

Posted by Joan Russow
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1993 NAFTA THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL
PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED
INTERPRETATION OF THESE PROVISIONS. Prepared for presentation at a
panel discussion on NAFTA
by

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BACKGROUND

In all three countries, Canada, Mexico and the U.S., citizens and organizations are concerned about the misplacing of government priorities,

The delusion of public process,

The exploitation of the labour force,

The inequitable distribution of resources,

The disenfranchisement of the many,

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The violation of human rights and

The denigration of social justice

In all three countries, citizens and organizations are also concerned about

The unquestioned imperative to grow,

The over consumptive pattern of behavior,

The relentless destruction of the environment, and

The irreversible loss of ecological heritage

These concerned citizens look with justified trepidation at NAFTA

In this talk I will be examining the potential discrepancy between the stated environmental provisions in NAFTA and the Canadian Governments published interpretation of these provisions in the Canadian Environmental Review.

Background

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appears a commitment to conserve, preserve and protect the environment;

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Yet industry is continually in non-compliance with these environmental provisions, and government is continually remiss in not requiring compliance.

The three countries negotiating the NAFTA all enunciate in their national legislation environmental provisions

Mexico

" Social liberalism therefore proposes a State that promotes and encourages private initiative, but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment." (Carlos Salinas de Gortare, *Social Liberalism: Our Path, Mexico: On the Record*. Vol. 1. No. 4 (March 1992)

In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. It is a comprehensive statute designed to ensure that there is an adequate legal basis for protecting the environment. Indeed, the law is based in large part on U.S. law and experience.

A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities (U.S. Government publication] *Free trade Negotiations with Mexico Environmental matters*, p. 3) ARMS LENGTH RESEARCH

In Canada, the government claims that:

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Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement," he [Mr. de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. It also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

. (Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

INITIATIVES

- Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations. Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

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In the United States, President Bush stated that

We will ensure that our right to safeguard the environment is preserved in the NAFTA

- We will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements

- We will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards

?

We will maintain our right , consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer). [TWO OF THE VERY FEW INTERNATIONAL AGREEMENTS SIGNED BY THE UNITED STATES

• Enhancement and Enforcement of Standards: we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement

- We will provide for full public and scientific scrutiny of any change to standards before they are implemented.

-we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)p.p. 4, 5)

Response of the Administration to issues raised in connection with the negotiation of a North American Free trade agreement. May 1, 1991)

- We will consult on national environmental standards and regulations, and will provide an

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opportunity for the public to submit data on alleged non-compliance. (Response of the Administration to issues raised in connection with the negotiation of a North American Free trade agreement. May 1, 1991, p. 5)

YET the moment that either one of the three states attempts to "enhance" environmental protection the others call forth the spectre of the trade agreement GATT:

Each one of the three states involved has attempted to object to the other state's enhancing environmental standards and in each case GATT has supported the state seeking to object to high standards:

In Canada,

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fiber in newsprint. (Shrybman, 1991, p. 13) The Canadian government has argued that a U.S. environmental Protection Agency rule banning the use of all forms of asbestos violates the U.S. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

In the U.S.

The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

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The U.S. based Non-Ferrous Metals Producers Committee is using the U.S.- Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry. (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13)

(Cited in Rolfe, Chris Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

And in Mexico ...

When in 1990 the US placed an embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins [s] was inconsistent with the GATT (McDorman, T. 1991, p. 2)

It would appear that, in all three countries (including states and provinces) there is not the political will required to seriously address the urgency of the environmental crisis.

Will the NAFTA perpetuate the current North American environmental situation of strong but not-enforceable legislation and regulations,

will the NAFTA worsen the current North American environmental situation

or could an alternative to the NAFTA lead to stronger enforcement of environmental legislation?

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From the press release on Friday May 21, it would appear that the three day talks on the side environmental accords failed because the U.S. negotiator demanded the standards be enforceable through trade sanctions.

In the absence of any further information about the current discussion about the parallel accord related to the environment, I will only be able to refer to the actual NAFTA agreement itself. A representative from the Ministry of Environment, who was part of the parallel accord information loop, indicated that the purpose of the parallel accord was primarily to clarify some of the environmental provisions, and address some of the concerns expressed about some of these provisions.

"NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

To make a comparison between the environmental provisions of NAFTA and the Canadian Government's published interpretation, I have extracted and compiled in this diagram, the provisions in the NAFTA related to the environment (see NAFTA GRAPH) and linked them to the statements published by the Canadian Government in their publication NAFTA: Canadian Environmental Review, Oct. 1992.

In this diagram I have attempted to document five categories of statements:

1. Statements in the NAFTA related to the environment
2. Statements by the Canadian Government in the Canadian Environmental Review, October, 1992. Re: the environmental implications of the NAFTA

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3. Focal points to pursue related to statements in the NAFTA
4. Focal points to pursue related to statements made by the Canadian Government
5. Systemic "whereases" and "notwithstandings" within the documents that would prevent the implementation of environmental measures.

The diagram was then divided into key areas that are interrelated "standards-related measures" , "technical regulations," "relation to other documents that protect and preserve the environment," "Risk assessment and appropriate levels of protection," investment: performance requirements.

It would appear that the NAFTA does have in writing provisions to protect the environment

The NAFTA appears to involve a series of discrepancies

I will attempt to examine the discrepancies within the NAFTA and the interpretation of these discrepancies by the Canadian government in its "Canadian Environmental Review" of NAFTA along with the interpretation, by the Canadian government in the Canada U.S. Free Trade Agreement

1. RELATION BETWEEN ENVIRONMENTAL PROVISIONS AND OBJECTIVES

The discrepancy between Environmental provisions which limit economic pursuits in the preamble and economic pursuits in the objectives which ignore the environment

Compare preamble to Objectives

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PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolve to:

STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

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BUILD on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

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HAVE AGREED as follows:

Article 102:
Objectives

1.
The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:
 - (a)
Eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
 - (b)
Promote conditions of fair competition in the free trade area;
 - (c)
Increase substantially investment opportunities in the territories of the Parties;
 - (d)
Provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

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(e)

Create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

(f)

Establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2.

The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Canadian interpretation of the preamble and objectives

In the introduction to the Canadian Environmental Review

The following statement is made, which suggests that the environmental provisions are part of the objective section of the NAFTA:

Environmental objectives addressed during the negotiations included the identification of sustainable development and environmental protection and conservation as fundamental objectives of the NAFTA

In the Canadian Government document, the Canada/ US Free Trade Agreement Synopsis, the Canadian government indicates the important role of the preamble

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The preamble states the political commitment ...in entering into the Agreement. It records the shared aspirations of the two countries in concluding the Agreement and summarizes their aims and objectives. In other words, it is an agreed statement of intent which will guide the countries in implementing the provisions of the Agreement and in resolving disputes. ...the object and purpose of the Agreement (13)

ACTION: to require that to fully express the intent of the document the government should call for the inclusion of environmental provisions in the Objectives section

2.INTERNATIONAL COMMITMENTS AND STANDARDS

There is a discrepancy between the "retention of rights in other documents" (even though NAFTA, in the case of inconsistency unless otherwise indicated, prevails) and the Canadian Government unqualified assertion that Canada has "preserved these rights in agreements"

Article 103 of NAFTA states that NAFTA shall prevail in the event of an inconsistency between NAFTA and other international agreements (unless otherwise provided)

Article 103

1. The Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreement to which such Parties are party.

[Note exceptions related to the environment in GATT Article XX(b) include environmental

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measures necessary to protect human, animal or plant life or health, and GATT Article XXg applies to measures relating to the conservation of living and non-living exhaustible natural resources]

2. In the event of any inconsistency between this agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this agreement

However, in Article 903, it would appear that "rights in other documents" are retained:

Article 903 Affirmation of Agreement on Technical Barriers to Trade and Other agreements

Further to Article 103, the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under GATT and all other international agreements including environmental and conservation agreements to which those Parties are party.

The Canadian government in its Canadian Environmental Review has indicated the following

During the NAFTA negotiations, all three countries expressed the wish to retain their existing rights and obligations under those multilateral environmental and conservation agreements to which they have chosen to belong. The retention of these rights was also assigned a high priority by the Canadian environmental organization in both their written and oral submissions to the government. Canada has preserved these rights in the NAFTA

ACTION: IT IS IMPORTANT TO DEMAND TO KNOW IF THE RETENTION OF RIGHTS IS NOT INCOMPATIBLE WITH THE NAFTA PREVAILING OVER THE INTERNATIONAL AGREEMENTS NOT SPECIFICALLY MENTIONED.

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[NOTE: it is important to recognize the distinction between "standard" and "technical regulation"

Standard means a document approved by a recognized body that provides for common and repeated use, rules guidelines or characteristics for goods or related processes or production methods or for services or related operating methods, with which compliance is not mandatory

Whereas, a "technical regulation" means a document which lays down goods or related processes or production methods or for services or related operating methods, including the applicable administrative provisions, with which compliance is mandatory]

3. EXTENT TO WHICH INTERNATIONAL AGREEMENTS WILL PREVAIL

There is a discrepancy between the extent to which international agreements prevail as mentioned in the NAFTA and the extent to which the Canadian government indicates these agreements will prevail

In the NAFTA, the following is stated:

Article 104.1 obligations will prevail in

Convention on International Trade in endangered Species of Wild Fauna and Flora (1973)

The Montreal Protocol (1990)

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Basel convention on the Control of transboundary Movement of Hazardous Wastes and their disposal (1989)

Annex 104-1 Bilateral and Other Environmental and conservation Agreements

1. The agreement between the Government of Canada and the Government of the U.S. concerning the transboundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986

2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

Article 104.1. (f) Any subsequent international environmental or conservation agreement that the Parties agree shall be included, the international agreement will prevail

The Canadian government through its Canadian Environmental Review indicated:

The prevalence, in the event of inconsistency, of trade obligations set out in international environmental and conservation agreements over the NAFTA trade disciplines (Intro, CER)

In other words these international environmental or conservation agreements will take precedence over the NAFTA (CER find page ref)

ACTION: THAT CANADA INSIST IN HAVING ALL THE INTERNATIONAL AGREEMENTS RATIFIED BY CANADA INCLUDED IN WHATEVER AGREEMENT IS IN PLACE AND THAT THESE INTERNATIONAL AGREEMENTS SHOULD TAKE PRECEDENCE OVER THE ANY NORTH AMERICAN AGREEMENT [UNLESS THE ENVIRONMENTAL PROVISIONS IN THE NAFTA ARE STRONGER] AS STATED IN THE CANADIAN GOVERNMENT'S

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INTERPRETATION OF NAFTA. INTERNATIONAL AGREEMENTS SHALL INCLUDE MORAL COMMITMENTS ARISING OUT OF INTERNATIONAL DOCUMENTS SUCH AS UN CONVENTION FOR THE PRESERVATION OF CULTURAL AND NATURA (1972), AND UNCED DOCUMENTS SUCH AS THE RIO DECLARATION AND AGENDA 21 IN WHICH THE GLOBAL COMMUNITY AGREED TO FUNDAMENTAL PRINCIPLES SUCH AS THE PRECAUTIONARY PRINCIPLE, THE NON-TRANSFERENCE OF HARMFUL SUBSTANCES OR ACTIVITIES AND THE REQUIREMENT OF A FULL LIFE CYCLE ANALYSIS OF SUBSTANCES AND ACTIVITIES.

4. STANDARDS-RELATED MEASURES

Discrepancy between "shall work jointly to enhance" and "shall to the greatest extent practicable make compatible" in the NAFTA, and "forbids downward harmonization," "mandate upward harmonization" in the Canadian government's interpretation of NAFTA

Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

Note "legitimate objectives" have been defined in article 9.5 as

- a) Safety
- b) Protection of human, animal or plant life or health, the environment or consumers
- c) Sustainable development

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ARTICLE 906 Compatibility and Equivalence

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall to the greatest extent practical, make compatible their respective standards-related measures

In the Canadian Government publication "Canadian Environmental Review" it is stated:

Standards enhancement

NAFTA would do more than forbid downward harmonization it obligates Parties to work towards upward harmonization (CER, 19)

Environmental objectives addressed during the negotiations included...co-operation, on a continental basis, on the enhancement of environmental standards and their enforcement (Intro, CER)

Significant as it would in effect establish the highest current standards of the three parties (CER, 19)

ACTION: to call upon the Canadian government to have incorporated in the NAFTA the "forbidding of downward harmonization" and the "obligating to work towards upward harmonization"

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5. ALLOCATION OF BURDEN IN RELATION TO STANDARDS

Discrepancy between burden of establishing inconsistency within a chapter as indicated in NAFTA and the placement of the burden of proof in the whole document on the nation challenging an environmental standard of another country as indicated in the Canadian interpretation of the document.

Article 914 Technical consultations

4. The Parties confirm that a Party asserting that a standards-related measure of another Party is inconsistent with this Chapter shall have the burden of establishing the inconsistency

The Canadian Government in its Canadian Environmental Review stated:

Environmental objectives addressed during the negotiations included...placement of the burden of proof in a dispute on any nation challenging an environmental standard of another country.
(Intro, CER)

And reaffirmed in the body of the text

"Furthermore, should Canada adopt an environmental standard under these international agreement, the burden of proof would be with any country challenging the provision (CER, 14)

It is only on page 22 that the actual text is presented

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ACTION: TO ENSURE THAT IN ANY DOCUMENT RELATED TO THE ENVIRONMENT, THE BURDEN OF PROOF SHOULD LIE NOT ONLY ON THE COUNTRY THAT OBJECTS TO THE HIGHER STANDARD, BUT ALSO TO THE INDUSTRY THAT SEEKS TO INTRUDE INTO THE ECOLOGICAL COMMONS

6. RELATION BETWEEN ACTION OF ENVIRONMENTAL MEASURES AND INVESTMENT

The discrepancy between "recognizing inappropriateness" should not waive" "may request consultations" as indicated in the NAFTA and "a commitment to refrain" in the Canadian government's analysis of the document

In the NAFTA Article 1114 (2) discourages the relaxing of environmental measures

In Article 1114 (2), Environmental Measures, the NAFTA states:

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement

In the Intro of the Canadian Governments, "Canadian Environment Review", the environmental objectives is presented as being" a commitment to refrain"

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Environmental objectives addressed during the negotiations included acceptance of a commitment that government refrain from offering derogations from generally applicable environmental measures for the purpose of encouraging an investment

ACTION : CALL UPON THE CANADIAN GOVERNMENT TO DEMONSTRATE TRUE COMMITMENT BY CHANGING "SHOULD" TO "SHALL"

Because of all these potential discrepancies between the NAFTA and the Canadian Governments interpretation of NAFTA, I would like to make the following recommendation

RECOMMENDATION:

GIVEN:

EITHER THE GOVERNMENT OF CANADA HAS MISINTERPRETED OR MISREPRESENTED ENVIRONMENTAL SECTIONS IN NAFTA, IN THEIR OCTOBER, 1992 ENVIRONMENTAL REVIEW, OR THE NAFTA HAS CHANGED AND IN THAT CASE IT WOULD BE NECESSARY TO HAVE ANOTHER ENVIRONMENTAL ASSESSMENT REVIEW OF THE ENVIRONMENTAL IMPLICATIONS OF NAFTA

THE CANADIAN GOVERNMENT NOT RATIFY THE DOCUMENT UNTIL THE STRONGER INTERPRETATION THAT HAS BEEN PRESENTED TO THE CANADIAN PUBLIC THROUGH THE GOVERNMENT INTERPRETATION OF THE DOCUMENT BECOME AN INTEGRAL PART OF THE ACTUAL DOCUMENT

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THE CANADIAN GOVERNMENT NOT RATIFY THE DOCUMENT BECAUSE IT FALLS SHORT OF THE CANADIAN GOVERNMENT'S INTERPRETATION OF THE DOCUMENT.

RESOLUTION

GIVEN THAT THE TWO OF THE HEADS OF STATE THAT NEGOTIATED THE NAFTA ARE NO LONGER IN POWER,

GIVEN THAT THERE WILL BE AN ELECTION IN MEXICO IN JULY 1994

AND GIVEN THAT THE NAFTA HAS NOT BEEN AVAILABLE FOR FULL PUBLIC SCRUTINY PRIOR TO NEGOTIATION

GIVEN THAT THE NAFTA HAS BEEN MISREPRESENTED TO THE PUBLIC BY THE CANADIAN GOVERNMENT

BE IT RESOLVED THAT THE CURRENT NAFTA BE DISCARDED, AND THAT AN AGREEMENT THAT TAKES INTO CONSIDERATION THE FOLLOWING CONCERNS

In all three countries, Canada, Mexico and the U.S., citizens and organizations are concerned about

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The misplacing of government priorities,

The delusion of public process,

The exploitation of the labour force,

The inequitable distribution of resources,

The disenfranchisement of the many,

The violation of human rights and

The denigration of social justice

In all three countries, citizens and organizations are also concerned about

The unquestioned imperative to grow,

The overconsumptive pattern of behavior,

The relentless destruction of the environment, and

The irreversible loss of ecological heritage

**THIS NEW AGREEMENT SHOULD NOT BE FULLY RATIFIED BY ANY OF THE THREE
COUNTRIES UNTIL AFTER THE ELECTION IN MEXICO**

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AND UNTIL THE AGREEMENT HAS THE SUPPORT OF THE CONCERNED CITIZENS IN ALL THREE COUNTRIES (see diagram B.)

ANNEX: Re Water

As to the risk of Canada being forced to export water to the U.S. (Water not being covered in the agreement), Political promises to the contrary are not enough. Once the free trade deal comes into effect, and in the absence of legislation forbidding it, Canada will be in a poor bargaining position against U.S pressure to divert water the most recent pressure being for diversion from the Great Lakes into the drought-stricken Mississippi basin

In all the on-going bargaining implicit in the Free Trade Agreement, Canada throughout will be the weaker party at the negotiating table. Our lack of success on the acid rain issue is indicative of that (Margorie Bowker)

goods of a Party means domestic products as these are understood in the General Agreement on Tariffs and Trade or such goods as the Parties may agree, and includes originating goods of that Party;

4. establishment of levels of protection in pursuing its legitimate objectives

Discrepancy between

(Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed to establish international environmental standards. International principles were in place

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate. (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardizations activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international

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electrotechnical Commission (IEC), Codex alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

2. The balance between environmental provisions and "notwithstanding" or "provided that's"

concepts such as

legitimate objectives.... , providing ...

