

the Establishment of a Border Environment Commission and a North American Development Bank."<sup>41</sup> These institutions will provide additional ways for the two governments to work toward resolving the serious environmental problems that exist along the border. Initially, attention will focus on the most serious public health and environmental needs in the border region: providing clean drinking water, treating wastewater, and managing hazardous waste. Problems outside the border region may also be addressed under the agreement if they have significant transboundary environmental effects.

The Border Environment Cooperation Commission (BECC) will work

with affected state and local governments and with the public to develop and coordinate solutions to environmental problems. It will provide environmental, technical, and financial expertise to projects, but it will not develop or manage projects itself. It will also certify projects for financing by the North American Development Bank, provided they meet appropriate environmental, technical, and financial criteria. BECC will be governed by a binational board of directors—a majority of whose members will come from the border region—that represent state and local governments and the public. An advisory council and certain procedures and requirements will ensure input

from affected communities and the larger public.

The bank will finance environmental infrastructure projects certified by BECC. It will be governed and capitalized by the two governments and will make available approximately \$2 billion to \$3 billion in loans and guarantees. The bank will also supplement existing sources of funding and support governments and investors in raising capital from other sources. Taking into account these new funds as well as existing sources of financing, it is estimated that a total of \$7 billion to \$8 billion in financing will be available over the next decade for environmental infrastructure projects along the U.S.-Mexican border.<sup>42</sup>

## NAFTA'S ENVIRONMENTAL SIGNIFICANCE

By Steve Charnovitz

The people of North America will benefit economically from NAFTA. The trade agreement will increase national income and lead to more efficient production, which will raise the average standard of living in all three countries.<sup>1</sup> Although some aspects of environmental quality are incorporated into the measurement of national income, many are not. Thus, economic analyses of NAFTA do not answer the question of whether NAFTA will be good, bad, or indifferent for the environment.

There are many reasons to believe that NAFTA will be an environmental plus.<sup>2</sup> There are also reasons to question this favorable prognosis.<sup>3</sup> In the absence of comprehensive green accounting or a reliable Ouija board, there is no way one can confidently predict NAFTA's environmental impact. Although some important environmental provisions were included in NAFTA and the side agreements, many issues were excluded. NAFTA, however, was certainly not our only chance to improve the trade and environment linkage.

Because higher-income countries are "cleaner" by some measures than lower-income countries, it is often suggested

that economic growth will lead to greater pollution control.<sup>4</sup> This is an important insight, but it should not be carried too far. Higher income alone does not determine a nation's environmental policy. Political leadership is key. On the day he became president of the richest country in the world, President Bush lamented that "We have more will than wallet."<sup>5</sup> By contrast Mexican President Salinas, from a middle-income country, really became an "environmental president" by raising antipollution spending and toughening enforcement.

The most honest assessment one can give of trade liberalization is that, by boosting national income, it offers the possibility of doing more for environmental protection and remediation. This is significant. But those who state that NAFTA will necessarily lead to a better environment are overpromising.

Although the U.S.-Mexican border has been an environmental disaster area for decades, the NAFTA debate had the salutary effect of forcing both governments to face up to these problems. That alone is a big plus. In addition, the environmental side agreement creates a new, high-level commission. While there were cooperative environmental agreements with Mexico signed during the Carter, Reagan, and Bush administrations, the new commission may be more successful for several reasons, such as its institutional structure and staff support.

Finally, NAFTA contains a provision warning governments against dropping environmental regulations just to attract new investment.<sup>6</sup> Unfortunately, this provision is merely hortatory. It establishes no requirements and cannot be grounds for an official complaint. Still, it is a noteworthy addition to a trade agreement.

Anytime one evaluates an international agreement, it is important to consider the issues excluded. That is especially useful in this case because so many NAFTA supporters exaggerated its environmental significance in the effort to secure congressional approval.

NAFTA has been variously characterized as a "green," "a greener," or even "the greenest" trade agreement. But what does greenness actually mean? Does NAFTA establish tight regional pollution standards? No, NAFTA does not set any environmental standards.<sup>7</sup> Does NAFTA require nations to adhere to environmental treaties the same way it requires nations to adhere to intellectual property treaties?<sup>8</sup> No, it does not.<sup>9</sup> Does NAFTA forbid any environmentally insensitive trade? No again.

