

REGIONAL AFFAIRS

North America

Linkages between Trade and Environment

The North American Symposium on Understanding the Linkages between Trade and Environment was convened from 11-12 October 2000, at the World Bank in Washington, DC. It was organised by the North American Commission for Environmental Cooperation (NACEC), established under the North American Free Trade Agreement (NAFTA) in 1994, to examine the linkages between trade and the environment.

Approximately 300 participants, representing the governments of the three NAFTA States – Canada, Mexico and the United States – and representatives of intergovernmental and non-governmental organisations, business and industry, and academia, attended the Symposium. Its goal was to examine the relationship between free trade and the environment based on recent studies and research, using a methodology developed by the NACEC.

The Meeting met in plenary sessions that addressed, *inter alia*, the following issues: trade liberalisation and natural resources; NAFTA and pollution impacts; relationships between trade liberalisation and environmental policies and regulations; NAFTA's transportation and manufacturing impact on the environment; the services and public sector and the environment; and next steps in terms of policy responses to environment-trade links.

The findings from specially prepared research papers were presented to the plenary sessions, which were then followed by commentary from designated discussants, questions and open discussion.

It is hoped that the Symposium will serve as a catalyst for further work and progress on integrating trade and environment issues.

Participants were welcomed by Janine Ferretti, Executive Director of NACEC, who noted that in recent years the debate surrounding trade and environment has remained intense. She noted that much of the debate has focused on polarised views between groups asserting that trade liberalisation harms the environment and those who believe that trade agreements will improve environmental quality.

The speaker stated that questions on the links between trade and the environment are matters best addressed using scientific evidence, and drew attention to NACEC's Final Analytic Framework for Assessing the Environmental Effects of the North American Free Trade Agreement, released in 1999, as a useful tool in this regard.

The Symposium Chair and former Premier of Quebec, Pierre Marc Johnson, said that the Meeting would consider the environmental impacts of free trade, whether NAFTA has been positive or negative in terms of environ-

mental effects and whether the tools for assessment are adequate. He said it is now feasible to start assessing the evidence from six years of NAFTA, and that this would be relevant to policy makers.

The Chair provided an overview of reports prepared for the Symposium, and noted that evidence from some of these reports challenges the traditional view that more trade always increases pressure on natural resources. As an example, he said that, while evidence suggests that increased trade affects Mexican forests, it also suggests that it might not have affected fisheries. On air pollution impacts, he noted mixed evidence that suggests there has been a sectoral shift in the concentration of industrial pollution. He drew attention to issues raised under Chapter 11 of NAFTA (investment) and said these reports suggest that current provisions are creating a dynamic of serious uncertainty about environmental regulation.

William Nitze, Assistant Administrator from the US Environmental Protection Agency (EPA), considered NACEC efforts to assess links between trade liberalisation and the environment, noting that the area is controversial and the relationship between trade liberalisation and environmental quality is complex. He said that the process of analysing the environmental effects of NAFTA has been critical to the development and implementation of the US Executive Order on Assessing Environmental Effects of Trade.

Lester Brown, Chairman of the Board of the Worldwatch Institute, challenged the notion of environmental assessment of projects. He suggested that projects should be designed by environmentalists based on ecology and science and then undergo economic assessment. He noted that while the global economy is growing, ecosystems are not and the results are beginning to manifest themselves. He gave two examples in this regard: falling water tables and the resulting agricultural water scarcity, with international trade effects in the form of new streams of imports of agricultural products; and climate change, resulting in changing patterns of precipitation and subsequent threats to agricultural production.

Trade Liberalisation and Natural Resources

Michael Ferrantino, Industry Economist, US International Trade Commission, presented the findings of a study of *NAFTA Environmental Impacts on North American Fisheries*. While noting the clear causal links between trade agreements and environmental outcomes, he also noted the practical difficulty in establishing a causal chain, as well as the inadequacies of available data. He suggested

there is no compelling reason to believe that NAFTA has influenced, either positively or negatively, the sustainability of North American fisheries.

In assessing the *Environmental Effects of NAFTA on the Forestry Sector in Mexico*, Mary Kelly, Executive Director, Texas Centre for Policy Studies, and Maria Teresa Guerrero, Comisión de Solidaridad y Defensa de los Derechos Humanos, presented a study examining how NAFTA has influenced the forestry and forest product industries in the northern Mexico state of Chihuahua; and how these changes have influenced the forests, environment and indigenous peoples of the Sierra Tarahumara.