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Provision for urgency

provision for exclusion

provision for harmonization without reducing....

Non-discriminatory treatment

not providing and unnecessary obstacle to trade

Measures that are applied in an unjustifiable manner

Measures that constitute a disguised risk

measures applied in an arbitrary way

providing measures are consistent with Chapter

3. The balance between impact assessment to prevent a project from proceeding and impact assessment to determine how to mitigate the impact

"A. Environmental review process and method

Since 1990, the federal government has required that all new policy or program initiatives

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having potentially significant environmental implications undergo an environmental review. The environmental review process can be used to develop an understanding of the general nature of the possible environmental effects of a policy, and to provide a framework for addressing environmental concerns that could arise when subsequent decisions are being taken relative to the implementation of the policy. (CEA, 69)

similarly the Mexican government indicates

"The Mexican government has attached priority to key public and private activities that are the most likely to cause ecological imbalances or to exceed the limits established in the Law, its regulations and ecological standards. The government has imposed regulations on the evaluation of the environmental impact of a broad range of public and private activities and has made them subject to prior authorization. Based upon an environmental review, the appropriate federal, state, or municipal government authority must authorize and impose conditions on both public and private activities that may cause adverse ecological effects or violate environmental laws. (CEA, 89)

4. The balance between environmental enhancement and not recognizing extraterritoriality

Extraterritoriality occurs when one country unilaterally attempts to extend, directly or indirectly, its policies into the jurisdiction of another country. Extraterritoriality was not advocated by the negotiators of Canada (nor by the ENGO— those involved in the consultative process)

For example the USA has no right to try to imposed their standards on the Victorians who continue to dump raw sewage into the ocean, or on the Logging companies that continue to clear cut Canadian forests

and Canada has no right to try to impose its higher pesticide residue standards on the USA

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5. The balance between impact assessment and absolute prohibition (no acceptable residue)

6. The balance between the reliance on international standards but the reluctance to list any other agreements than those ratified by the USA

The USA has been notorious for not signing international agreements

United Nations Convention on the Protection and preservation of Cultural and Natural heritage

positive duty to identify areas of significant natural heritage

3.

1.Extraterritoriality harmonization of standards

Discussion of document:

The preamble is very strong. To a certain extent, it would appear that environment has primacy over employment: the preamble reads,

"Create new employment opportunities and improve working conditions and living standards in their respective territories; and this is qualified by the statement " undertake each of the preceding in a manner consistent with environmental protection and conservation:

YET

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Without a commitment to achieve an enforceable means to attain a limit to growth, and without a commitment to set up an infrastructure to enforce regulations; the current North American situation which is now urgent will become irreversible.

The preamble also calls for "the development and enforcement of environmental laws and regulations;

(Note discussion with John Fried about legal implications)

PROBLEM 1.

A state cannot establish a higher environmental standard of production and exclude goods that do not meet that standard of production, and cannot require the other states to live up to higher standards

The following two sections appear to permit each state to establish as high standards as they deem necessary:

"Right to take Standards-related Measures"

Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and p

(Article 904,1)

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1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

a. the demonstrable purpose of the measure is to achieve a legitimate objective; and

b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

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Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed to establish international environmental standards. International principles were in place

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate. (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardizations activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

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Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international electrotechnical Commission (IEC), Codex alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

PROBLEM 4: LIMITED REFERENCE TO INTERNATIONAL DOCUMENTS ON THE ENVIRONMENT (NOTE NO MENTION OF RIO- unless in Annex 104, check in Annex 104);
Note only reference is to "specific trade obligations" in the environment treaties:

[ACTION; TO OPEN UP NAFTA TO ENSURE THAT THE DOCUMENT IS COMPATIBLE WITH UNCED DOCUMENTS]

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Treaties mentioned:

convention on International Trade in endangered Species of Wild Fauna and Flora (1973)

the Montreal Protocol (1990)

Basel convention on the Control of transboundary Movement of Hazardous Wastes and their disposal (1989)

Annex 104-1 Bilateral and Other Environmental and conservation Agreements

1. The agreement between the Government of Canada and the Government of the U.S. concerning the transboundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986

2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

* see Annex 104-1 for other agreements

Such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

ACTION: note that there is the provision to add other environmental agreements.

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The parties may agree in writing to modify Annex 104.1 include any amendment to an agreement referred to in Paragraph 1 and any other environmental or conservation agreement.

PROBLEM 5: PRIMACY IS GIVEN TO NAFTA OVER OTHER INTERNATIONAL AGREEMENTS

NOTE: THAT IN ARTICLE 103, "Relation to Other Agreements, this agreement is given primacy

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreements to which such Parties are party.

2. In the event of any inconsistency between this Agreement and such other agreement, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Background:

NAFTA

Perspectives and Actions

DEPARTMENTS

1. External Affairs

Documents:

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North American Free Trade Agreement Implementation Act: The NAFTA Partnership. March 1993

Content:

It is primarily a document about Canadian Business interests

"NAFTA will provide further new opportunities for Canadian goods and services. Canadian firms will be able to expand sales in sectors that were previously highly restricted, such as autos, financial services, trucking, energy and fisheries. "

Mexico Canada's largest trading partner (3 billion, 1991)

"Canadian business has already begun to take advantage of these new trade measures to increase their presence in Mexico. "

Participants:

The Export Development Corporation (EDC)

The Business Co-operation Program of the CIDA

CIDA/Inc (several environmental protection and control projects related to air and water pollution, hazardous waste disposal and rehabilitation of wetlands in proximity to industrial and residential areas.)

Investment Canada is also developing a program to encourage Mexican investment in Canada

EAITC has organized a trade promotion program in Mexico directed at specific sectoral opportunities, to introduce as wide a cross section as possible of potential exporters to the marketplace.

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In order to capitalize on existing opportunities in Mexico and give depth to heightened economic relations as envisaged under the NAFTA, the Canadian private sector is preparing to position itself effectively in this growing market.

The most likely sectors of concentration for Canadian entrepreneurs are mining, agro-industry, food, transportation, environment and tourism development.

Successful Canadian exporters

SR Telecom, Du Pont, Canada Export Award Winner in 1992, Dare Foods, Cansec Systems, Royal Plastics, Garden Grove Produce, Rebound Rig international oil equipment (900,000); Bovar-Western research (1.5. M) instrumentation control of their sulphur recovery units

Chronology:

Note: March 18. (1992). Canada provides Mexico with 1\$ million worth of environmental assistance. [what was the nature of the assistance]

September 17 (1992) Washington, D.C. — Environment ministers of the NAFTA countries agree to establish a Trilateral Environmental commission to explore co-operation on environmental issues.

November 3, 1993 the Canadian Environmental review of the NAFTA is released.

but will these pronouncements be enough to ensure long term preservation and protection of the environment without the concomitant political will?

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But would those provisions prevent the government from waiving sections of the Federal fisheries Act , and bypassing the Environmental Assessment Review Process to allow Alcan to proceed with the Kemano II Project

But would those provisions prevent Governments that are against in principle the mining of Uranium to acquiesce to the uranium miners and permit uranium mining

But would those provisions prevent the disposal of nuclear wastes on the land of disenfranchised- the indigenous peoples of the US

But would those provisions prevent the destruction of significant ecosystems

But would those provisions prevent the transfer of chemicals that are deemed to be unsafe in one country to another country with less stringent regulations.

Throughout the document there is a mention of "standards"

Regardless of NAFTA there are serious systemic constraints preventing significant change in addressing the seriousness of the current environmental crisis in North America

Some constraints are

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i.

The reluctance of the political and industrial community to address the need to limit growth and over consumption and the concomitant reluctance to acknowledge the implications of ignoring the limiting of growth and over-consumption.

In the process of wrapping the semantic capsule 'sustainable development' around this potentially unpalatable two sided world-view was born the genteel ploy of emphasizing the growth imperative for consumption in the South and the industrial communities comfortable with "business (much) as usual", while focusing on sustainability for purposes of dealing with the increasingly strident and influential concerns of environmental movements and scientific bodies documenting the possible dangers of global change. Thus there remains latent much of the old Stockholm debate between environmentalists and industrialist in the North and between developed nations of the North and developing nations of the south. (Dobell, 1992, p. 4)

Since our economies are growing and the ecosystems within which they are embedded are not, the consumption of resources everywhere has begun to exceed sustainable rates of biological production. Seen in this light, much of today's wealth is illusion derived from the irreversible conversion of productive natural capital into perishable human-made capital. (Rees, 1991, Draft. p. 9)

The result of unchecked growth has been the following:

Encroaching deserts (6 million ha/year; deforestation (11 million ha/yr of tropical forests alone); acid precipitation and forest dieback (31 million ha damaged in Europe alone); soil oxidation and erosion (26 billion tonnes/yr in excess of formation; toxic contamination of food supplies; draw-down and pollution of water tables; species extinction (1000s/yr); fisheries exhaustion; ozone depletion (5% loss over North America [an probably globally] in the decade to 1990); greenhouse gas buildup (25% increase in atmospheric CO₂ alone); potential climatic change (1.5-4.5C₀ mean global warming expected by 2040); and rising sea-levels (1.2-2.2 m by 2100) and like trends are the result of either excess consumption or the thermodynamic dissipation of toxic by-products of economic activity into the ecosphere (Data from: Brown et al [Annual]; Brown and Flavin 1988; Canada 1988; WCRP 1990; Schneider 1990; US Environmental

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Protection Agency [reported in Stevens 1991]). (reported in Rees, 1991, Draft. p. 11)

Continued development [and growth has even been perceived as a basic truth by the president of the World Bank: Barber Conabb CHECK SPELLING. stated that " a basic truth is that development cannot be halted, only directed". (Conabb, 1989, p. 15)

and he then continued to reassure the developing nations that

"With the developing nations, we must go on learning by doing..."Connabb, 1989, p. 15)

ii.
The discrepancy between the establishment of environmental policy through international commitments and the denial of the policy through free trade agreements:

In June 1988 both the US and Canada participated actively in a world conference on The Changing Atmosphere: Implications for Global Security. The conference concluded that global atmospheric problems were the product of 'an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war.'" and recommended national efforts to reduce carbon emissions by 20 % by the year 2005. yet later that year the Canada-US Free trade Agreement was ratified, entrenching energy and resource policies that are fundamentally at odds with the policy directions endorsed by representatives of the countries at the global warming conference. Under the terms of the free trade agreement; both countries forego, for as long as the agreement stands, the use of regulatory devices that could prevent the development of fossil fuel resources for export. (Shrybman, S. 1990, p. 22)

"

iii.
The discrepancy between government and industry rhetoric embodied in laws and regulations and the political will to enforce these regulations

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iv.
The discrepancy between institutional rhetoric embodied in publications and the traditional role that is played by the institution (the usurping of the environmental movement to the point of making it redundant)

(see "eco-development" in Colby, M., Environmental management in development; the evolution of paradigms, 1990, World Bank discussion papers V. 39)

v.
The advocating of a new found role of international governance for industry as a potential replacement for government.

Ramphal at Globe 92 described the new found role as " enlightened long-term thinking": He described the newly found enlightenment in the following way:

The private sector has been traditionally regarded as trammled by short-term profit considerations. Enlightened long-term thinking was a preserve of the State, of governments. Today the greatest flaw in governance at the national level is the ascendancy of the short-term in the political calculus, as leaders respond frenetically to democratic pressures for immediate results. It is the private sector, and particularly the larger enterprises within it, that have the intellectual space to think beyond tomorrow. ... (Ramphal, S. 1992)

vi.
The advocating of self regulation by industry; the moving away from compliance, imposed regulations etc.

QUOTE FROM SESSION AT GLOBE 92

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vii.

The discarding of the principle of arms-length research in industrial projects

viii.

The revealing of the true intent by industry in in-house documents.???? from statements from industry about industry's perceived advantages of tripartite free trade.

McCrae, Jim World Bank Environmental division CHECK

"dirty technology belongs in third world"

Basel convention related to third world dumping

The Royal Bank conveys in Econoscope, that " the new rules [in Mexico] automatically allow 100% foreign ownership of Mexican companies provides that less than US100 million is involved and that certain other criteria are met (for example, the funds must come from abroad and the investment must not be in areas which are already industrialized)Royal Bank of Canada p 4.

Note: no mention of safe industry

The move towards a free trade agreement with the United States is seen by the Mexican government as a powerful tool to modernize its economy. Such an alliance leading to a greater integration of Mexico into the North American economy could provide an anchor of stability for Mexico's monetary and fiscal policies. (Royal Bank of Canada p. 4)

....On the plus side, the United States will find that an improved Mexican economy, particularly if it can help to reduce the flow of economic refugees into the United States, and improved co-operation on narcotics and the environment sufficiently compelling reasons to pursue free trade talks. The greater competition offered by Mexican low-cost labour-intensive products had to be kept in perspective. A central tenet of international trade theory is that countries

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specialize in the production and export of goods according to comparative advantage rather than absolute advantage.

Many developing countries have failed to convert their advantages with respect to plentiful and cheap labour into a comparative advantage because of a number of factors impeding overall labour productivity. (Royal Bank of Canada p. 9)

...For Mexico the comparative advantage offered by low-cost labour is offset to a certain extent by the lower level of manufacturing productivity except perhaps for the most recent manufacturing plants built in the in-bond maquiladora sector). Moreover, Mexico is faced with a number of other problems such as heavy state involvement, absenteeism and poor transportation and communication infrastructures. (Royal Bank of Canada p. 11)

NOTE mention of pollution controls

There are several areas in which Canadian expertise could find a market in Mexico. These include agriculture, fishing , forestry and pollution control . Royal Bank of Canada p. 11

[Note the only mention of anything that is related to the environment is the possibility of a market for Canadians in pollution control.]

On the issue of whether or not ' export protectionism' would grow, one must ask what the multinational corporations want to use the spoke countries for. Do they want them as markets or as production bases? If they want them as export markets, the ;multinationals would then favor export protections. If, however, they want them as production bases--as is increasingly the case with Mexico--then the multinationals gain no advantage from maintaining export protections. (Weintraub, Sidney, in Hill, R. et al 1991, p. 9)

...the multinational might well prefer an expanding free trade area to rationalize their production. ...U.S. multinationals have distribution systems set up to take advantage of the preferences it provides, they may well want it to continue. (Wonnacott, R.in Hill, R. et al 1991 p. 9)

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First, it sets a timetable that lends itself to the 'Yankee trader' attitude that you cannot conclude a deal until the deadline (indeed after the deadline), because if a deal is reached earlier, it is because you have not squeezed enough and ended up leaving money on the table. Mexican negotiators have not experienced this, but they soon will...Second, the fast-track process lends itself to some very damaging side deals between the administration and Congress. In the Canadian case, while approval was given for the process by Congress, the price was a side deal whereby the administration essentially promised to restrict the Canadian forest products industry in any way it could. It did so with trumped-up cases against cedar shakes and shingles and softwood lumber. (Ritchie in Hill, R. et al 1991, p. 11)

To increase Canada's Weight in

Settling Trade Disputes

A trilateral resolution of disputes would provide Canada and Mexico together with greater weight in holding the United States to its commitments than either would have alone. But for precisely this reason, it is far from clear that the United States would accept the trilateralizing of dispute settlement. ...Nor is it even clear that Canada would wish to trilateralize dispute settlement, since this could weaken, rather than strengthen, Canada's voice in disputes with the United States where Mexico did not support Canada's position. (Wonnacotte, R.J. "Canada and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute p. 3)

To Have a Low-Wage

Partner in the Free Trade Bloc

" Finally, Canada, like the United States, needs a low-wage partner such as Mexico. Every other participating country in a free-trade bloc has such a partner. Without access to a pool of low-wage labor, Canadian industry will find it more difficult to remain competitive in world markets. However, low wages in Mexico will raise the question: How can Canadian industry compete with cheap Mexican labor? .Wonnacotte, R.J. "Canada and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute. p. 4

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Fear of trade

with low-wage Mexico

One major fear will be that Canadians cannot risk trading freely with Mexico because of that country's cheap supplies of labour, which will give Mexican goods an overwhelming competitive advantage.If we really had to worry about the competitive advantage conferred by low Mexican wages, then existing Canadian tariffs would provide little relief: if 'sixty-cent-an-hour wages' are a threat, then 'sixty-six cent-an-hour wages' are not much less of a threat. What matters in international competition is ;not how ;much local labor is paid in terms of purchasing power. What matters is how unit costs of production compare internationally at the going exchange rates. (Lipse, R. "Canada at the U.S. -Mexico Free Trade Dance." Commentary. No.20, August 1990. C.D Howe Institute p. 10).

ix.
The watering down of environmental resolve when action is require: policy to prevent pollution becomes translated in action to reduce or mitigate pollution

12. The Ministers agreed that, in order to achieve ESID, industry initiatives should include the following objectives:

a) Adoption of pollution prevention, the approach that prevents pollution at the source in products and manufacturing processes rather than removing it after it has been created (UNIDO, 1992, p. 7)

In the introduction to the Alumina Industry case study that was examined at the UNIDO conference the following statement was made: "Bauxite mining cause unavoidable ecological disturbance, and in some circumstances the issue of preservation of biodiversity is important" (UNIDO, Proceedings, 1992, p. 220)

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Recommendations

"7. Industry experts summarized the most promising ways of reducing the negative environmental impact of the alumina industry at the plant level as follows:

What was a policy of "preventing pollution" has now become a mandate to "reduce pollution or mitigate pollution"

"the thrust of the world Bank's energy work is increasingly to promote development in the energy sectors of developing countries while taking prudent steps to mitigate damage to the environment" (the World Bank, 1989)

x.