To be sure, the Bush administration never claimed that NAFTA would do any of these things. All President Bush promised was, "We can assure the Congress that we will do nothing in the [free

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## Looking Ahead

The preceding discussion highlights the essential environmental elements of the NAFTA package, although there are many more details. Some critics have assailed these elements as not providing sufficient environmental protection, and others have complained that they are too green (for another viewpoint on NAFTA's effect on the environment, see the box below). What is clear is that most of them are unprecedented and are serious attempts to deal with the environmental issues raised by NAFTA. If the environmental aspects of the NAFTA package are well implemented, they will contribute significantly

to protecting and conserving the North American environment generally and to dealing with the environmental effects associated with NAFTA in particular.

The environmental components of the NAFTA package will also have other far-reaching effects. They will undoubtedly influence future trade agreements and trade packages in many different ways, and new approaches and solutions will likely improve on those in the NAFTA package. Just as importantly, while in the process of elaborating the relationship between trade and the environment, the NAFTA countries are also working out at least part of what sustainable development should be—a

task of paramount importance to the world.

NAFTA's normative and institutional innovations, if adequately funded and effectively implemented, will build a pattern of cooperation on international environmental issues and raise expectations about what is possible and appropriate. These innovations also represent, if not a redefinition of traditional notions of sovereignty, at least a refinement of those notions and a development of types of social organization that allow countries to exercise and realize the legitimate aspects of sovereignty in a way that reflects the growing environmental, economic, and political interdependence of the world.

trade agreement] to weaken our environmental laws or to diminish our right to protect the health, safety, and environment of Americans."<sup>10</sup> Even if this promise had been kept, it would seem undeserving of much credit.

Not weakening U.S. laws does not constitute "greenness." If the United States had lost a war to Mexico and NAFTA constituted the peace terms, then retaining the country's environmental sovereignty might be viewed as a success. But a trade negotiation is not a war. The United States entered the NAFTA talks with its environmental sovereignty intact. The NAFTA negotiators, therefore, should not be given credit for "protecting" U.S. standards.

Some critics, like consumer advocate Ralph Nader, complain that U.S. negotiators bargained away the country's environmental sovereignty.<sup>11</sup> Is that true? Any brief answer requires a simplification of very complex provisions.<sup>12</sup>

NAFTA establishes new rules on when nations can apply their internal environmental standards to imports. These rules are slightly tighter than those in the General Agreement on Tariffs and Trade (GATT).<sup>13</sup> While GATT allows nations freely to apply domestic product standards to imported products, NAFTA does not. Under NAFTA, if nations use international standards, like the ones promulgated by the Codex Alimentarius Commission, those standards can be applied to imports.<sup>14</sup> But if nations want to apply their own standards to imports, several new rules must be met. For example, NAFTA requires that food safety

measures be based both on "scientific principles" and on a "risk assessment."<sup>15</sup> Countries may continue to choose their "level of protection"—that is, the maximum risk level they tolerate—but governments must avoid "arbitrary or unjustifiable" differences in such risk avoidance.<sup>16</sup> In other words, NAFTA's objective is "achieving consistency" of such risk levels within each country.

These requirements will probably not undermine U.S. health and safety. But they are more restrictive of environmental standards than are those in GATT. Furthermore, the NAFTA dispute settlement procedure has teeth that GATT lacks.<sup>17</sup> If a NAFTA tribunal finds a U.S. standard in violation, Congress (or the state legislature) must change the law or risk trade sanctions from the country whose exporters are being inconvenienced.

Already, several health laws have been reined in by NAFTA. The NAFTA implementing legislation amended five U.S. import restrictions that were deemed out of conformity with the trade pact.<sup>18</sup> These included laws safeguarding meat and poultry safety and preventing the importation of diseased animals. All five of these laws were permissible under GATT.

Contrary to the view of some commentators, there is no commitment in NAFTA to pursue sustainable development policies. It is true that NAFTA's preamble suggests that the three countries are "resolved to . . . promote sustainable development." Yet surely one has to have a severe case of Pollyannaism to imbue this statement with any significance when it is just one line on one

page of a detailed agreement that says nothing else about sustainable development in the remaining 1,034 pages.<sup>19</sup>

NAFTA also fails to create a trade regime for North America that is more environmentally friendly than GATT.<sup>20</sup> For example, as then-Governor Clinton noted in 1992, NAFTA "contains no mechanism for public participation in defending challenges to American laws if we apply our environmental laws against Mexican products."<sup>21</sup> This and other omissions are especially regrettable given that three out of five GATT environmental complaints lodged against the United States have had either Canada or Mexico as the plaintiff.<sup>22</sup> (The United States has been the plaintiff or defendant in every GATT environmental case.)