Mary Kelly noted that substantially increased imports of pulp and paper products from the US since NAFTA have created pressure on Chihuahua producers to keep prices and costs low to remain competitive, which could put pressure on local industry to oppose environmental regulations that increase its costs. She expressed concern at recent interpretations of NAFTA's Chapter 11 investment provisions.* She also supported an increased focus on sustainable forestry management, noting that even official statistics, which do not account for high levels of illegal cutting, point to a significant production increase since NAFTA.

Maria Teresa Guerrero drew attention to the socio-political conflicts affecting those living in this region, which often relate to forestry issues. She noted that many citizens' complaints about illegal cutting and other sustainable practices have been filed, and that the authorities have not yet addressed these in a satisfactory manner.

With regard to *NAFTA Effects on Water*, Christine Elwell, Adjunct Professor of Law, Sierra Club of Canada, and Reg Gilbert, Senior Coordinator of Great Lakes United Inc., considered this issue. Christine Elwell highlighted the threat of bulk water exports in the Great Lakes area, including the risks of using outdated data on water levels for approving plans and projects, the decline in water levels based on information from climate modelling, and declining rates of annual renewal of the water. She stressed that this should have policy implications. Reg Gilbert highlighted a recommendation for elements for a new Common Standard to Protect the Great Lakes to be applied to all water withdrawal and listed as a paramount environmental agreement under Article 104 of NAFTA (in relation to environmental and conservation agreements).

In the ensuing discussion, one participant commented on the need to distinguish between direct and indirect effects of NAFTA, such as tariff and non-tariff barriers as opposed to general effects such as globalisation, and cautioned against drawing too broad conclusions based on the material presented to this Symposium. Another participant commented on environmental legislation in Mexico, and the importance of raising awareness and focusing on enforcement.

In response, Maria Teresa Guerrero stressed the need for compliance with environmental legislation, highlighting the increase in the number of complaints by citizens regarding cases of non-compliance, particularly in rela-

tion to illegal logging and other unsustainable forestry practices, where she said the government had failed to adequately enforce relevant legislation.

NAFTA and Pollution Impacts

John Dixon, Programme Team Leader, Environment Department, World Bank, chaired this session. Among other points, he drew attention to the impact of trade on the use of technology, noting that many newer technologies are less energy-intensive and could be less polluting.

Kenneth Reinert, Associate Professor, School of Public Policy, George Mason University, discussed a study examining the *Industrial Pollution Impacts of Trade Liberalisation under NAFTA*. In considering the findings, he stated that NAFTA's most significant environmental impacts in relation to industrial pollution are found in the base metals sector, especially in the US and Canada, while Mexico's petroleum sector is also a major source, particularly in relation to air pollution. He noted that the transportation sector is also an important source of industrial pollution.

The authors of a paper examining the impacts of NAFTA and trade liberalisation, *On the Generation, Management and Shipments of Industrial Hazardous Wastes in Canada, Mexico and the United States*, also presented their findings. They considered the increase in international shipments of such wastes within the three NAFTA countries, focusing on increases in waste generation along country borders.

Cyrus Reed, Project Director, Texas Centre for Policy Studies, explained that the study's methodology aimed to establish changes that have taken place and the impact NAFTA has had. While noting that many changes have occurred outside the NAFTA framework, he said NAFTA rules "have been identified as forming a potential obstacle to, or having a chilling effect on, countries' willingness to adopt higher standards to protect human health and the environment."

Marisa Jacott, from the "Emisiones: Espacio Virtual" Programme LaNeta, noted significant gaps in reliable data on waste generation in Mexico.

Mark Winfield, of the Canadian Institute for Environmental Law and Policy, noted significant increases in hazardous waste generation in Ontario and Quebec, particularly in the steel and chemical industries. He also noted dramatic increases in US exports of waste to Ontario and Quebec for disposal. He suggested that the concentration of the waste industry in this border area was designed to take advantage of a less stringent regulatory environment. He was of the opinion that Chapter 11 should be renegotiated and improved.

During discussion on the issue, several participants challenged the assumptions behind the data presented in the studies. One participant noted that numerous references had been made to Chapter 11 cases, but that there had been little discussion on its real implications. In response, panelists noted that there appeared to be a strong sense that agencies might feel constrained by Chapter 11 cases and that this was having a policy impact.

Relationships between Trade Liberalisation and Environmental Policies and Regulations

The presenters were introduced by the Session Chair Charles Caccia, Chair of the House of Commons Standing Committee on Environment and Sustainable Development, Canada.

Howard Mann, Associate, International Institute for Sustainable Development, spoke on the *Impact of Trade Law on Environmental Decisions and Measures taken by Governments*, noting that trade law now has a "constitutional" status through substantive rules and a mandatory adjudication process, as well as now being binding.