The compromising of the environment as a result of trade agreements

It [NAFTA] may limit Canada's or British Columbia's authority to establish relatively tough environmental standards; and

it may limit the public's access to decision-making affecting the environment during the negotiation of an agreement and the operation of such an agreement.

therefore, the association urged the government of British Columbia to:

- undertake an environmental assessment (with full opportunity for public access to information and involvement) of the potential impact on British Columbia's environment and environmental decision-making process

- insist that the federal government do the same; and

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- oppose any trade agreement with Mexico that:

- i) would impair the province's ability to set relatively high environmental standards;

- ii) does not specify that failure to establish and enforce reasonable environmental standards is considered to be a trade subsidy; or

- iii) does not include mechanisms to facilitate public access to information regarding and public participation in, decision-making under the agreement

(Environmental Law Association , Ministry of Development, Trade and Tourism, 1991 p. 23)

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appear to preserve and protect the environment; yet industry is continually in non-compliance with these environmental provisions and government is continually violating its own policies by not enforcing regulations. Without a commitment to achieve and enforceable means to attain a limit to growth, and without a commitment to set up an infrastructure to enforce regulations; the current North American situation which is now urgent will become irreversible.

2. POSSIBILITY OF COMMON CONCERNS BEING ADDRESSED WITHIN AND THROUGH NAFTA

Does NAFTA become the [further] realization of these dire predictions or an opportunity for significant change? Is it possible to summon up the political will to limit growth, to achieve respect for human rights, to attain social justice, to enshrine ecological rights and to entrench

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fair and ecologically sound employment?

BETTER QUOTES

"We need to do a lot more than admit there is a problem (Aridis, 1992)

"All measures taken so far are band aid solutions ... we need real solutions (Carbajal, 1992)

"Future economic growth will compound existing problems unless specific steps are taken to integrate free trade and environmental protection. (Emerson, 1991)

[an to limit growth]

" Human rights, labour rights and environment deserve equal treatment with trade rights (Axworthy , 1991,)

For at least twenty years we have engaged in environmental rhetoric.

In June 1972 at the Stockholm convention on the Human Environment the following statement was made and principles enunciated:

To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common

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efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greater burden for large-scale environmental policy and action within their jurisdictions.

states the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generations...

Principle 2:

The natural resources of the earth include the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate

Principle 13 In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population. (Stockholm convention on the Human Environment, June 1972)

Was this only rhetoric in 1972: empty words whose legacy of inaction we now have to face?

If we are to achieve significant change {we must translate our rhetoric into realistic commitments to action within a trade agreement. }

Now in June of 1992 we are entering into a new world agreement, the "Rio Declaration on

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Environment and Development" at UNCED, and in the near future into a trilateral trade agreement , NAFTA. Is there still just rhetoric or will there now be substantive action to support words.

The three countries negotiating the NAFTA all enunciate environmental objectives but will all three countries have the political will to ensure that there will be long term preservation and protection of the environment Mexico

" Social liberalism therefore purposes a State that promotes and encourages private initiative, but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment." (Carlos Salinas de Gortare, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)

...Observaciones: El esfuerzo di Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuale han sideo aplicadas con gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecologica del la poblacion con su conjunto. (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

The Government of Mexico's three year environmental plan for the border communities calls for a doubling of the number of inspectors from the Secretariat of Urban Development and Ecology (SEDUE) by January 1992. This represents a four-fold increase from 1989. "By January 1992, The SEDUE team of 200 qualified inspectors will be ensuring that industries in the border communities adhere strictly to Mexico's environmental laws and regulations. Businesses that refuse or cannot comply will be subject to penalties, including having their operations shut down.

Information and data systems are being upgraded and decentralized. These improvements will allow for closer monitoring of raw materials and dangerous wastes. Already, in the last three years almost 1 million tons of hazardous materials have been prohibited from entering Mexico.

Progress can already be seen in the "maquiladora" industries where compliance with

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regulations on operating licenses , on the declaration of the production of hazardous wastes and on the proper disposal of hazardous wastes has increased dramatically since 1989. All existing maquiladora plants must be entirely recertified by 1992. All new investment must present environmental impact statements. ("Protecting the Environment Mexico's public works program for the Border Region," undated, and unsigned document)

Mexico and the United States are committed to a cooperative program that will encourage sustained economic growth and environmental protection in both countries. President Bust and president Salinas believe that the two are complementary and must be pursued together. (Free trade Negotiations with Mexico Environmental matters, p. 1)

Mexico has established a good basis for progress on environmental protection and conservation of natural resource. President Salinas has states that, while seeking to stimulate foreign investment, Mexico will not accept investments that have been rejected by the United States or Canada for environmental reasons. (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 2)

In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. it is a comprehensive statute designed to ensure that there is an adequate legal basis for protecting the environment. Indeed, the law is based in large part on U.S. law and experience.

A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 3) ARMS LENGTH RESEARCH

In 1990.. the Government [of Mexico] shut down all 24 Military industrial installation in the Mexico City area because of potential environmental risks." (Free trade negotiations with Mexico, Environmental matters, U.S. government publication]

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Convenio con las industrias en el valle de Mexico para combatir la contaminacion ambiental

Por su parte el jefe del Departamento del Distrito Federal, Manuel Camacho Solis, explico las medidas tomadas en el pacto con la industria, entre las que destacan las siguientes;

- establecer la verificación obligatoria de las emisiones industriales, principalmente de las partículas de monóxido de carbono, azufre, óxidos de nitrógeno, plomo, hidrosulfatos y compuestos orgánicos volátiles para lo cual en un plazo máximo de 18 meses, 220 empresas que consumen el 53% del total de combustibles en el valle de México deberán contar con equipos anticontaminantes
- se integra un programa de capacitación de inspectores, auditores y verificadores, así como operadores de calderas y equipos de combustión.
- Se crea un cuerpo especial de inspección y asesoría profesional en la materia, y que actualmente las partículas de origen industrial son las de mayor riesgo para la salud, pues contienen químicos inorgánicos y metales pesados y constituyen el 65% de las partículas tóxicas suspendidas en el aire.
- se otorgará asesoría y equipo tecnológico a la industria para que instale equipos anticontaminantes
- se desarrollarán políticas de energía (ahorro, consumo racional, entre otras), además de que se controlarán y reformularán solventes de pintura
- Se cuenta con un billón de pesos para financiar el control de emisiones, cambiar procesos y descentralizar industrias. Es importante señalar que por primera vez en un programa de esta naturaleza intervienen siete bancos comerciales: Multibanco Mercantil de México, Banca Serfin, Banca Confía, Bancomer, Banco Internacional, Multibanco Comermex y Banco BCH, así como ocho arrendadoras.

Note. Need for sustained monitoring and implementation of regulations cannot only be implemented as a means to an end. Implementation of standards and regulations as a means to

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an end without the provisions in place to continue to impose, implement these regulation.. relax regulation

- SE continuaran actualizando y desarrollando nors cada vez mas estrictas para la industria, hasta alcanzar reducciones en la emision de paticulas entre un 70 y 90%

...Observaciones: El esfuerzo dl Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuale han sideo aplicadas con gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecologica del la poblacion con su conjunto. (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

Canada

Canada's Green plan for a healthy environment is a co-ordinated package of actions to help Canadians work together in partnership to achieve, within this decade, a healthy environment and a sound , prosperous economy.

Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement ," he [Mr. de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. it also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

Canada's Green Plan is a major step forward of our country. It greatly expands, organizes and focuses our environmental activities. It is an optimistic document about the future of our environment," Mr. de Cotret said. (Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

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Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

Legislative, Regulatory and Market tools for change

Goal

the balanced use of strong and effective environmental laws, with market-based approaches for environmental protection. p. 20

INITIATIVES

- Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations. Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Whereas the Government of Canada in demonstrating national leadership should establish national environmental quality objectives, guidelines and codes of practice (Canadian

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Environmental protection act, 1988)

Whereas toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries (Canadian Environmental protection act, 1988)

section 2. a Government of Canada shall... take both preventative and remedial measures in protecting the environment (Canadian Environmental protection act, 1988)

In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister , it is stated that "the duties of the Minister include providing for

a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to

2(i) endeavour to protect the environment from the release of toxic substances". (Canadian Environmental Protection Act, 1988, C 22)

[" deleterious substance means

a) any substance that, if added to any water would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water

(Fisheries act, statutes of Canada 1976077, c35)

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yet raw sewage is still dumped into the waters around Vancouver Island and fish have lesions]

" whereas... no present activity should compromise activities... fulfill the needs of future generations (CHECK WORDING IN CI3)

United States

"A NAFTA offers an historic opportunity to bring together the energies and talents of these great nations, already bound by strong ties of family, business and culture. Prime Minister Mulroney and President Salinas are both leaders of great vision. They believe as do I, that a NAFTA would enhance the well-being of our peoples. They are ready to move forward with us in this unprecedented enterprise. In seeking to expand our economic growth, I am committed to achieving a balance that recognizes the need to preserve the environment, protect worker safety, and facilitate adjustment. ... At my direction, Ambassador Hills and my Economic Policy Council have undertaken an intensive review of our NAFTA objectives and strategy to ensure thorough considerations of the economic, labor and environmental issues raised by you and your colleagues.

Based on my discussions with President Salinas, I am convinced that he is firmly committed to strengthened environmental protection, and that there is strong support for this objective among the Mexican people. Because economic growth can and should be supported by enhanced environmental protection, we will develop and implement an expanded program of environmental cooperation in parallel with the free trade talks. ...thus, our efforts toward economic integration will be complemented by expanded programs of cooperation of labour and the environment." (Letter from George Bush to Chairman Rostenkowski and Majority Leader Gephardt; similar letter sent to every member of Congress, May 1, 1991)

Mexico's commitment to environmental protection

- Mexico has no interest in becoming a pollution haven for U.S. companies.

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- Mexico's comprehensive environmental law of 1988, which is based on U.S. law and experience, is a solid foundation for tackling its environmental problems.
- All new investments are being held to these higher legal standards and an environmental impact assessment is required to show how they will comply.
- Enforcement has in the past been a key problem, but Mexico's record has been improving dramatically. Since 1989, Mexico has ordered more than 980 temporary and 82 permanent shutdowns of industrial facilities for environmental violations; the budget of SEDUE (Mexico ' EPA) has increased almost eight-fold

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

Environmental issues in the NAFTA

- Protection of Health and Safety: We will ensure that our right to safeguard the environment is preserved in the NAFTA (YET NOTE US NOT PREPARED TO HAVE THAT ENSHRINED IN AN INTERNATIONAL CHARTER)
 - we will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements
 - we will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards
 - we will maintain our right , consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer).
- Enhancement and Enforcement of Standards: we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement

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- we will provide for full public and scientific scrutiny of any change to standards before they are implemented.

-we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)p.p. 4, 5)

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

- we will consult on national environmental standards and regulations, and will provide an opportunity for the public to submit data on alleged non-compliance. (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991, p. 5)

The current global ecological crisis is urgent and a serious shift in perspective is necessary if the crisis is to be addressed. This shift in perspective must permeate all future considerations of trade and development related to the environment, health, human rights and social justice. This shift in perspective must move away from perceiving that states have "the sovereign right to exploit their resources pursuant to their own environmental and developmental policies [and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction." (Principle 2 in the Rio Declaration on Environment and Development)] . This shift in perspective must move away from perceiving that states have " the right to development [being fulfilled] so as to equitable meet developmental and environmental needs of present and future generations" (Principle 3 in the Rio Declaration on Environment and Development). Through this new perspective we must begin perceiving that the ecological preservation and protection must be given primacy and that an integral part of ecological preservation and protection is the limiting of industrial growth.

If states entering into the free-trade agreement acknowledge the need to limit growth and ecological preservation and protection as fundamental principles of negotiation, then any departure from this principle will have to be justified. The onus of proof would then shift from those objecting to increased growth and to potentially ecologically unsound interventions having to demonstrate harm to those advocating interventions having to demonstrate worth and

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safety.

Although all of the three countries do not recognize the need to limit growth they have spent years enunciating the goal of protecting and preserving the environment.

What we need to do is achieve the highest attainable synthesis of our common goals in the coordination of policy in a North American community, not some lowest common denominator achieved through some process of mechanical compromise [re - integrative bargaining]. [Need to achieve a bargaining set with sufficient diversity to be able to trade off objectives for one country in one area with goals for others in others.]

There is a need for common standards based not only on the highest tenable principles drawn from all three countries but also on the highest tenable principles not yet embodied in policy and legislation. These standards should be related to environmental, social justice, human rights and health provisions. The enshrining of high standards conforms in principle to declared objectives of all three countries. These declared objectives are present not only in legislation from all three countries but also in many international covenants and declarations to which all three countries to varying degrees subscribe [have ratified] . These declared objectives are evident in [Out Common Security Palmer] in the preamble to C 13 Environmental Assessment Review Act in Canada, in the intent behind the Mexican Constitutional law for the ecological equilibrium and protection o the environment CHECK and in the U.S. ... CHECK

so I am not here to wring hands about the threat posed by Mexico as a pollution haven in a North American community. In fact, in many ways all of North America could be described as a pollution haven for industry. Rather, on the assumption that we will, for political reasons, have a little time before a final agreement is reached, I want to ask how we can use this lull to translate some of our nice rhetoric into realistic commitments to action within a trade agreement.

On the issue of a North American Free Trade Agreement there has already accumulated a great deal of literature [refs. Hart, CD Howe, Murray Smith, Conference volumes, etc, BC consultation [and commissioned] documents, etc.] CHECK

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On the more particular question of trade and environment, there is also beginning to accumulate a vast literature. The issue is being addressed by a GATT working party, and is a major topic for discussion at UNCED. Also a number of reports [IISD conference, GATT report,...]

But indications to date suggest that the discussions at UNCED will not resolve the basic tensions between environmental goals and economic principles [ecological rights and economic privileges]. The Draft text for the RIO Declaration [on the Environment and Development] reveals still far too strong an overhang of orientation to a model of the nation-state and national sovereignty and a reluctance to curb growth or to come up with international environmental standards, with an international court of environmental law, with the enshrinement of the right to a safe environment and to an environmental heritage; and with establishing any form of international environmental governance

Even though the international scientific community that does not have a vested interest in development recognizes the urgency of the global situation (include reference to document signed by 20 Nobel Laureates see Fred Knelman's letter to Nobel Laureates) the U.N. delegates meeting in the Prep Com in New York have failed to give the environment primacy and have instead enshrined the right, though qualified, to develop and exploit resources.

In principle 2. "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. (2 April 1992, Rio Declaration on Environment and Development]

In principle 3.

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations

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(2 April 1992, Rio Declaration on Environment and Development]

The Prep Com delegates also failed to define explicitly what is meant by development: there is a fundamental distinction between exploitative and humanitarian development. Even the chair of committee on "Rio Declaration on Environment and Development" continued to perpetuate the simplistic myth that the north is concerned about [only] the environment and the south is concerned about [only] development. (March 26, 1992, personal communication in presence of the press). Are they continuing to ignore concerns as embodied in declarations such as those embodied in the "Constitutional Law for the Ecological Equilibrium and Protection of the Environment" Mexican document, 1988)

Not only have the delegates been reluctant to limit growth and to give the environment primacy within the sustainable development context they have also failed to recognize the urgency of the global situation by their not recognizing more fundamental non-anthropocentric rights

Principle 1 human beings are at the centre of concerns for sustainable development. They are entitled to a health and productive life in harmony with nature.

(2 April 1992, Rio Declaration on Environment and Development]

Other agreement such as GATT have succeeded in resolving the tension between environmental goals and economic principles [ecological rights and economic privileges] by giving primacy to {unimpeded flows of goods and all) and ignoring environmental values (pursuit of a sustainable society through conservation of resources and preservation of biodiversity) }

GATT is built on the premise of nation states and meaningful national borders. Indeed the whole apparatus of international law has to presume that the relevant actors are national government.

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GATT fails to permit "power of governments to implement environmental regulation ..." and brings about "increased economic pressures to reduce environmental standards." (from FAX sent by West Coast Environmental Law Association with comments by Rolfe, C. Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

Each one of the three states involved has attempted to object to other states of using high environmental standards to influence trade and in each case GATT has supported the state seeking to object to high standards:

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fibre in newsprint. (Shrybman, 1991, p. 13) The Canadian government has argued that a U.S. environmental Protection Agency rule banning the use of all forms of asbestos violates the U.S. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

The U.S. based Non-Ferrous Metals Producers Committee is using the U.S.- Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry. (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13)

(cited in Rolfe, Chris Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

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And Mexico ... When in 1990 the US. placed and embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins [s] was inconsistent with the GATT (McDorman, T. 1991, p. 2)

The GATT Panel stated that under the GATT " a contracting party may not restrict imports of a product merely because it originates in a country with environmental policies different from its own'. (U.S. Mexico GATT Panel, 3 September 1991, at paras 2.1-2.2). It is this statement that has been seen as the biggest problem with the "GATT Panel report from an environmentalist point of view. (McDorman, T. 1992, p. 19). However, even the normally environmentally sensitive Nordic countries have indicated that a country is not free 'to require that imported products [be] produced as cleanly abroad as at home.'" (EFTA members press convening of working party, 82 Focus- GATT Newsletter 2-3 (July 1991) Any other conclusion reached by the GATT Panel would allow certain countries to dictate to others what standards must exist and this would clearly be an invasion of a country's sovereignty. Moreover, as the Panel concluded, any other conclusion would permit trade only between countries with identical regulations and this would amount to a dismantling of the GATT. ("McDorman, T., 1992, p. 19) CHECK CITATIONS PUT IN FOOTNOTES

Direction to proceed is spelled out in McDorman analysis: need international agreement on priority for environmental objectives sufficiently strong that it formally and explicitly over-rides GATT where necessary.

Want to look closely at the US Mexico GATT panel report as outlined by McDorman

He reports that the panel found that "the obligations owed by the US to Mexico under GATT prohibited use of trade measures to deal with such environmental issues [i.e. those having effect beyond the borders of the country adopting the trade measures]. This conclusion flows from the fact that GATT may regulate conditions around product, but not around means of production, and from the view that it is still possible to talk about the actions of a particular country affecting its environment. With these orientations, GATT can conclude that "Countries cannot look behind a good to determine if the production or manufacturing process was environmentally friendly. Or in other words countries cannot impose their environmental standards or regulations on other countries by boycotting their goods. "to a certain extent, this

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is what comparative advantage is all about: differences in their environment of production, including the environment of government regulations".

If this is true, how do we deal responsibly with environmental concerns in an emerging North American community in which sovereign communities still wish to pursue their own vision of interpersonal and intergenerational equity and sustainability?