Finally, the environmental side agreement failed to achieve many of the goals set out by President Clinton, such as a commission that has independence and the legal power to stop pollution.<sup>23</sup> The new commission has no enforcement power. Moreover, its secretariat has few attributes of independence. It cannot even prepare a "factual" record without the specific permission of two of the three NAFTA parties.<sup>24</sup>

**A**t the first North American Conservation Conference back in 1909, the governments of Canada, Mexico, and the United States declared that "immediate action is necessary to prevent further pollution, mainly by sewage, of the lakes, rivers and streams throughout  
*(continued on the next page)*

## NOTES

1. The text of NAFTA is published in: *Message from the President of the United States Transmitting North American Free Trade Agreement, Texts of Agreement, Implementing Bill, Statement of Administrative Action and Required Supporting Statements*, 103rd Cong., 1st sess., 4 November 1993, H. Doc. 103-149, vols. 1 and 2. The texts of the environmental and labor supplemental agreements and the border finance agreement, discussed below, are published in: *Message from the President of the United States Transmitting North American Free Trade Agreement Supplemental Agreements and Additional Documents*, 103rd Cong., 1st sess., 4 November 1993, H. Doc. 103-160.
2. "General Agreement on Tariffs and Trade," Geneva, 1947, in *United Nations Treaty Series* 55 (1947): 187; and, for a general overview, see P. L. Lallas, D. C. Esty, and D. J. van Hoogstraten, "Environmental Protection and International Trade: Toward Mutually Supportive Rules and Policies," *Harvard Environmental Law Review* 16, no. 2 (1992): 282.
3. See, for example, S. Auerbach, "Raising a Roar over a Ruling: Trade Pact Imperils Environmental Rules," *Washington Post*, 1 October 1991, D1.
4. "Protocol on Substances That Deplete the

Ozone Layer," Montreal, 1987, in *International Legal Materials* 26 (1987): 1550; "Convention on International Trade in Endangered Species of Wild Fauna and Flora," Washington, D.C., 1973, in *International Legal Materials* 12 (1973): 1088; and "Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal," Basel, 1989, in *International Legal Materials* 28 (1989): 657.

5. GATT article XX refers to "(b) necessary to protect human, animal or plant life or health," and "(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions or domestic production and consumption." The GATT negotiators' lack of environmental awareness reflected the lower level of environmental consciousness at that time, of course. "General Agreement on Tariffs and Trade," note 2 above, art. XX.
6. In addition to incorporating GATT article XX, the Canada-U.S. Free Trade Agreement contained provisions on technical standards. See "Canada-U.S. Free Trade Agreement" (articles 1201, 601-03, 607, and 609), Ottawa, 1987, in *International Legal Materials* 27 (1988): 281.
7. For a more detailed discussion of the indirect effects of trade on the environment, see P. Lallas, "NAFTA and Evolving Approaches to Identify and Address 'Indirect' Environmental Impacts to International Trade," *Georgetown International Environ-*

*mental Law Review* 5, no. 3 (1993): 519-64.

8. See, for example, "Factories Along U.S.-Mexican Border Accused of Rampant Pollution in Region," *BNA Environment Reporter* 21, no. 44 (1991): 1941; and J. Ward and G. T. Prickett, "Prospects for a Green Trade Agreement," *Environment*, May 1992, 2.
9. See, for example, J. Bhagwati and H. E. Daly, "Debate: Does Free Trade Harm the Environment?" *Scientific American*, November 1993, 41-57.
10. G. M. Grossman and A. B. Krueger, "Environmental Impacts of a North American Free Trade Agreement" (discussion paper for the Woodrow Wilson School, Princeton University, Princeton, N.J., February 1992), 8-20.
11. For a discussion of these "indirect" effects of trade, see Lallas, note 7 above; and Grossman and Krueger, note 10 above.
12. See, for example, "Canada-Mexico-U.S. North American Plant Protection Agreement," Yosemite, Calif., 1976, in *United States Treaties and Other International Agreements* 28 (1976): 6223; "Treaty Relating to Boundary Waters and Questions Arising Along the Boundary Between the U.S. and Canada," Washington, D.C., 1909, in *United States Treaties* 548 (1909); "Canada-U.S. Agreement on Air Quality," Ottawa, 1991, in *International Legal Materials* 30 (1991); "Mexico-U.S. Agreement for Cooperation on