He stated that technical and human capacity to consistently meet trade and environmental requirements is a concern in relation to new environmental measures. However, risks to the environment in relation to investment obligations in Chapter 11 are far greater, as disciplines are broader and have been given wide-ranging meaning by the first arbitral panels that considered them.

The speaker drew attention to the fact that the dispute resolution is initiated by private corporations without regard to other national perspectives, and said that if the trend in Chapter 11 interpretations continues, "this would pose a major threat to environmental law making."

Daniel Millimet, Department of Economics, Southern Methodist University, presented his examination of the *Extent to which Environmental Standards have been relaxed since the Advent of NAFTA*. He found some evidence that US states along the Canadian and Mexican border responded differently to environmental changes in neighbouring US states in terms of sulphur dioxide emis-

less responsive to compliance cost changes in neighbouring states than were interior states. He found no changes in behaviour between the pre- and post-NAFTA period. This suggests that there is no evidence that NAFTA brought about a "race to the bottom" by causing lower standards of environmental protection.

In the ensuing discussion, Kal Raustiala, Acting Professor, School of Law and Institute of the Environment, University of California at Los Angeles, said that these studies suggest, if in different ways, that NAFTA's environmental impact has been relatively modest or even negligible.

Professor David Barkin from the Universidad Autonoma Metropolitana said this Symposium, and the trade and environment communities in general, needed to address the effects of trade liberalisation on communities.

Chair Caccia supported the need to examine the wider operation of the Agreement. He said that while some supported improving NAFTA – such as Chapter 11 – within its existing framework, he felt that a total reworking should be considered. He asked whether trade should continue to be the primary driving force in North American economics, with environmental, labour and other considerations taking a secondary position. He said the next step should be to proceed from having a North American agreement on trade, to one on sustainable development!

Information Session on Government Reviews of Trade

Paul Faeth, Chair of this session and Director of the Economics Programme at the World Resources Institute, emphasised the role of reviews in helping to identify policies that minimise the negative effects and enhance the positive effects of trade.

Participants heard presentations on *Canada's Proposed Environmental Assessment Framework for Trade Negotiations*. The presenter, Richard Ballhorn, Director General, Canadian Department of Foreign Affairs, said this will strive to integrate environmental concerns by providing information on the effects of trade agreements; address stakeholders' concerns; promote sustainable development; contribute to overall policy coherence; and identify potential conflicts with environmental legislation early on.

Jennifer Haverkamp, Assistant US Trade Representative, spoke on the *US Executive Order and Implementing Guidelines* currently being finalised and noted that the time has come to institutionalise the procedure rather than work on a case-by-case basis. She explained that the Executive Order categorises agreements into those with or without mandatory environmental review, or into a third category of agreements neither explicitly included nor excluded but reviewed based on expected environmental significance.

Mexico's perspective was outlined by José Luis



sions and compliance costs, but not toxic releases. In terms of compliance costs, he concluded that border states were

Samaniego, Coordinator de Asuntos Internacionales, Secretaria de Medio Ambiente. He saw the main pressures on the environment coming not from trade treaties but from population pressures and the non-sustainability of resources, as well as from economic growth.

The Chair commented on the presentations and ensuing discussion. He said fundamental problems resulting in pollution and other environmental problems ultimately result in serious policy and market failures. He stressed that assessments need to focus on how NAFTA influences sustainability.

NAFTA's Transportation and Manufacturing Impact on the Environment

The Session Chair Gustavo Alanis, Presidente, Centro Mexicano de Derecho Ambiente A.C., noted progress in terms of increased recognition of links between trade and environment and efforts to make the two compatible.

Sheila Holbrook-White, Executive Director, Texas Citizen Fund, said her study on *NAFTA Transportation Corridors* sought to focus on basic community impacts of trade under NAFTA in border areas between NAFTA Member States. She explained the emerging concept of such trade corridors, and said that they comprise those transportation systems that carry the majority of trade-related traffic resulting from NAFTA and that are exposed to significantly increased volumes of trade-related traffic.

Claudio Schatan, Economic Commission for Latin America and the Caribbean, presented her paper on *Mexico's Manufacturing Exports and Environment under NAFTA*, which investigates whether Mexican industry has become more or less polluting since NAFTA came into effect; also, whether exports from the most polluting industries have increased. Her conclusion was that Mexico has not become a pollution haven, but also has not moved far toward more highly developed industrial sectors that would lead to, among other things, lower levels of pollution and improved standards of living.

In the ensuing discussion, one participant emphasised that transportation is an important and appropriate issue for NACEC activity. Another speaker noted that presenters had considered in detail the problem of assessing environmental impacts, but suggested that more focus should now be given to identifying solutions.