"Potentially, any nation could thereby justify unilaterally imposing its own social, economic or employment standards as a criterion for accepting imports. Any influential contracting party could effectively regulate the internal environment of others simply by erecting trade barriers based on unilateral environment policies. (The Venezuelan intervention in the U.S.- Mexico GATT Panel, note 3, at para. 4.27).

Rather than considering high standards an "imposition", perhaps we could now contemplate, high standards as "the expression of collective will" . Given the recognized urgency of the global situation, the goal as the expression of collective will, should be the attaining of the highest tenable standards so that at least within the North American context, through a strongly principled NAFTA, our energy could be placed in striving in the three countries to meet this established standards rather than in using the GATT to condone and even foster lower or relax standards.

So I would like to ask whether NAFTA can provide a lead in a [more] fruitful direction, which achieves a better reconciliation of the differing perspectives, situations and orientations of the different players. Differences in North America are not so great as in the world as a whole, and should be more easily bridged. All three countries share the same lofty rhetoric and indeed the same idealistic -- apparently potent -- legislation. All three fall down badly on implementation, on monitoring and on enforcement.

CITE STATEMENTS IN PREAMBLES INDICATING RHETORIC

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NEED FOR INTERNATIONAL STANDARDS DRAWING FROM ...;

But all also can see the writing on the wall, and might be ready to turn around the decision structures and alter the priorities in the direction necessary to move towards sustainable development { sustainable environment} . All may be ready jointly to move against the threats of "jobs blackmail" and competitiveness blackmail" which have stalled any realistic moves thus far towards adequate pricing of resources or adequate weighting to preservation and future interests.

Often the "job blackmail" is couched in altruistic terms as "striking a balance" or "achieving consensus". In these cases those who are concerned about giving the environment primacy are perceived to be "extremists" or of being "unreasonable." or of "not caring about the welfare of other human beings". Can we discuss a balance between the need to preserve an area and the "privilege" to engage in ecologically unsound practices? Can we discuss a balance between the right of humanity to not have to live in fear of environmental degradation and the "privilege" of labour to engage in work that could contribute to potential environmental degradation? Can we talk about balance when we ask to save 3% of the remaining ancient forests on an Island?

The time for the condoning of rationalization has past. The environment will continue to be degraded and not sufficiently preserved if people continue to condone the rationalization of engaging in ecologically unsound practices. No longer should we condone the following forms of rationalization: a) "we recognize that the practices are ecologically unsound but if we do not do them jobs will be lost, workers will be displaced, communities will become ghost towns b) " we recognize that the practices are ecologically unsound but if I don't or we don't engage in these practices someone else will" or c) "we recognize that practices in a sovereign state other than our own are not ecologically sound but the goods are so much cheaper, and what right do we have to impose our standards" Environmental preservation and protection must no longer be just tokenism. [classic statements, do they need a source?]

The time for tolerating the couching of business as usual in new euphemisms "sustainable development" has passed. An outgrowth of this toleration is a new form of industrial environmental hypocrisy where industries engage in the device of feigned altruism: the setting up of environmental divisions within an ecologically unsound industry . We have a responsibility to ensure that we are no longer deluded by industries that set up an environmental department

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while continuing to destroy the environment through their principal activity. [No amount of recycling of aluminum cans will make up for the destruction occurring in the production of aluminum.] The total activity of the industry has to come under environmental scrutiny.

Working together we may be able to reach meaningful agreements on measures to avoid both "the race to the bottom" in jurisdictional competition and cost associated with the "first over the top" fear. What is needed is strong political will for the enshrining of high common standards and of strong enforcement measures to be enshrined in a code of commitments that will be an integral part of the NAFTA.

We need to be willing to address the need to limit growth and to actually limit growth

We need to be willing to address the need to decrease consumption and to actually decrease consumption

We need to be willing to no longer tolerate ecologically unsound products or practices

We need to be willing to define what these practices and set up regulations to prevent these products or practices. (without either one of the three countries having to reduce its standards)

We need to be willing to honour wilderness preservation of significant, representative and distributive ecosystems (at least the minimum that was recommended by the Brundlandt Commission)

We need to be willing to reduce military spending and the production of weapons of destruction and to transfer a significant percentage of those funds to research into the development and implementation of alternative safe energy, into alternative ecologically sound practices, and to redressing the current damage.

We need to be willing to recognize that pollution knows no boundaries and that international governance of environmental regulations must transcend sovereign borders

we need to "establish regulatory regimes including environmental standards, objectives, guidelines and codes of practices" (Shrybman, S. 1990, p.28 "proposed article for inclusion in the General Agreement on Tariffs and Trade: Environmental protection")

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We need to agree that "nothing in the agreement shall be construed to prevent any party from taking any action which it may deem necessary to protect the environment, including the establishment of import or export restrictions and the use of subsidies to:

prevent or remedy adverse environmental effects and/or conserve natural resources" (Shrybman, S. 1990, 28 from "proposed article for inclusion in the General Agreement on Tariffs and Trade: Environmental protection")

we need to be willing to discredit all countries that flaunt rhetoric and retreat from action

we need to be willing to insist on and be prepared to fund arms length research.

3. POTENTIAL ROLE FOR NAMI IN ASSISTING IN THE ESTABLISHING THE HIGHEST ATTAINABLE SYNTHESIS OF OUR COMMON GOALS IN THE COORDINATION OF POLICY IN A NORTH AMERICAN COMMUNITY

I would also like to suggest that perhaps NAMI could provide leadership in bringing together of independent thinkers drawn from societies such as the Kennedy Institute, the Royal Society of Canada, the FINE ? of Mexico and build on the initiative begun in 1972 when a group of independent thinkers drawn from the scientific and social science community met prior to the Stockholm convention on the environment. At that time this group of forty drew up significant and far reaching recommendations that if, they had been followed at that time, might have facilitated the difficult decisions we have to face today. There is little satisfaction to be drawn from lamenting the fact that we should have listened then. We must help to communicate the urgency of the global situation and the need to dare to implement a new perspective. NAMI could also build on the initiative taken by Dr Fred Knelman (who also involved in the group of 40 in Stockholm) to contact Nobel Laureates to get them involved in the urgent decisions that have to be made. We must recognize that to achieve the stated objectives of all three states, we must insist that there be high international standards in place, that individual states should be encouraged to surpass, and that these standards should be drawn from the highest tenable principles enunciated from the global community. Only then can we be assured that the environment will be given primacy and that international organizations like GATT or Free trade Boards? will not be able to condone the reduction of environmental standards to facilitate trade.

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II There is a fundamental conflict between traditional concepts of economic growth and the preservation of the environment. During the last century, uncontrolled continuous growth in the industrial production of environmentally harmful substances and products in some regions of the world has produced dangerous amounts of pollution and has been responsible for an inordinate waste of resources. At the same time, an increasing concentration of economic power and industrial activity has led to a centralization within a few nations of the benefits from the use of the earth's natural resources, and the international political influence that is derived from the control of these resources. It has become clear that a more rational distribution of industrial power is necessary if the global problems of environment and society are to be solved. Such a redistribution would achieve at the same time a more equal apportionment of economic and political benefits among nations and individuals.

III The exploitation of third World national and regional resources by foreign corporations, with a consequent outflow of profits from the exploited regions, has resulted in a vast and growing economic disparity among nations and a monopoly of industrialized countries over production, energy, technology, information and political power. Complementary to this is the flooding of developing countries with surplus goods and capital, with a resultant distortion of their economies, and the deformation of their environments into monocultures in the interest of further enriching the industrial states. The foreign investments, economic development and technological practices of such industrial states must be curbed and altered by the basic claim of a region's people to control of its resources. Use of these resources, however, should not be dictated by the accidents of geography, but must be allocated in such ways as to serve the needs of the world's people in this and future generations. The authority of any region's people over resources and environment includes the obligation to recognize that the environment is an indivisible whole, not subject to political barriers. The environment must be protected from avoidable pollution, destruction and exploitation from all sources. (Earth Talk, 1972, p. 170)

Much conventional technology and many of its proliferating products have proved ecologically harmful. We cannot reject technology per se but must restructure and reorient it. Ecologically sound technologies will minimize stresses to the environment. A rapid development of the new approach should be complemented by a technology review and surveillance system to assure that any new technology is ecologically compatible and will be used for human survival and fulfillment. It is not enough to add anti pollution devices to existing technologies, although this might well be the initial stage of phasing out present polluting technologies. (Earth Talk, An Independent Declaration on the Environment, 1972)

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... few clauses from existing RIO declaration draft about prohibitions against use of environmental regulations as trade barriers, etc.

FIND

Let's recap briefly the steps already taken in the two major countries (US story is perhaps well enough known anyway.)

Mexico ..citation for Salinas

ref. to NAMI doc and related refs

Major steps

goals explicitly states "his goal is not to attract polluting industries but to substitute clean ones"

Canada SOE report

Green plan

environmental Assessment Review Act.

Need to look at different sources of conflict associated with scarcity of exhaustible resources and struggles over shares of renewable resource in which everyone is racing to be first to harvest stocks in which no one is investing enough to assure any kind of sustainability of renewability

CONCLUSION:

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Environmental Assessment Review Act in Canada, in the intent behind the Mexican Constitutional law for the ecological equilibrium and protection of the environment CHECK and in the U.S. ... CHECK

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SYSTEMIC CONSTRAINTS;

- discrepancy between rhetoric and action
- discrepancy between regulations and enforcement
- Short-term changes as means to end
- False dichotomy between jobs and environment economic pressures and environment
- required or discretionary environmental assessment review coupled with non-arms length research to determine environmental impact
- misplaced onus of proof
- reluctance to cede sovereignty to global governance in urgent situation
- industrial hypocrisy

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The British Columbia Federation of Labour (BCFL) also felt that free trade with Mexico would threaten the quality of life enjoyed in British Columbia and jeopardize the province's economic stability. The only advantage will be corporations' access to cheap labour. According to the respondent, Mexico will sell its cheap labour in order to attract foreign capital. The BCFL raised a number of other issues it felt should be addressed as part of the discussion on trilateral free trade: Mexico's low wages, anti-democratic union practices, the lack of environmental regulations and restrictions, unhealthy and dangerous working conditions and unprotected consumers. (Ministry of Development, Trade and Tourism, 1991, p. 27.)

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

Environmental problems are probably the most pressing with regard to the health and well-being of the Mexican workers. The Rio Grande, on which hundreds of communities on both sides of the US Mexico border depend for drinking water, is deluged by industrial waste, uranium ;mining runoff, hazardous spills from transborder transport, agricultural chemicals and millions of gallons a day of untreated Mexican raw sewage. Lax environmental standards that allow this to happen are also what attracts U.S. and now Canadian companies to the border zones to do business.(Northcotte, 1991, p. 31)

According to the US based Coalition for Justice in the Maquiladoras, the damaging characteristics of the maquiladoras, environmental contamination, unsafe working conditions and the exploitation of workers, have shattered the quality of life in the border communities. " (Northcotte, V. 1991, p. 31)

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Although Mexico claims that it will not become an environmental haven, the general industrial perception is that, at least in the short term it will be one. The possibility of Mexico's becoming [or becoming more of] an environmental haven is reiterated in the section on Environmental and Pollution Control in the Ministry of Development and trade and tourism report on BC. consultations with the private sector re.: Mexico, Canada and the United States: the trilateral free trade proposal.

" Environmental regulations on businesses operating in Mexico are expected

to be less stringent than they generally are for operations in British Columbia or the United States. At least initially, therefore, Mexico will be more attractive for locating new industries with pollution concerns than in British Columbia or U.S. jurisdictions. This likely will not be significant in the long term but initially it will result in some impact on the British Columbia industry. " (Ministry of Development, Trade and Tourism, June 1991, p. 24)

The new perspective must move away from "pollution concerns" being the concerns that industry has when they have to abide by stringent regulations to being the concerns that the community has about the preservation of the ecosystem. the new perspective must also move away from considering "impact" as being economic impact to considering "impact" as being ecological impact.

[Environmental provisions necessary to prevent either one of the three countries from becoming an environmental pollution haven

Environmental provisions to ensure that the highest tenable principles are in place to ensure that neither one of the three countries becomes an environmental pollution haven.]

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative

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to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

All of our three countries appear to agree on what is needed to be done . Now we must ensure that what needs to be done , is done.

Report and suggestion for follow up paper

NAFTA: International environmental principles emanating from UNCED and economic constraints

or Environmental provisions and economic constraints.

Assessment of Environment Canada's analysis of the environmental implications of NAFTA

Concepts to examine that may be economic constraints:

NAFTA DOCUMENT

Discussion of document:

The preamble is very strong. To a certain extent, it would appear that environment has primacy over employment: the preamble reads,

"Create new employment opportunities and improve working conditions and living standards in their respective territories; and this is qualified by the statement " undertake each of the

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preceding in a manner consistent with environmental protection and conservation:

The preamble also calls for "the development and enforcement of environmental laws and regulations;

(Note discussion with John Fried about legal implications)

PROBLEM 1.

A state cannot establish a higher environmental standard of production and exclude goods that do not meet that standard of production, and cannot require the other states to live up to higher standards

The following two sections appear to permit each state to establish as high standards as they deem necessary:

"Right to take Standards-related Measures" (Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

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"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed to establish international environmental standards. International principles were in place

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for

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example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate. (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardizations activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international electrotechnical Commission (IEC), Codex alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

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Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

PROBLEM 4: LIMITED REFERENCE TO INTERNATIONAL DOCUMENTS ON THE ENVIRONMENT (NOTE NO MENTION OF RIO- unless in Annex 104, check in Annex 104); Note only reference is to "specific trade obligations" in the environment treaties:

[ACTION; TO OPEN UP NAFTA TO ENSURE THAT THE DOCUMENT IS COMPATIBLE WITH UNCED DOCUMENTS]

Treaties mentioned:

convention on International Trade in endangered Species of Wild Fauna and Flora (1973)

the Montreal Protocol (1990)

Basel convention on the Control of transboundary Movement of Hazardous Wastes and their disposal (1989)

Annex 104-1 Bilateral and Other Environmental and conservation Agreements

1. The agreement between the Government of Canada and the Government of the U.S. concerning the transboundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986

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2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

* see Annex 104-1 for other agreements

Such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

ACTION: note that there is the provision to add other environmental agreements.

The parties may agree in writing to modify Annex 104.1 include any amendment to an agreement referred to in Paragraph 1 and any other environmental or conservation agreement.

PROBLEM 5: PRIMACY IS GIVEN TO NAFTA OVER OTHER INTERNATIONAL AGREEMENTS

NOTE: THAT IN ARTICLE 103, "Relation to Other Agreements, this agreement is given primacy

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreements to which such Parties are party.

2. In the event of any inconsistency between this Agreement and such other agreement, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

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Background:

NAFTA

Perspectives and Actions

DEPARTMENTS

1. External Affairs

Documents:

North American Free Trade Agreement Implementation Act: The NAFTA Partnership. March 1993

Content:

It is primarily a document about Canadian Business interests

"NAFTA will provide further new opportunities for Canadian goods and services. Canadian firms will be able to expand sales in sectors that were previously highly restricted, such as autos, financial services, trucking, energy and fisheries. "

Mexico Canada's largest trading partner (3 billion, 1991)

"Canadian business has already begun to take advantage of these new trade measures to increase their presence in Mexico. "

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Participants:

The Export Development Corporation (EDC)

The Business Co-operation Program of the CIDA

CIDA/Inc (several environmental protection and control projects related to air and water pollution, hazardous waste disposal and rehabilitation of wetlands in proximity to industrial and residential areas.)

Investment Canada is also developing a program to encourage Mexican investment in Canada

EAITC has organized a trade promotion program in Mexico directed at specific sectoral opportunities, to introduce as wide a cross section as possible of potential exporters to the marketplace.

In order to capitalize on existing opportunities in Mexico and give depth to heightened economic relations as envisaged under the NAFTA, the Canadian private sector is preparing to position itself effectively in this growing market.

The most likely sectors of concentration for Canadian entrepreneurs are mining, agro-industry, food, transportation, environment and tourism development.

Successful Canadian exporters

SR Telecom, Du Pont, Canada Export Award Winner in 1992, Dare Foods, Cansec Systems, Royal Plastics, Garden Grove Produce, Rebound Rig international oil equipment (900,000); Bovar-Western research (1.5. M) instrumentation control of their sulphur recovery units

Chronology:

Note: March 18. (1992). Canada provides Mexico with 1\$ million worth of environmental assistance. [what was the nature of the assistance]

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September 17 (1992) Washington, D.C. — Environment ministers of the NAFTA countries agree to establish a Trilateral Environmental commission to explore co-operation on environmental issues.

November 3, 1993 the Canadian Environmental review of the NAFTA is released.

Contact:

Ross Glasgow (Specialist in NAFTA and Climate Change) 9920503

2. Environment Canada

2.1.

2.2. Legal interpretation

John Fried. (943-2803) Specialist in legal interpretation of NAFTA

Preamble is strong on the environment but the preamble carries little weight. No mention of environment in the "objectives". John Fields said that the preamble sets the context but the environmental provisions would be stronger if in the objectives". The document would be a lot stronger on the environment if the environmental provisions had been placed in the "objectives section". To do this the three countries would have to agree to open up the document again. Up until now the countries have refused to do this. [However, with Mulroney and Bush gone, perhaps an argument could be made to open the document up and place the environmental provisions in the "Objective section" ; this could be better than having a separate parallel agreement on the environment"

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Body of text:

An important section

Note: Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment an consumers.

K

1993 NAFTA THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS.

Prepared for presentation at a panel discussion on NAFTA

by

JOAN RUSSOW

DOCTORAL CANDIDATE

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INTERDISCIPLINARY STUDIES

UNIVERSITY OF VICTORIA

May, 23, 1993

BACKGROUND

In all three countries, Canada, Mexico and the U.S., citizens and organizations are concerned about the misplacing of government priorities,

The delusion of public process,

The exploitation of the labour force,

The inequitable distribution of resources,

The disenfranchisement of the many,

The violation of human rights and

The denigration of social justice

In all three countries, citizens and organizations are also concerned about

The unquestioned imperative to grow,

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The over consumptive pattern of behavior,

The relentless destruction of the environment, and

The irreversible loss of ecological heritage

These concerned citizens look with justified trepidation at NAFTA

In this talk I will be examining the potential discrepancy between the stated environmental provisions in NAFTA and the Canadian Governments published interpretation of these provisions in the Canadian Environmental Review.

