the potential impact of continental dioxin emissions. Another is the development of a partial equilibrium model to examine possible trade-environment links with respect to electricity market integration.

³¹ See www.cec.org/files/PDF/11_Vaughan-e.pdf (last visited July 24, 2002).

³² See www.cec.org/databases/certifications/Cecdata/index.cfm?websiteID=3 (last visited July 24, 2002).

³³ See www.cec.org/files/PDF/CEC_Art13electricity_Eng.pdf (last visited July 24, 2002).

At its 2001 meeting, the Council established a framework for future CEC activities. It emphasizes:

- gathering, compiling, and sharing high-quality environmental information;
- promoting the use of market-based approaches;
- cooperating regionally in the implementation of global commitments;
- building capacity for stronger environmental partnerships;
- strengthening strategic linkages to improve sustainability; and
- promoting public participation in the CEC's work.³⁴

Specifically, the Council recognized that timely and accurate information is essential for the development of good policy and good decisions and that access to knowledge is fundamental to the ability of citizens to act. The Council further expressed its commitment to strengthening public participation in all aspects of the CEC's work and recognized the valuable contribution of the public and JPAC.

What does the future hold? We can be sure that environmental problems will continue to transcend borders, necessitating cooperation. It is evident that environmental issues are becoming increasingly complex. The number of institutions will grow. There will be challenges to implementation as weak compliance and enforcement mechanisms undermine the best of policies and intentions. Under such circumstances, effective citizen engagement will be needed more than ever.

In this region, the environmental challenges of water management and hazardous waste and the potential of a North American approach to energy markets will continue to gain importance. The CEC will also encounter the negotiation of additional trade regimes, incorporation of the Doha agenda, new scientific understandings and technological developments, and increasingly sophisticated market instruments. High public expectations will persist as citizens and their organizations seek to make their voices heard on matters that affect their health, well-being, and quality of life.

We can also see the emergence and evolution of institutions capable of dealing with change and com-

plexity. They are those that use knowledge-intensive models and approaches, that develop a more integrated management framework, that engage all sectors of society, that integrate science and policy, and that promote the sharing of information. Institutions that exhibit these characteristics will be agile and responsive and consequently garner respect for their effectiveness.

The CEC remains unique in its objective of furthering environmental sustainability within a regime of trade liberalization. The CEC's state of the environment report concluded that "North America is often looked to as a model for prosperity and progress. We can become a model of environmental stewardship and social equity."

That aspiration can be realized. The understanding that citizen engagement is not only just, but also effective in achieving the objectives of the NAAEC was recognized in the very drafting of the agreement, including for example provision for citizen submissions. But it is more than words. The organizational design of the CEC has institutionalized the commitment to public involvement through the creation of the JPAC. Policies and programs explicitly and implicitly turn to stakeholders to define, shape, and comment upon the CEC's work. Furthermore, the tools have been developed to facilitate participation: financial resources are available through the NAFEC, and access to information from databases such as PRTRs to reports of expert meetings and drafts of proposed policies is assured.

All is not perfect, of course, but the point to be made is that the principle of citizen engagement has been embraced. Through trial and error, improvements in the CEC's processes are being made, greater numbers of stakeholders are involved, and the impact on decisions is being felt and will be documented.

Perhaps the North American experience will be of interest to others engaged in discussions and debate about building vibrant and effective environmental institutions, whether national, regional, or international. The Commission for Environmental Cooperation is a work in progress, but one that has recognized and put in place the fundamental elements of good governance that will support the transition to sustainability.

³⁴ See www.cec.org/files/PDF/COUNCIL/01-00com_EN.pdf (last visited July 24, 2002).