The Services and Public Sector and the Environment

Session Chair Steve Charnovitz, Attorney, Wilmer, Cutler and Pickering, said that environmental services is an important issue that has perhaps not received sufficient attention, given that it constitutes one-third of international trade.

In his presentation, Dale Andrew, Principal Administration, Organisation for Economic Cooperation and Development (OECD), considered *Services Trade Liberalisation*. He discussed work conducted in relation to the General Agreement on Trade in Services (GATS), a multilateral framework to liberalise trade. He noted that negotiators in Geneva are in the process of discussing GATS 2000, aimed at addressing trade liberalisation issues.

The speaker suggested that NAFTA's approach is different to GATS', as it takes a negative list or "top-down" approach, although there are currently no commitments to successive rounds of liberalisation under NAFTA's approach, unlike GATS. He referred to NAFTA as a "GATS-plus" agreement.

Takis Plagiannakos, Senior Environmental Advisor, Ontario Power Generation, examined in his presentation *Whether Free Trade between Canada and the US in the Electricity Sector Would Improve Environmental Quality*, looking particularly at air quality in Ontario and North-east/Mid-west US.

He recommended that environmental regulations should take into consideration the specific differences and potential impacts of air emissions between the two countries; also, that a level playing field needs to be ensured as markets open to competition; and that harmonisation is required for new environmental regulations.

Vera Kornylak, Arizona Centre for Law and Public Interest, considered the *Relationship between Waste Water Treatment and NAFTA*. She described a project that sought to examine the indirect effect of NAFTA on the number and type of violations of the Clean Water Act at three waste water treatment facilities along the Arizona-Mexico border.

She said that findings indicate that the public's access to environmental compliance information needs to be improved, and recommended, *inter alia*, the development of a comprehensive strategy at a national level to address border-related environmental problems.

Closing Plenary

Session Chair Durwood Zaelke, President, Centre for International Environmental Law (CIEL), asked the panelists to consider how to integrate the information gathered during this Symposium into policy responses and ongoing trade negotiations – such as under the Free Trade Agreement of the Americas (FTAA).

He noted the political situation post-Seattle, and stated that there was yet to be a full environmental assessment of trade agreements. Without such an assessment, however, there could not be meaningful public participation.

Jeffrey Schott, Senior Fellow at the Institute for International Economics, said that the studies presented had demonstrated problems with the legal and economic analysis of the environmental impacts of NAFTA. He stressed that conclusions of the papers should be rigorously appraised, especially those pertaining to Chapter 11.

The speaker also supported reforms of NACEC, noting its limited budget. He said that NACEC should focus, among other things, on organising activities within a narrower scope and on making NACEC a depository and clearing-house for hard regional environmental data, with annual conferences to assess the state of the environment.

Konrad von Moltke, Senior Fellow, International Institute for Sustainable Development, highlighted his work on NAFTA Chapter 11. He warned about moving from academic studies to policy advice too quickly, and said macroeconomic analysis had not provided useful insight

on the trade and environment nexus. He stressed that environmental policy needs to address concrete impacts in a concrete way.

The speaker suggested that an interpretative statement of NAFTA Chapter 11 would provide a significant step forward. Chapter 11 was one unique aspect of NAFTA, which therefore should be addressed in the NAFTA context. He encouraged NACEC to create incentives for academia to study NAFTA-environment issues more, and underlined the need for NACEC to draw on such a body of work.

Concluding Remarks

Raul Arriaga, Coordinator of the Transition Team of President-elect Vicente Fox in Mexico, stressed support for greater public participation, transparency and accountability, as well as for strengthening cooperation within NAFTA. He suggested that NACEC has not always been used to its full potential but that it plays a valuable role, and expressed support for sessions such as this Symposium.

Symposium Chair Pierre Marc Johnson, referring to points made in the discussions, said that if trade regimes

were of the same nature as constitutional law, then there were a couple of chapters missing relating to issues such as the environment, labour and equity. He suggested that the work being carried out at the Symposium and by NACEC in general related to creating one of the additional chapters.

Janine Ferretti, NACEC Executive Director, hoped participants would incorporate ideas and information presented at the Symposium in their work and help to advance these issues. (MJ)



Note

* These provisions allow individual investors to initiate international arbitration proceedings against a NAFTA country if the investor considers that the NAFTA country has acted in a discriminatory or protectionist manner. There have been a number of cases brought by investors/companies involving actions by NAFTA countries to prevent trade where those countries have cited environmental/public health reasons. Rulings to date have favoured the investor/company. This has led to concerns that governments will feel constrained from acting on environmental/public health concerns where trade under NAFTA is involved, given the risk of legal proceedings that might lead to large compensation payments being awarded.