Background

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appears a commitment to conserve, preserve and protect the environment;

Yet industry is continually in non-compliance with these environmental provisions, and government is continually remiss in not requiring compliance.

The three countries negotiating the NAFTA all enunciate in their national legislation environmental provisions

Mexico

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" Social liberalism therefore proposes a State that promotes and encourages private initiative, but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment." (Carlos Salinas de Gortare, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)

In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. It is a comprehensive statute designed to ensure that there is an adequate legal basis for protecting the environment. Indeed, the law is based in large part on U.S. law and experience.

A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities (U.S. Government publication] Free trade Negotiations with Mexico Environmental matters, p. 3) ARMS LENGTH RESEARCH

In Canada, the government claims that:

Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement," he [Mr. de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. It also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

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. (Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

INITIATIVES

- Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations. Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

In the United States, President Bush stated that

We will ensure that our right to safeguard the environment is preserved in the NAFTA

- We will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements

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- We will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards

?

We will maintain our right , consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer). [TWO OF THE VERY FEW INTERNATIONAL AGREEMENTS SIGNED BY THE UNITED STATES

- Enhancement and Enforcement of Standards: we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement

- We will provide for full public and scientific scrutiny of any change to standards before they are implemented.

-we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)p.p. 4, 5)

Response of the Administration to issues raised in connection with the negotiation of a North American Free trade agreement. May 1, 1991)

- We will consult on national environmental standards and regulations, and will provide an opportunity for the public to submit data on alleged non-compliance. (Response of the Administration to issues raised in connection with the negotiation of a North American Free trade agreement. May 1, 1991, p. 5)

YET the moment that either one of the three states attempts to "enhance" environmental protection the others call forth the spectre of the trade agreement GATT:

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Each one of the three states involved has attempted to object to the other state's enhancing environmental standards and in each case GATT has supported the state seeking to object to high standards:

In Canada,

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fiber in newsprint. (Shrybman, 1991, p. 13) The Canadian government has argued that a U.S. environmental Protection Agency rule banning the use of all forms of asbestos violates the U.S. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

In the U.S.

The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

The U.S. based Non-Ferrous Metals Producers Committee is using the U.S.- Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry. (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13)

(Cited in Rolfe, Chris Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

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And in Mexico ...

When in 1990 the US placed an embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins [s] was inconsistent with the GATT (McDorman, T. 1991, p. 2)

It would appear that, in all three countries (including states and provinces) there is not the political will required to seriously address the urgency of the environmental crisis.

Will the NAFTA perpetuate the current North American environmental situation of strong but not-enforceable legislation and regulations,

will the NAFTA worsen the current North American environmental situation

or could an alternative to the NAFTA lead to stronger enforcement of environmental legislation?

From the press release on Friday May 21, it would appear that the three day talks on the side environmental accords failed because the U.S. negotiator demanded the standards be enforceable through trade sanctions.

In the absence of any further information about the current discussion about the parallel accord related to the environment, I will only be able to refer to the actual NAFTA agreement itself. A representative from the Ministry of Environment, who was part of the parallel accord information loop, indicated that the purpose of the parallel accord was primarily to clarify some of the environmental provisions, and address some of the concerns expressed about some of these

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provisions.

"NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

To make a comparison between the environmental provisions of NAFTA and the Canadian Government's published interpretation, I have extracted and compiled in this diagram, the provisions in the NAFTA related to the environment (see NAFTA GRAPH) and linked them to the statements published by the Canadian Government in their publication NAFTA: Canadian Environmental Review, Oct. 1992.

In this diagram I have attempted to document five categories of statements:

1. Statements in the NAFTA related to the environment
2. Statements by the Canadian Government in the Canadian Environmental Review, October, 1992. Re: the environmental implications of the NAFTA
3. Focal points to pursue related to statements in the NAFTA
4. Focal points to pursue related to statements made by the Canadian Government
5. Systemic "whereases" and "notwithstandings" within the documents that would prevent the implementation of environmental measures.

The diagram was then divided into key areas that are interrelated "standards-related measures"

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, "technical regulations," "relation to other documents that protect and preserve the environment," "Risk assessment and appropriate levels of protection," investment: performance requirements.

It would appear that the NAFTA does have in writing provisions to protect the environment

The NAFTA appears to involve a series of discrepancies

I will attempt to examine the discrepancies within the NAFTA and the interpretation of these discrepancies by the Canadian government in its "Canadian Environmental Review" of NAFTA along with the interpretation, by the Canadian government in the Canada U.S. Free Trade Agreement

1. RELATION BETWEEN ENVIRONMENTAL PROVISIONS AND OBJECTIVES

The discrepancy between Environmental provisions which limit economic pursuits in the preamble and economic pursuits in the objectives which ignore the environment

Compare preamble to Objectives

PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolve to:

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STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

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CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

Article 102:
Objectives

1.
The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:
 - (a)
Eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
 - (b)
Promote conditions of fair competition in the free trade area;
 - (c)
Increase substantially investment opportunities in the territories of the Parties;
 - (d)
Provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;
 - (e)
Create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
 - (f)
Establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

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2.
The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Canadian interpretation of the preamble and objectives

In the introduction to the Canadian Environmental Review

The following statement is made, which suggests that the environmental provisions are part of the objective section of the NAFTA:

Environmental objectives addressed during the negotiations included the identification of sustainable development and environmental protection and conservation as fundamental objectives of the NAFTA

In the Canadian Government document, the Canada/ US Free Trade Agreement Synopsis, the Canadian government indicates the important role of the preamble

The preamble states the political commitment ...in entering into the Agreement. It records the shared aspirations of the two countries in concluding the Agreement and summarizes their aims and objectives. In other words, it is an agreed statement of intent which will guide the countries in implementing the provisions of the Agreement and in resolving disputes. ...the object and purpose of the Agreement (13)

ACTION: to require that to fully express the intent of the document the government should call for the inclusion of environmental provisions in the Objectives section

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2. INTERNATIONAL COMMITMENTS AND STANDARDS

There is a discrepancy between the "retention of rights in other documents" (even though NAFTA, in the case of inconsistency unless otherwise indicated, prevails) and the Canadian Government unqualified assertion that Canada has "preserved these rights in agreements"

Article 103 of NAFTA states that NAFTA shall prevail in the event of an inconsistency between NAFTA and other international agreements (unless otherwise provided)

Article 103

1. The Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreement to which such Parties are party.

[Note exceptions related to the environment in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and GATT Article XXg applies to measures relating to the conservation of living and non-living exhaustible natural resources]

2. In the event of any inconsistency between this agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this agreement

However, in Article 903, it would appear that "rights in other documents" are retained:

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Article 903 Affirmation of Agreement on Technical Barriers to Trade and Other agreements

Further to Article 103, the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under GATT and all other international agreements including environmental and conservation agreements to which those Parties are party.

The Canadian government in its Canadian Environmental Review has indicated the following

During the NAFTA negotiations, all three countries expressed the wish to retain their existing rights and obligations under those multilateral environmental and conservation agreements to which they have chosen to belong. The retention of these rights was also assigned a high priority by the Canadian environmental organization in both their written and oral submissions to the government. Canada has preserved these rights in the NAFTA

ACTION: IT IS IMPORTANT TO DEMAND TO KNOW IF THE RETENTION OF RIGHTS IS NOT INCOMPATIBLE WITH THE NAFTA PREVAILING OVER THE INTERNATIONAL AGREEMENTS NOT SPECIFICALLY MENTIONED.

[NOTE: it is important to recognize the distinction between "standard" and "technical regulation"

Standard means a document approved by a recognized body that provides for common and repeated use, rules guidelines or characteristics for goods or related processes or production methods or for services or related operating methods, with which compliance is not mandatory

Whereas, a "technical regulation" means a document which lays down goods or related

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processes or production methods or for services or related operating methods, including the applicable administrative provisions, with which compliance is mandatory]

3. EXTENT TO WHICH INTERNATIONAL AGREEMENTS WILL PREVAIL

There is a discrepancy between the extent to which international agreements prevail as mentioned in the NAFTA and the extent to which the Canadian government indicates these agreements will prevail

In the NAFTA, the following is stated:

Article 104.1 obligations will prevail in

Convention on International Trade in endangered Species of Wild Fauna and Flora (1973)

The Montreal Protocol (1990)

Basel convention on the Control of transboundary Movement of Hazardous Wastes and their disposal (1989)

Annex 104-1 Bilateral and Other Environmental and conservation Agreements

1. The agreement between the Government of Canada and the Government of the U.S. concerning the transboundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986

2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

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Article 104.1. (f) Any subsequent international environmental or conservation agreement that the Parties agree shall be included, the international agreement will prevail

The Canadian government through its Canadian Environmental Review indicated:

The prevalence, in the event of inconsistency, of trade obligations set out in international environmental and conservation agreements over the NAFTA trade disciplines (Intro, CER)

In other words these international environmental or conservation agreements will take precedence over the NAFTA (CER find page ref)

ACTION: THAT CANADA INSIST IN HAVING ALL THE INTERNATIONAL AGREEMENTS RATIFIED BY CANADA INCLUDED IN WHATEVER AGREEMENT IS IN PLACE AND THAT THESE INTERNATIONAL AGREEMENTS SHOULD TAKE PRECEDENCE OVER THE ANY NORTH AMERICAN AGREEMENT [UNLESS THE ENVIRONMENTAL PROVISIONS IN THE NAFTA ARE STRONGER] AS STATED IN THE CANADIAN GOVERNMENT'S INTERPRETATION OF NAFTA. INTERNATIONAL AGREEMENTS SHALL INCLUDE MORAL COMMITMENTS ARISING OUT OF INTERNATIONAL DOCUMENTS SUCH AS UN CONVENTION FOR THE PRESERVATION OF CULTURAL AND NATURA (1972), AND UNCED DOCUMENTS SUCH AS THE RIO DECLARATION AND AGENDA 21 IN WHICH THE GLOBAL COMMUNITY AGREED TO FUNDAMENTAL PRINCIPLES SUCH AS THE PRECAUTIONARY PRINCIPLE, THE NON-TRANSFERENCE OF HARMFUL SUBSTANCES OR ACTIVITIES AND THE REQUIREMENT OF A FULL LIFE CYCLE ANALYSIS OF SUBSTANCES AND ACTIVITIES.

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4. STANDARDS-RELATED MEASURES

Discrepancy between "shall work jointly to enhance" and "shall to the greatest extent practicable make compatible" in the NAFTA, and "forbids downward harmonization," "mandate upward harmonization" in the Canadian government's interpretation of NAFTA

Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

Note "legitimate objectives" have been defined in article 9.5 as

- a) Safety
- b) Protection of human, animal or plant life or health, the environment or consumers
- c) Sustainable development

ARTICLE 906 Compatibility and Equivalence

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall to the greatest extent practical, make compatible their respective standards-related measures

In the Canadian Government publication "Canadian Environmental Review" it is stated:

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Standards enhancement

NAFTA would do more than forbid downward harmonization it obligates Parties to work towards upward harmonization (CER, 19)

Environmental objectives addressed during the negotiations included...co-operation, on a continental basis, on the enhancement of environmental standards and their enforcement (Intro, CER)

Significant as it would in effect establish the highest current standards of the three parties (CER, 19)

ACTION: to call upon the Canadian government to have incorporated in the NAFTA the "forbidding of downward harmonization" and the "obligating to work towards upward harmonization"

5. ALLOCATION OF BURDEN IN RELATION TO STANDARDS

Discrepancy between burden of establishing inconsistency within a chapter as indicated in NAFTA and the placement of the burden of proof in the whole document on the nation challenging an environmental standard of another country as indicated in the Canadian interpretation of the document.

Article 914 Technical consultations

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4. The Parties confirm that a Party asserting that a standards-related measure of another Party is inconsistent with this Chapter shall have the burden of establishing the inconsistency

The Canadian Government in its Canadian Environmental Review stated:

Environmental objectives addressed during the negotiations included...placement of the burden of proof in a dispute on any nation challenging an environmental standard of another country. (Intro, CER)

And reaffirmed in the body of the text

"Furthermore, should Canada adopt an environmental standard under these international agreement, the burden of proof would be with any country challenging the provision (CER, 14)

It is only on page 22 that the actual text is presented

ACTION: TO ENSURE THAT IN ANY DOCUMENT RELATED TO THE ENVIRONMENT, THE BURDEN OF PROOF SHOULD LIE NOT ONLY ON THE COUNTRY THAT OBJECTS TO THE HIGHER STANDARD, BUT ALSO TO THE INDUSTRY THAT SEEKS TO INTRUDE INTO THE ECOLOGICAL COMMONS

6. RELATION BETWEEN ACTION OF ENVIRONMENTAL MEASURES AND INVESTMENT

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The discrepancy between "recognizing inappropriateness" should not waive" "may request consultations" as indicated in the NAFTA and "a commitment to refrain" in the Canadian government's analysis of the document

In the NAFTA Article 1114 (2) discourages the relaxing of environmental measures

In Article 1114 (2), Environmental Measures, the NAFTA states:

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement

In the Intro of the Canadian Governments, "Canadian Environment Review", the environmental objectives is presented as being "a commitment to refrain"

Environmental objectives addressed during the negotiations included acceptance of a commitment that government refrain from offering derogations from generally applicable environmental measures for the purpose of encouraging an investment

ACTION : CALL UPON THE CANADIAN GOVERNMENT TO DEMONSTRATE TRUE COMMITMENT BY CHANGING "SHOULD" TO "SHALL"

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Because of all these potential discrepancies between the NAFTA and the Canadian Governments interpretation of NAFTA, I would like to make the following recommendation

RECOMMENDATION:

GIVEN:

EITHER THE GOVERNMENT OF CANADA HAS MISINTERPRETED OR MISREPRESENTED ENVIRONMENTAL SECTIONS IN NAFTA, IN THEIR OCTOBER, 1992 ENVIRONMENTAL REVIEW, OR THE NAFTA HAS CHANGED AND IN THAT CASE IT WOULD BE NECESSARY TO HAVE ANOTHER ENVIRONMENTAL ASSESSMENT REVIEW OF THE ENVIRONMENTAL IMPLICATIONS OF NAFTA

THE CANADIAN GOVERNMENT NOT RATIFY THE DOCUMENT UNTIL THE STRONGER INTERPRETATION THAT HAS BEEN PRESENTED TO THE CANADIAN PUBLIC THROUGH THE GOVERNMENT INTERPRETATION OF THE DOCUMENT BECOME AN INTEGRAL PART OF THE ACTUAL DOCUMENT

THE CANADIAN GOVERNMENT NOT RATIFY THE DOCUMENT BECAUSE IT FALLS SHORT OF THE CANADIAN GOVERNMENT'S INTERPRETATION OF THE DOCUMENT.

RESOLUTION

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GIVEN THAT THE TWO OF THE HEADS OF STATE THAT NEGOTIATED THE NAFTA ARE NO LONGER IN POWER,

GIVEN THAT THERE WILL BE AN ELECTION IN MEXICO IN JULY 1994

AND GIVEN THAT THE NAFTA HAS NOT BEEN AVAILABLE FOR FULL PUBLIC SCRUTINY PRIOR TO NEGOTIATION

GIVEN THAT THE NAFTA HAS BEEN MISREPRESENTED TO THE PUBLIC BY THE CANADIAN GOVERNMENT

BE IT RESOLVED THAT THE CURRENT NAFTA BE DISCARDED, AND THAT AN AGREEMENT THAT TAKES INTO CONSIDERATION THE FOLLOWING CONCERNS

In all three countries, Canada, Mexico and the U.S., citizens and organizations are concerned about

The misplacing of government priorities,

The delusion of public process,

The exploitation of the labour force,

The inequitable distribution of resources,

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The disenfranchisement of the many,

The violation of human rights and

The denigration of social justice

In all three countries, citizens and organizations are also concerned about

The unquestioned imperative to grow,

The overconsumptive pattern of behavior,

The relentless destruction of the environment, and

The irreversible loss of ecological heritage

THIS NEW AGREEMENT SHOULD NOT BE FULLY RATIFIED BY ANY OF THE THREE COUNTRIES UNTIL AFTER THE ELECTION IN MEXICO

AND UNTIL THE AGREEMENT HAS THE SUPPORT OF THE CONCERNED CITIZENS IN ALL THREE COUNTRIES (see diagram B.)

ANNEX: Re Water

As to the risk of Canada being forced to export water to the U.S. (Water not being covered in the agreement), Political promises to the contrary are not enough. Once the free trade deal comes into effect, and in the absence of legislation forbidding it, Canada will be in a poor bargaining position against U.S pressure to divert water the most recent pressure being for diversion from the Great Lakes into the drought-stricken Mississippi basin

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In all the on-going bargaining implicit in the Free Trade Agreement, Canada throughout will be the weaker party at the negotiating table. Our lack of success on the acid rain issue is indicative of that (Margorie Bowker)

goods of a Party means domestic products as these are understood in the General Agreement on Tariffs and Trade or such goods as the Parties may agree, and includes originating goods of that Party;

4. establishment of levels of protection in pursuing its legitimate objectives

Discrepancy between

(Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

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"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed to establish international environmental standards. International principles were in place

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for

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example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate. (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardizations activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international electrotechnical Commission (IEC), Codex alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

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Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

2. The balance between environmental provisions and "notwithstanding" or "provided that"

concepts such as

legitimate objectives.... , providing ...

Provision for urgency

provision for exclusion

provision for harmonization without reducing....

