



Commission for Environmental Cooperation of North America



**Regional Workshops on Sustainable Development and Regional
Trade Agreements**

San Jose, Costa Rica and Buenos Aires, Argentina 25-29 April 2005

NAFTA



- Biggest free trade area in world
- 420 million people
- GDP \$13 trillion
- Canada-Mexico-US trade more than doubled in NAFTA's first 10 years



NAFTA and its environmental side agreement (NAAEC)

- Key environmental concerns: pollution havens, chilling effect on stronger environmental protections, scale effects
- NAFTA noted important relationship between trade and the environment
- CEC established to track the relation between trade and the environment
- First trade agreement to link environmental cooperation and trade relations



CEC Mission

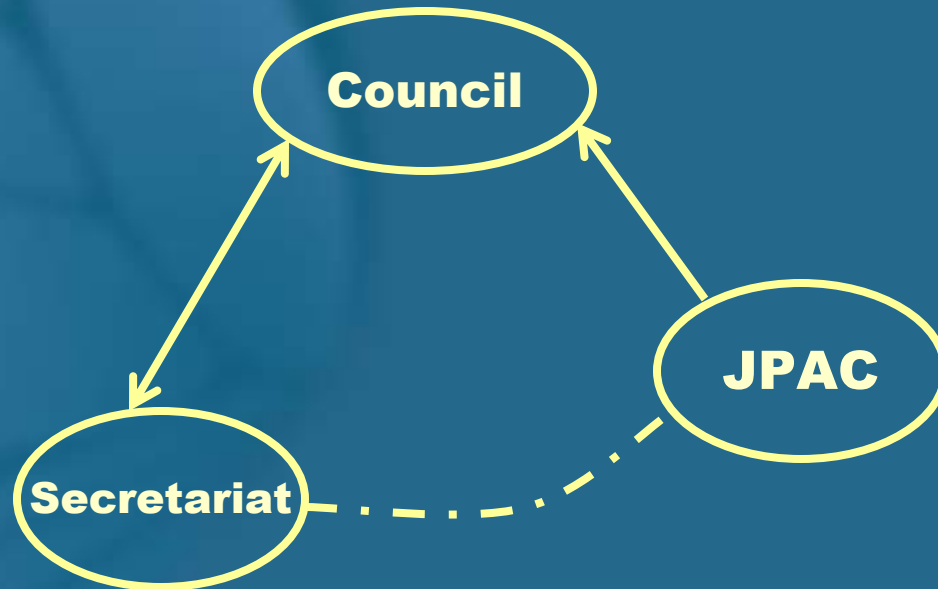
Facilitate cooperation and public participation to foster conservation, protection, and enhancement of the environment...

... In the context of increasing economic and trade links



CEC Structure

- Council
- Secretariat
- JPAC



CEC: Mechanisms and Areas of Work

NAAEC prescribes:

- Party Obligations:
 - High levels of environmental protection
 - Effective environmental enforcement
 - Access to remedies and due process
- Enhanced public participation
 - Submissions on enforcement matters (Articles 14 & 15)
 - JPAC
- Tri-partite environmental cooperation
- Independent Secretariat Reports (Article 13)
- Party-to-party dispute resolution (Part V)



Ten Years of NAFTA and the CEC: Lessons Learned

Dire predictions

- widespread race-to-the-bottom
- pollution havens
- collision of environmental laws with trade disciplines

...have not occurred as feared.

Robust environmental laws do not dampen economic benefits of trade.

Freer trade and sustainable development need not be Incompatible.