(continued from the previous page)

North America."<sup>25</sup> Noting that "natural resources are not confined by the boundary lines that separate Nations," the conferees recommended "concurrent measures for conserving the material foundations of the welfare" of North America.<sup>26</sup> The new trilateral environmental commission provides a mechanism for achieving the cooperation called for in 1909 and many times since. Regrettably, the commission was designed mainly for enforcing each party's parochial standards rather than designing the "concurrent measures" needed in all three countries.

The new procedures involving trade sanctions are wedded to an outdated, "command-and-control" mode of regulation. To the extent possible, the new commissions should de-emphasize this aspect of its mandate in favor of promoting more effective environmental taxes and negotiated rulemaking in all three countries. This will require the active involvement of business and environmental groups.<sup>27</sup>

Another weakness in the NAFTA package is the low level of U.S. funding for border cleanup. NAFTA authorizes the creation of a North American Development Bank. Yet analysts who have scrubbed the numbers doubt that the anticipated finance leveraging will occur. The U.S. House Committee on Banking, Finance and Urban Affairs judged the proposal "seriously defective."<sup>28</sup> The best option would be to find a new source of dedicated funds, such as pollution or energy taxes.

Congress also should devise a better

process for considering trade agreements. The "fast track" procedure, now two decades old, was designed for relatively uncontroversial issues. Using it in highly polarized situations runs the danger of abusing democratic norms. Fast track provides for up to 60 days of review in the U.S. House of Representatives. Yet NAFTA was given only seven days.

Trade agreements do not have to be rushed through Congress. To cite one episode, the rapid consideration of NAFTA allowed no time for a hearing on the five health laws altered by the legislation. Although members of Congress's agriculture committees probably knew about these changes, there was little indication in the House and Senate debates that other lawmakers were aware of this.

Congress should also require the establishment of an environmental advisory committee on trade negotiations analogous to the labor advisory committee. This proposal was first broached by environmental groups in 1990, but the Bush and Clinton administrations have resisted it. Nevertheless, Congress has an interest in gaining good advice on the environmental aspects of trade. Another option, recently floated by Harvard University law professor Laurence Tribe, would be to set up a Congressional Office of Environmental Assessment.<sup>29</sup>

Finally, Congress should examine whether the United States meets the requirement in the NAFTA side agreement for judicial procedures that "are not unnecessarily complicated."<sup>30</sup> Recently, the Earth Island Institute was told that

its lawsuit calling for better enforcement of the shrimp-turtle import ban (regarding shrimp harvesting methods lethal to turtles) could only be filed in the Court of International Trade in New York. It is interesting to note that, although the law establishing this court mandates that no more than five out of the eight judges be in the same political party, no balance is required for substantive expertise.<sup>31</sup> President Clinton should consider the environment next time a vacancy occurs on the court.

In conclusion, NAFTA deserves three cheers for what it does for the economy but only a half-cheer for its possible impacts on the environment. The true environmental significance of the NAFTA package is the opportunity presented for innovative leaders in all three countries to begin working together.

1. Of course, some individuals will suffer real losses. These distributional aspects are not discussed here.

2. For example, see U.S. Government, *The NAFTA: Report on Environmental Issues* (Washington, D.C., November 1993).

3. For example, see Sierra Club, *Analysis of the North American Free Trade Agreement and the North American Agreement on Environmental Cooperation* (Washington, D.C., October 1993).

4. For example, see GATT Secretariat, *International Trade 90-91*, vol. 1 (Geneva, 1992), 28-30.

5. U.S. Government Printing Office, *Inaugural Addresses of the Presidents of the United States* (Washington, D.C., 1989), 348.

6. "North American Free Trade Agreement," *International Legal Materials* 32 (1993): 605, art. 1114.2. (This is sometimes called competitive deregulation.)

Environmental Programs and Transboundary Problems," La Paz, Mexico, 1983, in *International Legal Materials* 22 (1983): 1025; and "Mexico-U.S. Agreement on Cooperation for the Protection and Improvement of the Environment of the Metropolitan Area of Mexico City," Washington, D.C., 1989, in *International Legal Materials* 29 (1990): 26. For further treatment of international environmental agreements between Canada, Mexico, and the United States, see "Integrated Environmental Plan for the Mexican-U.S. Border Area: First Stage, 1992-1994" (Washington, D.C.: U.S. Environmental Protection Agency, February 1992), A6-A10.