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Non-discriminatory treatment

not providing and unnecessary obstacle to trade

Measures that are applied in an unjustifiable manner

Measures that constitute a disguised risk

measures applied in an arbitrary way

providing measures are consistent with Chapter

3. The balance between impact assessment to prevent a project from proceeding and impact assessment to determine how to mitigate the impact

"A. Environmental review process and method

Since 1990, the federal government has required that all new policy or program initiatives having potentially significant environmental implications undergo an environmental review. The environmental review process can be used to develop an understanding of the general nature of the possible environmental effects of a policy, and to provide a framework for addressing environmental concerns that could arise when subsequent decisions are being taken relative to the implementation of the policy. (CEA, 69)`

similarly the Mexican government indicates

"The Mexican government has attached priority to key public and private activities that are the most likely to cause ecological imbalances or to exceed the limits established in the Law, its

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regulations and ecological standards. The government has imposed regulations on the evaluation of the environmental impact of a broad range of public and private activities and has made them subject to prior authorization. Based upon an environmental review, the appropriate federal, state, or municipal government authority must authorize and impose conditions on both public and private activities that may cause adverse ecological effects or violate environmental laws. (CEA, 89)

4. The balance between environmental enhancement and not recognizing extraterritoriality

Extraterritoriality occurs when one country unilaterally attempts to extend, directly or indirectly, its policies into the jurisdiction of another country. Extraterritoriality was not advocated by the negotiators of Canada (nor by the ENGO— those involved in the consultative process)

For example the USA has no right to try to impose their standards on the Victorians who continue to dump raw sewage into the ocean, or on the Logging companies that continue to clear cut Canadian forests

and Canada has no right to try to impose its higher pesticide residue standards on the USA

5. The balance between impact assessment and absolute prohibition (no acceptable residue)

6. The balance between the reliance on international standards but the reluctance to list any other agreements than those ratified by the USA

The USA has been notorious for not signing international agreements

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United Nations Convention on the Protection and preservation of Cultural and Natural heritage

positive duty to identify areas of significant natural heritage

3.

1.Extraterritoriality harmonization of standards

Discussion of document:

The preamble is very strong. To a certain extent, it would appear that environment has primacy over employment: the preamble reads,

"Create new employment opportunities and improve working conditions and living standards in their respective territories; and this is qualified by the statement " undertake each of the preceding in a manner consistent with environmental protection and conservation:

YET

Without a commitment to achieve an enforceable means to attain a limit to growth, and without a commitment to set up an infrastructure to enforce regulations; the current North American situation which is now urgent will become irreversible.

The preamble also calls for "the development and enforcement of environmental laws and regulations;

(Note discussion with John Fried about legal implications)

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PROBLEM 1.

A state cannot establish a higher environmental standard of production and exclude goods that do not meet that standard of production, and cannot require the other states to live up to higher standards

The following two sections appear to permit each state to establish as high standards as they deem necessary:

"Right to take Standards-related Measures"

Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and p

(Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

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Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed

to establish international environmental standards. International principles were in place

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate. (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardizations activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international electrotechnical Commission (IEC), Codex alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

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ACTION: to advocate the inclusion of bodies that have embodied environmental provisions;
UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

PROBLEM 4: LIMITED REFERENCE TO INTERNATIONAL DOCUMENTS ON THE ENVIRONMENT (NOTE NO MENTION OF RIO- unless in Annex 104, check in Annex 104);
Note only reference is to "specific trade obligations" in the environment treaties:

[ACTION; TO OPEN UP NAFTA TO ENSURE THAT THE DOCUMENT IS COMPATIBLE WITH UNCED DOCUMENTS]

Treaties mentioned:

convention on International Trade in endangered Species of Wild Fauna and Flora (1973)

the Montreal Protocol (1990)

Basel convention on the Control of transboundary Movement of Hazardous Wastes and their disposal (1989)

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Annex 104-1 Bilateral and Other Environmental and conservation Agreements

1. The agreement between the Government of Canada and the Government of the U.S. concerning the transboundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986
2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

* see Annex 104-1 for other agreements

Such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

ACTION: note that there is the provision to add other environmental agreements.

The parties may agree in writing to modify Annex 104.1 include any amendment to an agreement referred to in Paragraph 1 and any other environmental or conservation agreement.

PROBLEM 5: PRIMACY IS GIVEN TO NAFTA OVER OTHER INTERNATIONAL AGREEMENTS

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NOTE: THAT IN ARTICLE 103, "Relation to Other Agreements, this agreement is given primacy

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreements to which such Parties are party.

2. In the event of any inconsistency between this Agreement and such other agreement, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Background:

NAFTA

Perspectives and Actions

DEPARTMENTS

1. External Affairs

Documents:

North American Free Trade Agreement Implementation Act: The NAFTA Partnership. March 1993

Content:

It is primarily a document about Canadian Business interests

"NAFTA will provide further new opportunities for Canadian goods and services. Canadian firms will be able to expand sales in sectors that were previously highly restricted, such as autos,

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financial services, trucking, energy and fisheries. "

Mexico Canada's largest trading partner (3 billion, 1991)

"Canadian business has already begun to take advantage of these new trade measures to increase their presence in Mexico. "

Participants:

The Export Development Corporation (EDC)

The Business Co-operation Program of the CIDA

CIDA/Inc (several environmental protection and control projects related to air and water pollution, hazardous waste disposal and rehabilitation of wetlands in proximity to industrial and residential areas.)

Investment Canada is also developing a program to encourage Mexican investment in Canada

EAITC has organized a trade promotion program in Mexico directed at specific sectoral opportunities, to introduce as wide a cross section as possible of potential exporters to the marketplace.

In order to capitalize on existing opportunities in Mexico and give depth to heightened economic relations as envisaged under the NAFTA, the Canadian private sector is preparing to position itself effectively in this growing market.

The most likely sectors of concentration for Canadian entrepreneurs are mining, agro-industry, food, transportation, environment and tourism development.

Successful Canadian exporters

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SR Telecom, Du Pont, Canada Export Award Winner in 1992, Dare Foods, Cansec Systems, Royal Plastics, Garden Grove Produce, Rebound Rig international oil equipment (900,000); Bovar-Western research (1.5. M) instrumentation control of their sulphur recovery units

Chronology:

Note: March 18. (1992). Canada provides Mexico with 1\$ million worth of environmental assistance. [what was the nature of the assistance]

September 17 (1992) Washington, D.C. — Environment ministers of the NAFTA countries agree to establish a Trilateral Environmental commission to explore co-operation on environmental issues.

November 3, 1993 the Canadian Environmental review of the NAFTA is released.

but will these pronouncements be enough to ensure long term preservation and protection of the environment without the concomitant political will?

But would those provisions prevent the government from waiving sections of the Federal fisheries Act , and bypassing the Environmental Assessment Review Process to allow Alcan to proceed with the Kemano II Project

But would those provisions prevent Governments that are against in principle the mining of Uranium to acquiesce to the uranium miners and permit uranium mining

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But would those provisions prevent the disposal of nuclear wastes on the land of disenfranchised- the indigenous peoples of the US

But would those provisions prevent the destruction of significant ecosystems

But would those provisions prevent the transfer of chemicals that are deemed to be unsafe in one country to another country with less stringent regulations.

Throughout the document there is a mention of "standards"

Regardless of NAFTA there are serious systemic constraints preventing significant change in addressing the seriousness of the current environmental crisis in North America

Some constraints are

i.
The reluctance of the political and industrial community to address the need to limit growth and over consumption and the concomitant reluctance to acknowledge the implications of ignoring the limiting of growth and over-consumption.

In the process of wrapping the semantic capsule 'sustainable development' around this potentially unpalatable two sided world-view was born the genteel ploy of emphasizing the growth imperative for consumption in the South and the industrial communities comfortable with "business (much) as usual", while focusing on sustainability for purposes of dealing with the

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increasingly strident and influential concerns of environmental movements and scientific bodies documenting the possible dangers of global change. Thus there remains latent much of the old Stockholm debate between environmentalists and industrialist in the North and between developed nations of the North and developing nations of the south. (Dobell, 1992, p. 4)

Since our economies are growing and the ecosystems within which they are embedded are not, the consumption of resources everywhere has begun to exceed sustainable rates of biological production. Seen in this light, much of today's wealth is illusion derived from the irreversible conversion of productive natural capital into perishable human-made capital. (Rees, 1991, Draft. p. 9)

The result of unchecked growth has been the following:

Encroaching deserts (6 million ha/year; deforestation (11 million ha/yr of tropical forests alone); acid precipitation and forest dieback (31 million ha damaged in Europe alone); soil oxidation and erosion (26 billion tonnes/yr in excess of formation; toxic contamination of food supplies; draw-down and pollution of water tables; species extinction (1000s/yr); fisheries exhaustion; ozone depletion (5% loss over North America [an probably globally] in the decade to 1990); greenhouse gas buildup (25% increase in atmospheric CO₂ alone); potential climatic change (1.5-4.5C mean global warming expected by 2040); and rising sea-levels (1.2-2.2 m by 2100) and like trends are the result of either excess consumption or the thermodynamic dissipation of toxic by-products of economic activity into the ecosphere (Data from: Brown et al [Annual]; Brown and Flavin 1988; Canada 1988; WCRP 1990; Schneider 1990; US Environmental Protection Agency [reported in Stevens 1991]). (reported in Rees, 1991, Draft. p. 11)

Continued development [and growth has even been perceived as a basic truth by the president of the World Bank: Barber Conabb CHECK SPELLING. stated that " a basic truth is that development cannot be halted, only directed". (Conabb, 1989, p. 15)

and he then continued to reassure the developing nations that

"With the developing nations, we must go on learning by doing..."Connabb, 1989, p. 15)

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ii.
The discrepancy between the establishment of environmental policy through international commitments and the denial of the policy through free trade agreements:

In June 1988 both the US and Canada participated actively in a world conference on The Changing Atmosphere: Implications for Global Security. The conference concluded that global atmospheric problems were the product of 'an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war.' and recommended national efforts to reduce carbon emissions by 20 % by the year 2005. yet later that year the Canada-US Free trade Agreement was ratified, entrenching energy and resource policies that are fundamentally at odds with the policy directions endorsed by representatives of the countries at the global warming conference. Under the terms of the free trade agreement; both countries forego, for as long as the agreement stands, the use of regulatory devices that could prevent the development of fossil fuel resources for export. (Shrybman, S. 1990, p. 22)

"

iii.
The discrepancy between government and industry rhetoric embodied in laws and regulations and the political will to enforce these regulations

iv.
The discrepancy between institutional rhetoric embodied in publications and the traditional role that is played by the institution (the usurping of the environmental movement to the point of making it redundant)

(see "eco-development" in Colby, M., Environmental management in development; the evolution of paradigms, 1990, World Bank discussion papers V. 39)

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v.
The advocating of a new found role of international governance for industry as a potential replacement for government.

Ramphal at Globe 92 described the new found role as "enlightened long-term thinking": He described the newly found enlightenment in the following way:

The private sector has been traditionally regarded as trammled by short-term profit considerations. Enlightened long-term thinking was a preserve of the State, of governments. Today the greatest flaw in governance at the national level is the ascendancy of the short-term in the political calculus, as leaders respond frenetically to democratic pressures for immediate results. It is the private sector, and particularly the larger enterprises within it, that have the intellectual space to think beyond tomorrow. ... (Ramphal, S. 1992)

vi.
The advocating of self regulation by industry; the moving away from compliance, imposed regulations etc.

QUOTE FROM SESSION AT GLOBE 92

vii.
The discarding of the principle of arms-length research in industrial projects

viii.
The revealing of the true intent by industry in in-house documents.???? from statements from industry about industry's perceived advantages of tripartite free trade.

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McCrae, Jim World Bank Environmental division CHECK

"dirty technology belongs in third world"

Basel convention related to third world dumping

The Royal Bank conveys in Econoscope, that " the new rules [in Mexico] automatically allow 100% foreign ownership of Mexican companies provides that less than US100 million is involved and that certain other criteria are met (for example, the funds must come from abroad and the investment must not be in areas which are already industrialized)Royal Bank of Canada p 4.

Note: no mention of safe industry

The move towards a free trade agreement with the United States is seen by the Mexican government as a powerful tool to modernize its economy. Such an alliance leading to a greater integration of Mexico into the North American economy could provide an anchor of stability for Mexico's monetary and fiscal policies. (Royal Bank of Canada p. 4)

...On the plus side, the United States will find that an improved Mexican economy, particularly if it can help to reduce the flow of economic refugees into the United States, and improved co-operation on narcotics and the environment sufficiently compelling reasons to pursue free trade talks. The greater competition offered by Mexican low-cost labour-intensive products had to be kept in perspective. A central tenet of international trade theory is that countries specialize in the production and export of goods according to comparative advantage rather than absolute advantage.

Man developing countries have failed to convert their advantages with respect to plentiful and cheap labour into a comparative advantage because of a number of factors impeding overall labour productivity. (Royal Bank of Canada p. 9)

...For Mexico the comparative advantage offered by low-cost labour is offset to a certain extent by the lower level of manufacturing productivity except perhaps for the most recent manufacturing plants built in the in-bond maquiladora sector). Moreover, Mexico is faced with a number of other problems such as heavy state involvement, absenteeism and poor transportation and communication infrastructures. (Royal Bank of Canada p. 11)

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NOTE mention of pollution controls

There are several areas in which Canadian expertise could find a market in Mexico. These include agriculture, fishing , forestry and pollution control . Royal Bank of Canada p. 11

[Note the only mention of anything that is related to the environment is the possibility of a market for Canadians in pollution control.]

On the issue of whether or not ' export protectionism' would grow, one must ask what the multinational corporations want to use the spoke countries for. Do they want them as markets or as production bases? If they want them as export markets, the ;multinationals would then favor export protections. If, however, they want them as production bases--as is increasingly the case with Mexico--then the multinationals gain no advantage from maintaining export protections. (Weintraub, Sidney, in Hill, R. et al 1991, p. 9)

...the multinational might well prefer an expanding free trade area to rationalize their production. ...U.S. multinationals have distribution systems set up to take advantage of the preferences it provides, they may well want it to continue. (Wonnacott, R.in Hill, R. et al 1991 p. 9)

First, it sets a timetable that lends itself to the 'Yankee trader' attitude that you cannot conclude a deal until the deadline (indeed after the deadline), because if a deal is reached earlier, it is because you have not squeezed enough and ended up leaving ;money on the table. Mexican negotiators have not experienced this, but they soon will...Second, the fast-track process lends itself to some very damaging side deals between the administration and Congress. In the Canadian case, while approval was given for the process by Congress, the price was a side deal whereby the administration essentially promised to restrict the Canadian forest products industry in any way it could. It did so with trumped-up cases against cedar shakes and shingles and softwood lumber. (Ritchie in Hill, R. et al 1991, p. 11)

To increase Canada's Weight in

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Settling Trade Disputes

A trilateral resolution of disputes would provide Canada and Mexico together with greater weight in holding the United States to its commitments than either would have alone. But for precisely this reason, it is far from clear that the United States would accept the trilateralizing of dispute settlement. ...Nor is it even clear that Canada would wish to trilateralize dispute settlement, since this could weaken, rather than strengthen, Canada's voice in disputes with the United States where Mexico did not support Canada's position. (Wonnacotte, R.J. "Canada and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute p. 3)

To Have a Low-Wage

Partner in the Free Trade Bloc

" Finally, Canada, like the United States, needs a low-wage partner such as Mexico. Every other participating country in a free-trade bloc has such a partner. Without access to a pool of low-wage labor, Canadian industry will find it more difficult to remain competitive in world markets. However, low wages in Mexico will raise the question: How can Canadian industry compete with cheap Mexican labor? .Wonnacotte, R.J. "Canada and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute. p. 4

Fear of trade

with low-wage Mexico

One major fear will be that Canadians cannot risk trading freely with Mexico because of that country's cheap supplies of labour, which will give Mexican goods an overwhelming competitive advantage.If we really had to worry about the competitive advantage conferred by low Mexican wages, then existing Canadian tariffs would provide little relief: if 'sixty-cent-an-hour wages' are a threat, then 'sixty-six cent-an-hour wages' are not much less of a threat. What matters in international competition is ;not how ;much local labor is paid in terms of purchasing power. What matters is how unit costs of production compare internationally at the going

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exchange rates. (Lipse, R. "Canada at the U.S. -Mexico Free Trade Dance." Commentary. No.20, August 1990. C.D Howe Institute p. 10).

ix.
The watering down of environmental resolve when action is require: policy to prevent pollution becomes translated in action to reduce or mitigate pollution

12. The Ministers agreed that, in order to achieve ESID, industry initiatives should include the following objectives:

a) Adoption of pollution prevention, the approach that prevents pollution at the source in products and manufacturing processes rather than removing it after it has been created (UNIDO, 1992, p. 7)

In the introduction to the Alumina Industry case study that was examined at the UNIDO conference the following statement was made: "Bauxite mining cause unavoidable ecological disturbance, and in some circumstances the issue of preservation of biodiversity is important" (UNIDO, Proceedings, 1992, p. 220)

Recommendations

"7. Industry experts summarized the most promising ways of reducing the negative environmental impact of the alumina industry a the plant level as follows:

What was a policy of "preventing pollution" has now become a mandate to "reduce pollution or mitigate pollution"

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"the thrust of the world Bank's energy work is increasingly to promote development in the energy sectors of developing countries while taking prudent steps to mitigate damage to the environment" (the World Bank, 1989)

x.
The compromising of the environment as a result of trade agreements

It [NAFTA] may limit Canada's or British Columbia's authority to establish relatively tough environmental standards; and

it may limit the public's access to decision-making affecting the environment during the negotiation of an agreement and the operation of such an agreement.

therefore, the association urged the government of British Columbia to:

- undertake an environmental assessment (with full opportunity for public access to information and involvement) of the potential impact on British Columbia's environment and environmental decision-making process

- insist that the federal government do the same; and

- oppose any trade agreement with Mexico that:

- i) would impair the province's ability to set relatively high environmental standards;

- ii) does not specify that failure to establish and enforce reasonable environmental standards is considered to be a trade subsidy; or

- iii) does not include mechanisms to facilitate public access to information regarding and public participation in, decision-making under the agreement

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(Environmental Law Association , Ministry of Development, Trade and Tourism,1991 p. 23)

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appear to preserve and protect the environment; yet industry is continually in non-compliance with these environmental provisions and government is continually violating its own policies by not enforcing regulations. Without a commitment to achieve and enforceable means to attain a limit to growth, and without a commitment to set up an infrastructure to enforce regulations; the current North American situation which is now urgent will become irreversible.

2. POSSIBILITY OF COMMON CONCERNS BEING ADDRESSED WITHIN AND THROUGH NAFTA

Does NAFTA become the [further] realization of these dire predictions or an opportunity for significant change? Is it possible to summon up the political will to limit growth, to achieve respect for human rights, to attain social justice, to enshrine ecological rights and to entrench fair and ecologically sound employment?