CEC: New Priorities for Cooperative Work Program

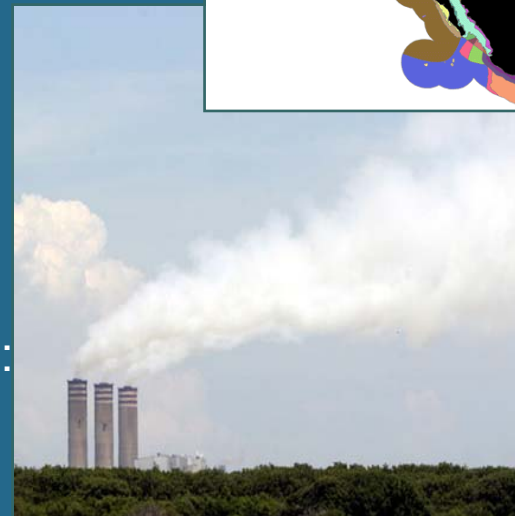
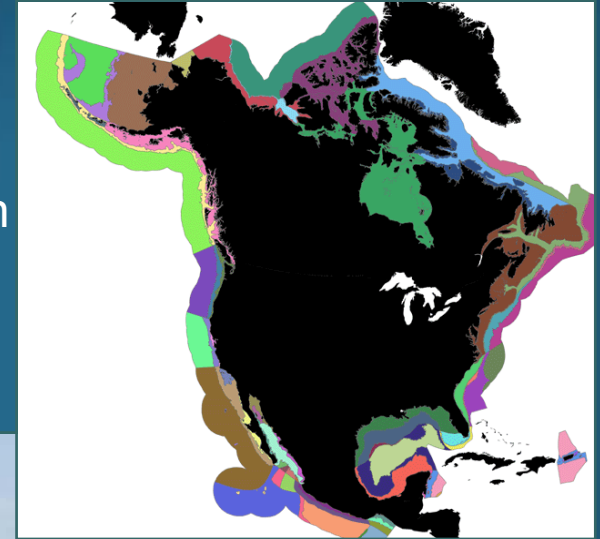
Puebla Declaration (2004):

- Information for decision-making
- Trade and environment
- Capacity building – focus on Mexico



Cooperative activities and reports: Accomplishments

- Annual *Taking Stock* report on PRTRs
- Terrestrial and Marine Species of Common Concern
- Assessing environmental effects of NAFTA
- Cooperation on air quality issues
- Environmental enforcement working group
- Trade in green goods and services: shade coffee
- Sound Management of Chemicals (SMOC):
North American Regional Action Plans
(NARAPs), DDT elimination in Mexico



Independent Secretariat Reports – Article 13

- Effects of Transgenic Maize in Mexico (2004)
- Electricity Restructuring in North America (2002)
- Ribbon of Life: An Agenda for Preserving Transboundary Bird Habitat on the Upper San Pedro River (1999)
- Continental Pollutant Pathways: Long-range Transport of Air Pollutants in North America (1997)
- Report on the Death of Migratory Birds at the Silva Reservoir (1995)



Submissions on Enforcement Matters

How it works

- Submission asserts a Party is failing to effectively enforce its environmental law
- Secretariat determines if submission meets requirements and whether to ask the Party to respond
- Secretariat recommends to Council that a factual record be prepared
- Council votes whether to instruct secretariat to prepare a factual record
- Secretariat develops factual record per instructions
- Parties have 45 days to comment on draft factual record
- Secretariat incorporates Parties' comments as appropriate and provides Council with final factual record
- Council votes on release of final factual record



Submissions on Enforcement Matters

History and Current Status (as of 25 April 2005):

10 active submissions, with 4 factual records in progress

50 submissions so far: 17 *re* Canada, 24 *re* Mexico, 9 *re* United States

10 published factual records: Cozumel, BC Hydro, Metales y Derivados, Migratory Birds, Aquanova, BC Mining, BC Logging, Oldman River II, Rio Magdalena, Molybdenum II

Secretariat has recommended 18 factual records: 15 Council instructions to prepare factual records, 2 Council votes against preparation of a factual record, 1 pending



Submissions on Enforcement Matters

Secretariat administration:

SEM Unit: SEM Director, 2 Legal Officers, 2 assistants

Special Legal Advisors: 3 from each country

Contracts: legal and technical expertise as needed

Key issues

Scope and sufficiency of information

Pursuit of remedies

Pending proceedings

Factual record follow-up

Sensitivities: enforcement and sovereignty



Closing thoughts

The CEC, with 10 years of experience, is a resource for those considering how to address environmental concerns in the context of regional trade agreements.

Variables for other approaches for recourse mechanisms include:

- To whom is it available?
- What subject matter can it address?
- Is it paired with a State-to-State dispute mechanism?
- What degree of independence for participant governments?
- What is the link to follow-up or capacity building?