13. "Integrated Environmental Plan for the Mexican-U.S. Border Area: First Stage, 1992-1994," note 12 above.

14. Office of the President, "Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement" (Washington, D.C., 1 May 1991).

15. *U.S. Code*, vol. 19, secs. 2101 et seq.

16. Office of the President, note 14 above.

17. *Ibid.*

18. *Report of the Administration on the North American Free Trade Agreement and Actions Taken in Fulfillment of the May 1, 1991 Commitments* (Washington, D.C.: U.S. Government Printing Office, 18 September 1992), iv-vi and 113-70 (environment).

ment), iv and 88-91 (worker health and safety).

19. *Review of U.S.-Mexico Environmental Issues* (Washington, D.C.: U.S. Trade Representative, February 1992).

20. "National Environmental Policy Act," *U.S. Code*, vol. 42, sec. 4321.

21. The environmental reviews of NAFTA did not comply with the National Environmental Policy Act. In *Public Citizen v. United States Trade Representative*, 5 F. 3d 549 (D.C. Cir. 1993), the U.S. Circuit Court for the District of Columbia held that the completion of negotiations on NAFTA (and presumably its submittal to the president) is not "final agency action" within the meaning of the Administrative Procedures Act and, thus, that the court had no jurisdiction to hear a challenge based on the National Environmental Policy Act.

22. *Report on Environmental Issues*, reprinted in H. Doc. 103-160, note 1 above, page 143.

23. Lallas, note 7 above, page 540.

24. The following discussion summarizes very complex provisions. For fuller treatments of those provisions, see S. Charnovitz, "NAFTA: An Analysis of Its Environmental Provisions," *Environmental Law Reporter* 23 (1993): 10067; and Lallas, note 7 above, page 519.

25. The Uruguay Round, which involved more than 100 countries, began in 1986 and was finalized on 15

December 1993. NAFTA negotiators took the Dunkel text as a starting point for chapters 7B and 9 and diverged from it.

26. See NAFTA art. 102, reprinted in H. Doc. 103-149, note 1 above.

27. *Ibid.*, Preamble.

28. *Ibid.*, arts. 712(2), 904(2), 722, and 913.

29. Mickey Kantor, letter to John Adams, executive director of the Natural Resources Defense Council, 13 September 1993.

30. GATT article XX reads in part: "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: . . . (b) necessary to protect human, animal or plant life or health; . . . [or] (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption." For a general discussion of article XX's treatment of environmental issues, see J. Jackson, "World Trade Rules and Environmental Policies: Congruence or Conflict?" *Washington and Lee Law Review* 409 (1992): 1227.

31. See NAFTA art. 2102, note 1 above. That article provides in part: "The Parties understand that the measures referred to in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible resources."

32. *Ibid.*, art. 2005(3).

33. Negotiation of a trilateral environmental agreement had actually begun in the fall of 1992, pursuant to a statement by the environmental ministers of the three countries issued 17 September 1992. The post-transition negotiations had a much more ambitious vision of the agreement, however, and so the negotiations can most accurately be viewed as beginning anew.

In summer 1992, the United States and Mexico had agreed to a bilateral agreement on environmental cooperation. "Agreement Regarding the Strengthening of Bilateral Cooperation through the Establishment of a Joint Committee for the Protection and Improvement of the Environment," in *Report of the Administration on the North American Free Trade Agreement and Actions Taken in Fulfillment of the May 1, 1991 Commitments*, note 18 above. That agreement remains unsigned as of the date of this writing.

34. "North American Agreement on Environmental Cooperation," art. 5, in *Message from the President of the United States Transmitting North American Free Trade Agreement Supplemental Agreements and Additional Documents*, note 1 above.

35. *Ibid.*, art. 3.

36. *Ibid.*, arts. 4, 6, and 7.

37. *Report on Environmental Issues*, note 22 above, pages 18-19, states: "the Secretariat . . . will assist the Council in conducting an ongoing consideration of the environmental effects of the implementation of the NAFTA. . . . (Env. Article 10.6)."

38. "North American Agreement on Environmental Cooperation," arts. 15(2) and 15(7), in *Message from the President of the United States Transmitting North American Free Trade Agreement Supplemental Agreements and Additional Documents*, note 1 above.