BETTER QUOTES

"We need to do a lot more than admit there is a problem (Aridis, 1992)

"All measures taken so far are band aid solutions ... we need real solutions (Carbajal, 1992)

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"Future economic growth will compound existing problems unless specific steps are taken to integrate free trade and environmental protection. (Emerson, 1991)

[an to limit growth]

" Human rights, labour rights and environment deserve equal treatment with trade rights (Axworthy , 1991,)

For at least twenty years we have engaged in environmental rhetoric.

In June 1972 at the Stockholm convention on the Human Environment the following statement was made and principles enunciated:

To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greater burden for large-scale environmental policy and action within their jurisdictions.

states the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn

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responsibility to protect and improve the environment for present and future generations...

Principle 2:

The natural resources of the earth include the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate

Principle 13 In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population. (Stockholm convention on the Human Environment, June 1972)

Was this only rhetoric in 1972: empty words whose legacy of inaction we now have to face?

If we are to achieve significant change {we must translate our rhetoric into realistic commitments to action within a trade agreement. }

Now in June of 1992 we are entering into a new world agreement, the "Rio Declaration on Environment and Development" at UNCED, and in the near future into a trilateral trade agreement, NAFTA. Is there still just rhetoric or will there now be substantive action to support words.

The three countries negotiating the NAFTA all enunciate environmental objectives but will all three countries have the political will to ensure that there will be long term preservation and protection of the environment Mexico

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" Social liberalism therefore purposes a State that promotes and encourages private initiative, but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment." (Carlos Salinas de Gortare, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)

...Observaciones: El esfuerzo di Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuales han sido aplicadas con gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecologica de la poblacion con su conjunto. (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

The Government of Mexico's three year environmental plan for the border communities calls for a doubling of the number of inspectors from the Secretariat of Urban Development and Ecology (SEDUE) by January 1992. This represents a four-fold increase from 1989. "By January 1992, The SEDUE team of 200 qualified inspectors will be ensuring that industries in the border communities adhere strictly to Mexico's environmental laws and regulations. Businesses that refuse or cannot comply will be subject to penalties, including having their operations shut down.

Information and data systems are being upgraded and decentralized. These improvements will allow for closer monitoring of raw materials and dangerous wastes. Already, in the last three years almost 1 million tons of hazardous materials have been prohibited from entering Mexico.

Progress can already be seen in the "maquiladora" industries where compliance with regulations on operating licenses , on the declaration of the production of hazardous wastes and on the proper disposal of hazardous wastes has increased dramatically since 1989. All existing maquiladora plants must be entirely recertified by 1992. All new investment must present environmental impact statements. ("Protecting the Environment Mexico's public works program for the Border Region," undated, and unsigned document)

Mexico and the United States are committed to a cooperative program that will encourage sustained economic growth and environmental protection in both countries. President Bust and president Salinas believe that the two are complementary and must be pursued together. (Free trade Negotiations with Mexico Environmental matters, p. 1)

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Mexico has established a good basis for progress on environmental protection and conservation of natural resource. President Salinas has states that, while seeking to stimulate foreign investment, Mexico will not accept investments that have been rejected by the United States or Canada for environmental reasons. (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 2)

In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. it is a comprehensive statute designed to ensure that there is an adequate legal basis for protecting the environment. Indeed, the law is based in large part on U.S. law and experience.

A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 3) ARMS LENGTH RESEARCH

In 1990.. the Government [of Mexico] shut down all 24 Military industrial installation in the Mexico City area because of potential environmental risks." (Free trade negotiations with Mexico, Environmental matters, U.S. government publication]

Convenio con las industrias en el valle de Mexico para combatir la contaminacion ambiental

Por su parte el jefe del Departamento del Distrito Federal, Manuel Camacho Solis, explico las mdeidas tomas en el pacto con la industria, entre las ques destacan las siguientes;

- establecer la verificacion obligatoria de las emisiones industriales, principalmente de las particulas de monoxido de carbono, azulfre, oxidos de nitrogeno, plomo, hidrosulfatos y

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compuestos organicos volatiles para lo cual en un plazo maximo de 18 meses, 220 empresas que consumen el 53% del total de combustibles en el val de Mexico deberan conrar conequipos anticontaminates

- se integra un programa de capacitacion de inspectores, auditores y verificadores, asi como operadoeres de calderas y equipos de combustion.
- Se crea un cuerpo especial de inspeccion y asesoria profesional en la materia, y que actualmente las particulas de origen industrial son las de mas alto riesgo para la salud, pues continenen quimicos inorganicos y metales pesados y constituyen el 65% de las particulas toxicas suspendisdas en el aire.
- se otorgara asesoria y equipo tecnologico a la industria para ue instale equipos anticontaminantes
- se desarrollaran politicas de energia (ahorro, consumo racional, entre otras), ademas de que se controlaran y reformularan solventes de pinture
- Se cuenta con un billn de pesos para financiar el control de emisiones, cambiar procesos y descentralizar industrias,. Es importante se? alar que por primera vez en un programa de esta naturaleza intevienen siete bancos comerciales: Multibanco Mercantil d Mexico, Banca Serfin, Banca Confia, Bancomer, Banco Internacional, Multibanco Comermex y Banco BCH, asi como ocho arrendadoras.

Note. Need for sustained monitoring and implementation of regulations cannot only be implemented as a means to an end. Implementation of standards and regulations as a means to an end without the provisions in place to continue to impose, implement these regulation.. relax regulation

- SE continuaran actualizando y desarrollando nors cada vez mas estrictas para la industria, hasta alcanzar reducciones en la emision de paticulas entre un 70 y 90%

...Observaciones: El esfuerzo dl Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuales han sido aplicadas con

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gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecologica del la poblacion con su conjunto. (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

Canada

Canada's Green plan for a healthy environment is a co-ordinated package of actions to help Canadians work together in partnership to achieve, within this decade, a healthy environment and a sound , prosperous economy.

Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement ," he [Mr. de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. it also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

Canada's Green Plan is a major step forward of our country. It greatly expands, organizes and focuses our environmental activities. It is an optimistic document about the future of our environment," Mr. de Cotret said. (Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

Legislative, Regulatory and Market tools for change

Goal

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the balanced use of strong and effective environmental laws, with market-based approaches for environmental protection. p. 20

INITIATIVES

- Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations. Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Whereas the Government of Canada in demonstrating national leadership should establish national environmental quality objectives, guidelines and codes of practice (Canadian Environmental protection act, 1988)

Whereas toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries (Canadian Environmental protection act, 1988)

section 2. a Government of Canada shall... take both preventative and remedial measures in protecting the environment (Canadian Environmental protection act, 1988)

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In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister", it is stated that "the duties of the Minister include providing for

a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to

2(i) endeavour to protect the environment from the release of toxic substances". (Canadian Environmental Protection Act, 1988, C 22)

[" deleterious substance means

a) any substance that, if added to any water would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water

(Fisheries act, statutes of Canada 1976077, c35)

yet raw sewage is still dumped into the waters around Vancouver Island and fish have lesions]

" whereas... no present activity should compromise activities... fulfill the needs of future generations (CHECK WORDING IN C13)

United States

"A NAFTA offers an historic opportunity to bring together the energies and talents of these great nations, already bound by strong ties of family, business and culture. Prime Minister Mulroney and President Salinas are both leaders of great vision. They believe as do I, that a NAFTA would enhance the well-being of our peoples. They are ready to move forward with us in this unprecedented enterprise. In seeking to expand our economic growth, I am committed to achieving a balance that recognizes the need to preserve the environment, protect worker safety, and facilitate adjustment. ... At my direction, Ambassador Hills and my Economic Policy Council have undertaken an intensive review of our NAFTA objectives and strategy to ensure thorough considerations of the economic, labor and environmental issues raised by you and your colleagues.

Based on my discussions with President Salinas, I am convinced that he is firmly committed to strengthened environmental protection, and that there is strong support for this objective among the Mexican people. Because economic growth can and should be supported by enhanced environmental protection, we will develop and implement an expanded program of environmental cooperation in parallel with the free trade talks. ...thus, our efforts toward economic integration will be complemented by expanded programs of cooperation of labour and the environment." (Letter from George Bush to Chairman Rostenkowski and Majority Leader Gephardt; similar letter sent to every member of Congress, May 1, 1991)

Mexico's commitment to environmental protection

- Mexico has no interest in becoming a pollution haven for U.S. companies.
- Mexico's comprehensive environmental law of 1988, which is based on U.S. law and experience, is a solid foundation for tackling its environmental problems.
- All new investments are being held to these higher legal standards and an environmental impact assessment is required to show how they will comply.
- Enforcement has in the past been a key problem, but Mexico's record has been improving dramatically. Since 1989, Mexico has ordered more than 980 temporary and 82 permanent shutdowns of industrial facilities for environmental violations; the budget of SEDUE (Mexico ' EPA) has increased almost eight-fold

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Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

Environmental issues in the NAFTA

- Protection of Health and Safety: We will ensure that our right to safeguard the environment is preserved in the NAFTA (YET NOTE US NOT PREPARED TO HAVE THAT ENSHRINED IN AN INTERNATIONAL CHARTER)

- we will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements

- we will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards

- we will maintain our right , consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer).

- Enhancement and Enforcement of Standards: we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement

- we will provide for full public and scientific scrutiny of any change to standards before they are implemented.

- we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)p.p. 4, 5)

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

- we will consult on national environmental standards and regulations, and will provide an

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opportunity for the public to submit data on alleged non-compliance. (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991, p. 5)

The current global ecological crisis is urgent and a serious shift in perspective is necessary if the crisis is to be addressed. This shift in perspective must permeate all future considerations of trade and development related to the environment, health, human rights and social justice. This shift in perspective must move away from perceiving that states have "the sovereign right to exploit their resources pursuant to their own environmental and developmental policies [and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction." (Principle 2 in the Rio Declaration on Environment and Development)] . This shift in perspective must move away from perceiving that states have " the right to development [being fulfilled] so as to equitably meet developmental and environmental needs of present and future generations" (Principle 3 in the Rio Declaration on Environment and Development). Through this new perspective we must begin perceiving that the ecological preservation and protection must be given primacy and that an integral part of ecological preservation and protection is the limiting of industrial growth.

If states entering into the free-trade agreement acknowledge the need to limit growth and ecological preservation and protection as fundamental principles of negotiation, then any departure from this principle will have to be justified. The onus of proof would then shift from those objecting to increased growth and to potentially ecologically unsound interventions having to demonstrate harm to those advocating interventions having to demonstrate worth and safety.

Although all of the three countries do not recognize the need to limit growth they have spent years enunciating the goal of protecting and preserving the environment.

What we need to do is achieve the highest attainable synthesis of our common goals in the coordination of policy in a North American community, not some lowest common denominator achieved through some process of mechanical compromise [re - integrative bargaining]. [Need to achieve a bargaining set with sufficient diversity to be able to trade off objectives for one country in one area with goals for others in others.]

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There is a need for common standards based not only on the highest tenable principles drawn from all three countries but also on the highest tenable principles not yet embodied in policy and legislation. These standards should be related to environmental, social justice, human rights and health provisions. The enshrining of high standards conforms in principle to declared objectives of all three countries. These declared objectives are present not only in legislation from all three countries but also in many international covenants and declarations to which all three countries to varying degrees subscribe [have ratified] . These declared objectives are evident in [Out Common Security Palmer] in the preamble to C 13 Environmental Assessment Review Act in Canada, in the intent behind the Mexican Constitutional law for the ecological equilibrium and protection o the environment CHECK and in the U.S. ... CHECK

so I am not here to wring hands about the threat posed by Mexico as a pollution haven in a North American community. In fact, in many ways all of North America could be described as a pollution haven for industry. Rather, on the assumption that we will, for political reasons, have a little time before a final agreement is reached, I want to ask how we can use this lull to translate some of our nice rhetoric into realistic commitments to action within a trade agreement.

On the issue of a North American Free Trade Agreement there has already accumulated a great deal of literature [refs. Hart, CD Howe, Murray Smith, Conference volumes, etc, BC consultation [and commissioned] documents, etc.] CHECK

On the more particular question of trade and environment, there is also beginning to accumulate a vast literature. The issue is being addressed by a GATT working party, and is a major topic for discussion at UNCED. Also a number of reports [IISD conference, GATT report,...]

But indications to date suggest that the discussions at UNCED will not resolve the basic tensions between environmental goals and economic principles [ecological rights and economic privileges]. The Draft text for the RIO Declaration [on the Environment and Development]

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reveals still far too strong an overhang of orientation to a model of the nation-state and national sovereignty and a reluctance to curb growth or to come up with international environmental standards, with an international court of environmental law, with the enshrinement of the right to a safe environment and to an environmental heritage; and with establishing any form of international environmental governance

Even though the international scientific community that does not have a vested interest in development recognizes the urgency of the global situation (include reference to document signed by 20 Nobel Laureates see Fred Knelman's letter to Nobel Laureates) the U.N. delegates meeting in the Prep Com in New York have failed to give the environment primacy and have instead enshrined the right, though qualified, to develop and exploit resources.

In principle 2. "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. (2 April 1992, Rio Declaration on Environment and Development]

In principle 3.

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations

(2 April 1992, Rio Declaration on Environment and Development]

The Prep Com delegates also failed to define explicitly what is meant by development: there is a fundamental distinction between exploitative and humanitarian development. Even the chair of committee on "Rio Declaration on Environment and Development" continued to perpetuate the simplistic myth that the north is concerned about [only] the environment and the south is concerned about [only] development. (March 26, 1992, personal communication in presence of the press). Are they continuing to ignore concerns as embodied in declarations such as those embodied in the "Constitutional Law for the Ecological Equilibrium and Protection of the Environment" Mexican document, 1988)

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Not only have the delegates been reluctant to limit growth and to give the environment primacy within the sustainable development context they have also failed to recognize the urgency of the global situation by their not recognizing more fundamental non-anthropocentric rights

Principle 1 human beings are at the centre of concerns for sustainable development. They are entitled to a health and productive life in harmony with nature.

(2 April 1992, Rio Declaration on Environment and Development]

Other agreement such as GATT have succeeded in resolving the tension between environmental goals and economic principles [ecological rights and economic privileges] by giving primacy to {unimpeded flows of goods and all) and ignoring environmental values (pursuit of a sustainable society through conservation of resources and preservation of biodiversity) }

GATT is built on the premise of nation states and meaningful national borders. Indeed the whole apparatus of international law has to presume that the relevant actors are national government.

GATT fails to permit "power of governments to implement environmental regulation ..." and brings about "increased economic pressures to reduce environmental standards." (from FAX sent by West Coast Environmental Law Association with comments by Rolfe, C. Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

Each one of the three states involved has attempted to object to other states of using high environmental standards to influence trade and in each case GATT has supported the state

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seeking to object to high standards:

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fibre in newsprint. (Shrybman, 1991, p. 13) The Canadian government has argued that a U.S. environmental Protection Agency rule banning the use of all forms of asbestos violates the U.S. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

The U.S. based Non-Ferrous Metals Producers Committee is using the U.S.- Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry. (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13)

(cited in Rolfe, Chris Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

And Mexico ... When in 1990 the US. placed and embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins [s] was inconsistent with the GATT (McDorman, T. 1991, p. 2)

The GATT Panel stated that under the GATT " a contracting party may not restrict imports of a product merely because it originates in a country with environmental policies different from its own'. (U.S. Mexico GATT Panel, 3 September 1991, at paras 2.1-2.2). It is this statement that has been seen as the biggest problem with the "GATT Panel report from an environmentalist

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point of view. (McDorman, T. 1992, p. 19). However, even the normally environmentally sensitive Nordic countries have indicated that a country is not free 'to require that imported products [be] produced as cleanly abroad as at home.' (EFTA members press convening of working party, 82 Focus- GATT Newsletter 2-3 (July 1991) Any other conclusion reached by the GATT Panel would allow certain countries to dictate to others what standards must exist and this would clearly be an invasion of a country's sovereignty. Moreover, as the Panel concluded, any other conclusion would permit trade only between countries with identical regulations and this would amount to a dismantling of the GATT. ("McDorman, T., 1992, p. 19) CHECK CITATIONS PUT IN FOOTNOTES

Direction to proceed is spelled out in McDorman analysis: need international agreement on priority for environmental objectives sufficiently strong that it formally and explicitly over-rides GATT where necessary.

Want to look closely at the US Mexico GATT panel report as outlined by McDorman

He reports that the panel found that "the obligations owed by the US to Mexico under GATT prohibited use of trade measures to deal with such environmental issues [i.e. those having effect beyond the borders of the country adopting the trade measures]. This conclusion flows from the fact that GATT may regulate conditions around product, but not around means of production, and from the view that it is still possible to talk about the actions of a particular country affecting its environment. With these orientations, GATT can conclude that "Countries cannot look behind a good to determine if the production or manufacturing process was environmentally friendly. Or in other words countries cannot impose their environmental standards or regulations on other countries by boycotting their goods. "to a certain extent, this is what comparative advantage is all about: differences in their environment of production, including the environment of government regulations".

If this is true, how do we deal responsibly with environmental concerns in an emerging North American community in which sovereign communities still wish to pursue their own vision of interpersonal and intergenerational equity and sustainability?

"Potentially, any nation could thereby justify unilaterally imposing its own social, economic or employment standards as a criterion for accepting imports. Any influential contracting party could effectively regulate the internal environment of others simply by erecting trade barriers

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based on unilateral environment policies. (The Venezuelan intervention in the U.S.- Mexico GATT Panel, note 3, at para. 4.27).

Rather than considering high standards an "imposition", perhaps we could now contemplate, high standards as "the expression of collective will" . Given the recognized urgency of the global situation, the goal as the expression of collective will, should be the attaining of the highest tenable standards so that at least within the North American context, through a strongly principled NAFTA, our energy could be placed in striving in the three countries to meet this established standards rather than in using the GATT to condone and even foster lower or relax standards.

So I would like to ask whether NAFTA can provide a lead in a [more] fruitful direction, which achieves a better reconciliation of the differing perspectives, situations and orientations of the different players. Differences in North America are not so great as in the world as a whole, and should be more easily bridged. All three countries share the same lofty rhetoric and indeed the same idealistic -- apparently potent -- legislation. All three fall down badly on implementation, on monitoring and on enforcement.

CITE STATEMENTS IN PREAMBLES INDICATING RHETORIC

NEED FOR INTERNATIONAL STANDARDS DRAWING FROM ...;

But all also can see the writing on the wall, and might be ready to turn around the decision structures and alter the priorities in the direction necessary to more towards sustainable development { sustainable environment} . All may be ready jointly to move against the threats of "jobs blackmail" and competitiveness blackmail" which have stalled any realistic moves thus far towards adequate pricing of resources or adequate weighting to preservation and future interests.

Often the "job blackmail" is couched in altruistic terms as "striking a balance" or "achieving

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consensus". In these cases those who are concerned about giving the environment primacy are perceived to be "extremists" or of being "unreasonable." or of "not caring about the welfare of other human beings". Can we discuss a balance between the need to preserve an area and the "privilege" to engage in ecologically unsound practices? Can we discuss a balance between the right of humanity to not have to live in fear of environmental degradation and the "privilege" of labour to engage in work that could contribute to potential environmental degradation? Can we talk about balance when we ask to save 3% of the remaining ancient forests on an Island?

The time for the condoning of rationalization has past. The environment will continue to be degraded and not sufficiently preserved if people continue to condone the rationalization of engaging in ecologically unsound practices. No longer should we condone the following forms of rationalization: a) "we recognize that the practices are ecologically unsound but if we do not do them jobs will be lost, workers will be displaced, communities will become ghost towns b) " we recognize that the practices are ecologically unsound but if I don't or we don't engage in these practices someone else will" or c) "we recognize that practices in a sovereign state other than our own are not ecologically sound but the goods are so much cheaper, and what right do we have to impose our standards" Environmental preservation and protection must no longer be just tokenism. [classic statements, do they need a source?]

The time for tolerating the couching of business as usual in new euphemisms "sustainable development" has passed. An outgrowth of this toleration is a new form of industrial environmental hypocrisy where industries engage in the device of feigned altruism: the setting up of environmental divisions within an ecologically unsound industry . We have a responsibility to ensure that we are no longer deluded by industries that set up an environmental department while continuing to destroy the environment through their principal activity. [No amount of recycling of aluminum cans will make up for the destruction occurring in the production of aluminum.] The total activity of the industry has to come under environmental scrutiny.

Working together we may be able to reach meaningful agreements on measures to avoid both "the race to the bottom" in jurisdictional competition and cost associated with the "first over the top" fear. What is needed is strong political will for the enshrining of high common standards and of strong enforcement measures to be enshrined in a code of commitments that will be an integral part of the NAFTA.

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We need to be willing to address the need to limit growth and to actually limit growth

We need to be willing to address the need to decrease consumption and to actually decrease consumption

We need to be willing to no longer tolerate ecologically unsound products or practices

We need to be willing to define what these practices and set up regulations to prevent these products or practices. (without either one of the three countries having to reduce its standards)

We need to be willing to honour wilderness preservation of significant, representative and distributive ecosystems (at least the minimum that was recommended by the Brundlandt Commission)

We need to be willing to reduce military spending and the production of weapons of destruction and to transfer a significant percentage of those funds to research into the development and implementation of alternative safe energy, into alternative ecologically sound practices, and to redressing the current damage.

We need to be willing to recognize that pollution knows no boundaries and that international governance of environmental regulations must transcend sovereign borders

we need to "establish regulatory regimes including environmental standards, objectives, guidelines and codes of practices" (Shrybman, S. 1990, p.28 "proposed article for inclusion in the General Agreement on Tariffs and Trade: Environmental protection")

We need to agree that "nothing in the agreement shall be construed to prevent any party from taking any action which it may deem necessary to protect the environment, including the establishment of import or export restrictions and the use of subsidies to:

prevent or remedy adverse environmental effects and/or conserve natural resources" (Shrybman, S. 1990, 28 from "proposed article for inclusion in the General Agreement on Tariffs and Trade: Environmental protection")

we need to be willing to discredit all countries that flaunt rhetoric and retreat from action

we need to be willing to insist on and be prepared to fund arms length research.

3. POTENTIAL ROLE FOR NAMI IN ASSISTING IN THE ESTABLISHING THE HIGHEST ATTAINABLE SYNTHESIS OF OUR COMMON GOALS IN THE COORDINATION OF POLICY IN A NORTH AMERICAN COMMUNITY

I would also like to suggest that perhaps NAMI could provide leadership in bringing together of independent thinkers drawn from societies such as the Kennedy Institute, the Royal Society of Canada, the FINE of Mexico and build on the initiative begun in 1972 when a group of independent thinkers drawn from the scientific and social science community met prior to the Stockholm convention on the environment. At that time this group of forty drew up significant and far reaching recommendations that if, they had been followed at that time, might have facilitated the difficult decisions we have to face today. There is little satisfaction to be drawn from lamenting the fact that we should have listened then. We must help to communicate the urgency of the global situation and the need to dare to implement a new perspective. NAMI could also build on the initiative taken by Dr Fred Knelman (who also involved in the group of 40 in Stockholm) to contact Nobel Laureates to get them involved in the urgent decisions that have to be made. We must recognize that to achieve the stated objectives of all three states, we must insist that there be high international standards in place, that individual states should be encouraged to surpass, and that these standards should be drawn from the highest tenable principles enunciated from the global community. Only then can we be assured that the environment will be given primacy and that international organizations like GATT or Free trade Boards? will not be able to condone the reduction of environmental standards to facilitate trade.

II There is a fundamental conflict between traditional concepts of economic growth and the preservation of the environment. During the last century, uncontrolled continuous growth in the industrial production of environmentally harmful substances and products in some regions of the world has produced dangerous amounts of pollution and has been responsible for an inordinate waste of resources. At the same time, and increasing concentration of economic power and industrial activity has led to a centralization within a few nations of the benefits from the use of the earth's natural resources, and the international political influence that is derived from the control of these resources. It has become clear that more rational distribution of industrial power is necessary if the global problems of environment and society are to be solved. Such a redistribution would achieve at the same time a more equal apportionment of economic and political benefits among nations and individuals.

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III The exploitation of third World national and regional resources by foreign corporations, with a consequent outflow of profits from the exploited regions, has resulted in a vast and growing economic disparity among nations and ;a monopoly of industrialized countries over production, energy, technology, information and political power Complementary to this is the flooding of developing countries with surplus goods and capital, with a resultant distortion of their economies, and the deformation of their environments into ;monocultures in the interest of further enriching the industrial states. the foreign investments, economic development and technological practices of such industrial states ;must be curbed and altered by the basic claim of a region's people to control of its resources. Use of these resources, however, should not be dictated ;by the accidents of geography, but must be allocated in such ways as to sere the needs of the world's people in this and future generations. The authority of any region's people over resources and environment includes the obligation to recognize that the environment is an indivisible whole, not subject to political barriers. The environment must b protected from avoidable pollution, destruction and exploitation from all sources. (Earth Talk, 1972, p. 170)

Much conventional technology and many of its proliferating products have proved ecologically harmful. We cannot reject technology per se but must restructure and reorient it. Ecologically sound technologies will minimize stresses to the environment. A rapid development of the new approach should be complemented by a technology review and surveillance system to assure that any new technology is ecologically compatible and will be used for human survival and fulfillment. It is not enough to add anti pollution devices to existing technologies, although this might well be the initial stage of phasing out present polluting technologies. (Earth Talk, An Independent Declaration on the Environment, 1972)

... few clauses from existing RIO declaration draft about prohibitions against use of environmental regulations as trade barriers, etc.

FIND

Let's recap briefly the steps already taken in the two major countries (US story is perhaps well enough known anyway.)

Mexico ..citation for Salinas

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ref. to NAMI doc and related refs

Major steps

goals explicitly states "his goal is not to attract polluting industries but to substitute clean ones"

Canada SOE report

Green plan

environmental Assessment Review Act.

Need to look at different sources of conflict associated with scarcity of exhaustible resources and struggles over shares of renewable resource in which everyone is racing to be first to harvest stocks in which no one is investing enough to assure any kind of sustainability of renewability

CONCLUSION:

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SYSTEMIC CONSTRAINTS;

- discrepancy between rhetoric and action
- discrepancy between regulations and enforcement
- Short-term changes as means to end
- False dichotomy between jobs and environment economic pressures and environment
- required or discretionary environmental assessment review coupled with non-arms length research to determine environmental impact
- misplaced onus of proof
- reluctance to cede sovereignty to global governance in urgent situation
- industrial hypocrisy

The British Columbia Federation of Labour (BCFL) also felt that free trade with Mexico would threaten the quality of life enjoyed in British Columbia and jeopardize the province's economic stability. The only advantage will be corporations' access to cheap labour. According to the respondent, Mexico will sell its cheap labour in order to attract foreign capital. The BCFL raised a number of other issues it felt should be addressed as part of the discussion on trilateral free trade: Mexico's low wages, anti-democratic union practices, the lack of environmental regulations and restrictions, unhealthy and dangerous working conditions and unprotected consumers. (Ministry of Development, Trade and Tourism, 1991, p. 27.)

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As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

Environmental problems are probably the most pressing with regard to the health and well-being of the Mexican workers. The Rio Grande, on which hundreds of communities on both sides of the US Mexico border depend for drinking water, is deluged by industrial waste, uranium ;mining runoff, hazardous spills from transborder transport, agricultural chemicals and millions of gallons a day of untreated Mexican raw sewage. Lax environmental standards that allow this to happen are also what attracts U.S. and now Canadian companies to the border zones to do business.(Northcotte, 1991, p. 31)

According to the US based Coalition for Justice in the Maquiladoras, the damaging characteristics of the maquiladoras, environmental contamination, unsafe working conditions and the exploitation of workers, have shattered the quality of life in the border communities. " (Northcotte, V. 1991, p. 31)

Although Mexico claims that it will not become an environmental haven, the general industrial perception is that, at least in the short term it will be one. The possibility of Mexico's becoming [or becoming more of] an environmental haven is reiterated in the section on Environmental and Pollution Control in the Ministry of Development and trade and tourism report on BC. consultations with the private sector re.: Mexico, Canada and the United States: the trilateral free trade proposal.

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" Environmental regulations on businesses operating in Mexico are expected

to be less stringent than they generally are for operations in British Columbia or the United States. At least initially, therefore, Mexico will be more attractive for locating new industries with pollution concerns than in British Columbia or U.S. jurisdictions. This likely will not be significant in the long term but initially it will result in some impact on the British Columbia industry. " (Ministry of Development, Trade and Tourism, June 1991, p. 24)

The new perspective must move away from "pollution concerns" being the concerns that industry has when they have to abide by stringent regulations to being the concerns that the community has about the preservation of the ecosystem. the new perspective must also move away from considering "impact" as being economic impact to considering "impact" as being ecological impact.

[Environmental provisions necessary to prevent either one of the three countries from becoming an environmental pollution haven

Environmental provisions to ensure that the highest tenable principles are in place to ensure that neither one of the three countries becomes an environmental pollution haven.]

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

All of our three countries appear to agree on what is needed to be done . Now we must ensure that what needs to be done , is done.

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Report and suggestion for follow up paper

NAFTA: International environmental principles emanating from UNCED and economic constraints

or Environmental provisions and economic constraints.

Assessment of Environment Canada's analysis of the environmental implications of NAFTA

Concepts to examine that may be economic constraints:

NAFTA DOCUMENT

Discussion of document:

The preamble is very strong. To a certain extent, it would appear that environment has primacy over employment: the preamble reads,

"Create new employment opportunities and improve working conditions and living standards in their respective territories; and this is qualified by the statement " undertake each of the preceding in a manner consistent with environmental protection and conservation:

The preamble also calls for "the development and enforcement of environmental laws and regulations;

(Note discussion with John Fried about legal implications)

PROBLEM 1.

A state cannot establish a higher environmental standard of production and exclude goods that

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do not meet that standard of production, and cannot require the other states to live up to higher standards

The following two sections appear to permit each state to establish as high standards as they deem necessary:

"Right to take Standards-related Measures" (Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

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No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed to establish international environmental standards. International principles were in place

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate. (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

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2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardizations activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international electrotechnical Commission (IEC), Codex alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

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PROBLEM 4: LIMITED REFERENCE TO INTERNATIONAL DOCUMENTS ON THE ENVIRONMENT (NOTE NO MENTION OF RIO- unless in Annex 104, check in Annex 104); Note only reference is to "specific trade obligations" in the environment treaties:

[ACTION; TO OPEN UP NAFTA TO ENSURE THAT THE DOCUMENT IS COMPATIBLE WITH UNCED DOCUMENTS]

Treaties mentioned:

convention on International Trade in endangered Species of Wild Fauna and Flora (1973)

the Montreal Protocol (1990)

Basel convention on the Control of transboundary Movement of Hazardous Wastes and their disposal (1989)

Annex 104-1 Bilateral and Other Environmental and conservation Agreements

1. The agreement between the Government of Canada and the Government of the U.S. concerning the transboundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986
2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

* see Annex 104-1 for other agreements

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Such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

ACTION: note that there is the provision to add other environmental agreements.

The parties may agree in writing to modify Annex 104.1 include any amendment to an agreement referred to in Paragraph 1 and any other environmental or conservation agreement.

PROBLEM 5: PRIMACY IS GIVEN TO NAFTA OVER OTHER INTERNATIONAL AGREEMENTS

NOTE: THAT IN ARTICLE 103, "Relation to Other Agreements, this agreement is given primacy

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreements to which such Parties are party.

2. In the event of any inconsistency between this Agreement and such other agreement, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Background:

NAFTA

Perspectives and Actions

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DEPARTMENTS

1. External Affairs

Documents:

North American Free Trade Agreement Implementation Act: The NAFTA Partnership. March 1993

Content:

It is primarily a document about Canadian Business interests

"NAFTA will provide further new opportunities for Canadian goods and services. Canadian firms will be able to expand sales in sectors that were previously highly restricted, such as autos, financial services, trucking, energy and fisheries. "

Mexico Canada's largest trading partner (3 billion, 1991)

"Canadian business has already begun to take advantage of these new trade measures to increase their presence in Mexico. "

Participants:

The Export Development Corporation (EDC)

The Business Co-operation Program of the CIDA

CIDA/Inc (several environmental protection and control projects related to air and water pollution, hazardous waste disposal and rehabilitation of wetlands in proximity to industrial and residential areas.)

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Investment Canada is also developing a program to encourage Mexican investment in Canada

EAITC has organized a trade promotion program in Mexico directed at specific sectoral opportunities, to introduce as wide a cross section as possible of potential exporters to the marketplace.

In order to capitalize on existing opportunities in Mexico and give depth to heightened economic relations as envisaged under the NAFTA, the Canadian private sector is preparing to position itself effectively in this growing market.

The most likely sectors of concentration for Canadian entrepreneurs are mining, agro-industry, food, transportation, environment and tourism development.

Successful Canadian exporters

SR Telecom, Du Pont, Canada Export Award Winner in 1992, Dare Foods, Cansec Systems, Royal Plastics, Garden Grove Produce, Rebound Rig international oil equipment (900,000); Bovar-Western research (1.5. M) instrumentation control of their sulphur recovery units

Chronology:

Note: March 18. (1992). Canada provides Mexico with 1\$ million worth of environmental assistance. [what was the nature of the assistance]

September 17 (1992) Washington, D.C. — Environment ministers of the NAFTA countries agree to establish a Trilateral Environmental commission to explore co-operation on environmental issues.

November 3, 1993 the Canadian Environmental review of the NAFTA is released.

Posted by Joan Russow
Thursday, 16 August 2018 11:46 -

Contact:

Ross Glasgow (Specialist in NAFTA and Climate Change) 9920503

2. Environment Canada

2.1.

2.2. Legal interpretation

John Fried. (943-2803) Specialist in legal interpretation of NAFTA

Preamble is strong on the environment but the preamble carries little weight. No mention of environment in the "objectives". John Fields said that the preamble sets the context but the environmental provisions would be stronger if in the objectives". The document would be a lot stronger on the environment if the environmental provisions had been placed in the "objectives section". To do this the three countries would have to agree to open up the document again. Up until now the countries have refused to do this. [However, with Mulroney and Bush gone, perhaps an argument could be made to open the document up and place the environmental provisions in the "Objective section" ; this could be better than having a separate parallel agreement on the environment"

Body of text:

An important section

Note: Article 906 Compatibility and Equivalence

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1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

Key issues:

extraterritorialism

National security (21-2)

• INTERPRETATION OF NAFTA BY ENVIRONMENT CANADA

"North American Free Trade Agreement: Canadian Environmental Review (October 12)

"North American Free Trade Agreement: Canadian Environmental review, October, 1992.

purpose;

to ensure that the NAFTA would be consistent with Canada's commitment to the protection of the environment and to sustainable development, as set out in the Green Plan, a four point plan was adopted to integrate environmental concerns into each element of the NAFTA decision-making process.

1. ITAC environmental representative were appointed to the International Trade Advisory Committee, and to eight of the Sectoral Advisory Groups on International Trade (SAGIT). These important trade advisory bodies, which include 311 representatives from business, environment, labour and academic, report directly to the Honourable Michael Wilson, Minister of Industry, Science and technology and Minister for International Trade.

the environmental representatives on these committees ensure that environmental

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considerations are taken into account when the ITAC and SAGIT prepare recommendations for the government

(Note; involvement of Sierra Club, and Pollution Probe)

Mid-march 1993 Trilateral talks begin on agreements on labour and the environment

2. Canada's standards negotiators were responsible for ensuring, among other objectives, the continuing right of governments in Canada to establish, to maintain and to enforce environmental standards that reflect Canadian conditions and Canadian priorities. The integration of environmental concerns in the negotiating process is a preventive approach. It sets a precedent that will be continued in future trade agreements. (Intro)

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3. The Minister for International Trade

Bill C-115 an Act to implement the North American Free Trade Agreement;

Note that no environmental legislation, other than pesticide Act, is mentioned in the index

Note in the second whereas which indicates further resolve, the environment is not mentioned specifically

Note in the fourth whereas "it is necessary, in order to give effect to the Agreement, to make related or consequential amendments to certain Acts;" (environmental acts not included- does this mean that they are included or excluded)

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4. NGO perspective (Elizabeth May, Sierra Club)

3. stances of environmental groups.

1. Pollution Probe "work with government on NAFTA"

2. Action Canada "reluctant to work with government"

3. Sierra Club "Use NAFTA to achieve environmental protection"

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