39. *Ibid.*, art. 45(2).

40. *Ibid.*, art. 24(1).

41. *Message from the President of the United States Transmitting North American Free Trade Agreement Supplemental Agreements and Additional Documents*, note 1 above.

42. For a more complete discussion of the bank and BECC, see *Report on Environmental Issues*, note 22 above, pages 22-24.

7. NAFTA articles 713.1 and 905.1 (note 6 above) mandate the use of certain international product standards, but there are numerous caveats.

8. See NAFTA, note 6 above, article 1701. Intellectual property includes patents, copyrights, trademarks, etc.

9. But NAFTA article 104 (note 6 above) allows nations to follow listed environmental treaties in certain circumstances.

10. House Committee on Ways and Means, *Report of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement*, letter from President Bush to Congress, dated 1 May 1991, 102nd Cong., 1st sess., 1991, Committee Print 102-10.

11. See, for example, R. Nader et al., *The Case Against Free Trade* (San Francisco, Calif.: Earth Island Press, 1993).

12. For a detailed comparison of GATT and NAFTA rules, see S. Charnovitz, "The Regulation of Environmental Standards by International Trade Agreements," *International Environment Reporter* 16, no. 17 (1993): 631-35.

13. This discussion applies to the existing GATT rules. The Uruguay Round of GATT approved last December has even tighter rules than NAFTA, but they will not go into effect until July 1995 at the earliest. Some commentators credit NAFTA with "greenness" because it does not discipline environmental standard-setting as tightly as the new GATT would.

14. NAFTA, note 6 above, articles 713.2 and 905.2.

15. *Ibid.*, article 712.3.

16. NAFTA, note 6 above, article 714.3(b). This obligation only applies where such differences result in arbitrary or unjustifiable discrimination against a good of another party or constitute a disguised restriction on trade.

17. The new GATT agreement, to be signed in April, would put the same teeth in GATT's dispute settlement after July 1995.

18. Public Law 103-182 §361.

19. But NAFTA article 915 ("Definitions") indicates that sustainable development may be a legitimate objective (see note 6 above).

20. For further discussion, see S. Charnovitz, "NAFTA's Social Dimension: Lessons from the Past and Framework for the Future," *International Trade Journal*, Spring 1994.

21. Bill Clinton, "Expanding Trade and Creating Jobs" (speech delivered at North Carolina State University, Raleigh, N.C., October 1992), as reprinted in R. Dobell and M. Neufeld, eds., *Beyond NAFTA: The Western Hemisphere Interface* (Lanzville, B.C.: Oolichan Books, 1993), 192.

22. The three cases were "United States—Prohibition of Imports of Tuna and Tuna Products from Canada" (1982), "United States—Taxes on Petroleum and Certain Reported Substances" (1987), and "United States—Restrictions on Imports of Tuna" (1991). These cases appear in GATT's supplemental volumes 295, 345, and 395 of *Basic Instruments and Selected Documents*. The European Union is the plaintiff in two environmental complaints currently before GATT and was a coplaintiff in the Superfund case.

23. For a comparison of the Clinton administration's initial proposal to what was actually achieved, see M. E. Kelly, *NAFTA's Environmental Side Agreement: A Review and Analysis* (Austin, Tex.: Texas Center for Policy Studies, September 1993).

24. "North American Agreement on Environmental Cooperation," *International Legal Materials* 32 (1993): 1480, art. 15.

25. L. Havemeyer et al., *Conservation of Our Natural Resources* (New York: MacMillan Company, 1938), 536.

26. *Ibid.*, 535.

27. For a proposal for a problem-solving commission, see S. Charnovitz, "NAFTA's Link to Environment Policies," *Christian Science Monitor*, 21 April 1993, 19.

28. House, *North American Free Trade Agreement Implementation Act*, 103rd Cong., 1st sess., H. Rept. 103-361, part 2, 2.

29. Senate Committee on Environment and Public Works, *The National Environmental Policy Act and the North American Free Trade Agreement*, 103rd Cong., 1st sess., 22 July 1993, 13-14, 28.

30. "North American Agreement on Environmental Cooperation," note 24 above, article 7.1(d).

31. *U.S. Code*, vol. 28, sec. 251.



MARCH 1994

VOLUME 36

NUMBER 2

U.S. \$3.95/Canada \$5.25

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