

TRADE AND THE ENVIRONMENT

The linkages between trade and the environment are at the heart of the [North American Agreement on Environmental Cooperation](#) (NAAEC; the Agreement). The adoption of NAAEC and the creation of the Commission for Environmental Cooperation (CEC) responded, among other things, to concerns that free trade in North America would trigger a downward spiral of weakening environmental laws and lax enforcement in order to attract investment and gain trade advantages. Through NAFTA and NAAEC, Canada, Mexico and the United States committed to cooperating to promote sustainable development in North America, to achieving high levels of environmental protection and to enforcing their own environmental laws effectively.

Among its objectives, the Agreement aims to avoid creating trade distortions or new trade barriers.¹ [Article 10.6](#) of NAAEC mandates the CEC Council to cooperate with the NAFTA Free Trade Commission (FTC) to achieve the environmental goals and objectives of NAFTA. Part Five of NAAEC establishes a [consultation and dispute resolution](#) process for the Parties to the Agreement regarding a potential persistent pattern of failure by a Party to effectively enforce its environmental law. The dispute resolution process may include imposing a monetary enforcement assessment and the suspension of NAFTA benefits.²

At the same time, NAFTA introduced an investor-state mechanism for the settlement of investment disputes related to alleged unequal treatment or expropriation ([NAFTA Chapter 11](#)). This process may result in monetary awards to investors where a host government is found to have breached its investment obligations. NAFTA's Chapter 11 has been criticized for allegedly threatening environmental, and other, laws and regulations.³

As summarized below, over the almost 20 years of its existence, the CEC has consistently explored trade and environment linkages through expert analyses, collaborative initiatives and public discussions. Cooperation between the Council and the NAFTA FTC has not been a major focus, however, nor has the NAAEC Part V consultation and dispute resolution process ever been used.⁴ There have been 33 NAFTA Chapter 11 complaints against [Canada](#), 17 against [Mexico](#) and 16 against the [United States](#). Several Chapter 11 disputes have involved environmental issues.

Assessing the Environmental Effects of Trade

In 1999, the CEC published an [analytic framework for assessing the environmental effects of the North American Free Trade Agreement](#).

¹ NAAEC, [Article 1\(d\)](#).

² NAAEC, [Articles 34.5 and 36](#) and [Annex 34](#).

³ For example: <http://canadians.org/trade/documents/NAFTA-chapter11.pdf>;
http://www.rmalc.org.mx/tratados/tlcan/comunicados/comunicado_15_anyos.htm;
<http://www.citizen.org/publications/publicationredirect.cfm?ID=7076>.

⁴ The Agreement (Article 28) also calls for the Council to establish "Model Rules of Procedure" for the dispute resolution process. These rules have not been produced to date.

Between 2000 and 2008, the CEC held four North American [symposia](#) aimed at improving the understanding of the environmental effects of free trade and related economic growth in North America, as well as at identifying opportunities for further integration between environmental and trade policies.

- a) The First Symposium, held in 2000, focused on assessing the linkages between trade and the environment. The [papers presented](#) assessed the impacts of NAFTA on freshwater, fisheries, forests, hazardous wastes and domestic environmental laws. In 2002, the CEC Secretariat published [Free Trade and the Environment: The Picture Becomes Clearer](#).
- b) The [Second Symposium](#), in 2003, examined the environmental impacts of NAFTA in the energy and agricultural sectors. Following this symposium, JPAC provided Advice to Council [03-02](#).
- c) The [Third Symposium](#), held in 2005, assessed the environmental impacts of investment and economic growth.
- d) The [Fourth Symposium](#), in 2008, concentrated on the services sector.

[Lessons Learned from CEC's Trade and Environment Symposia](#) (2008)

In conjunction with the Fourth North American Symposium on Assessing the Environmental Effects of Trade, the CEC convened an experts roundtable to explore its future areas of work in light of emerging trade and environment issues. The experts roundtable convened on 24 April 2008: [Experts Roundtable—Positioning the CEC's Work on Trade and Environment Linkages for the Next Decade](#) (2008). The [roundtable report](#) summarizes the discussions that were focused around the question, how can the CEC find its niche, remain relevant and provide added value to North American integration in the upcoming decade?

The NAFTA Environmental Effects projects, although under slightly different titles, have been implemented every year since 1995. For example, in 2008 the CEC began a project entitled [Environmental Assessment of NAFTA](#) to understand new approaches to the ongoing assessment of the environmental effects of trade liberalization in North America. A 2011 draft report summarized available information on the environmental effects of NAFTA, identified gaps, and prioritized data needs concerning information about the environmental effects of trade liberalization in North America: [Environmental Assessment of NAFTA by the Commission for Environmental Cooperation: An Assessment of the Practice and Results to Date](#). These projects culminated in 2010 with the creation of a [Panel of Experts \(POE\)](#) to look at [lessons learned and path forward](#).

The CEC has also produced or supported [other publications](#) related to the CEC's work on promoting policies and actions that provide mutual benefits for the environment, trade and the economy across North America.

Green Goods and Services

The CEC has developed a series of online [Green Goods and Services Databases](#) for Canada, Mexico and the United States. These databases are intended to serve as a clearinghouse mechanism that provides transparent information on eco-labeling, certification schemes and other relevant environmental guidelines for coffee, “green” electricity and sustainable tourism.

- [Coffee Certification Program Database](#)

- [Electricity and Environment Database](#)
- [The Sustainable Tourism Resource Database](#)

The [North American Green Purchasing Initiative](#) (NAGPI) researched green procurement in North America and found that both public and private institutions are identifying and measuring the benefits of their green procurement programs. From 2002 to 2005, NAGPI developed a suite of buyers' guides, case studies and other [resources](#) on green procurement.

Other 1994–2010 Projects

[Supporting Sectoral Environmental Sustainability and Competitiveness](#) – An integrated report on Environmental Sustainability and North American Competitiveness was to have been made available to the NAFTA Parties. In December 2008, the CEC held a [North American Workshop on Environmental Sustainability and Competitiveness](#) to explore the relationship between environmental sustainability and competitiveness from a North American perspective, and identify opportunities for regional cooperation.

[Trade, Transportation and the Environment](#) – Key activities of this project included an evaluation of the environmental performance of a selected trade corridor and exploring options for intermodality in order to reduce greenhouse gas (GHG) emissions from freight transport. Governments from all levels could support the implementation of the framework developed in this pilot project, which should be applicable to other trade corridors in North America. On this matter, JPAC provided Advice to Council [01-01](#).⁵

[Enhancing the Production and Use of Renewable Energy](#) – This project aimed to promote policies and actions that provide benefits for the environment, trade and the economy, and encourage sustainable consumption, production and trade of Renewable Energy in North America. A [Guide to Developing a Community Renewable Energy Project](#), as well as case studies, expert reports and other [resources](#), was produced under this project. In November 2005, JPAC held a meeting focused on [renewable energy](#).

[Conserving Biodiversity through Trade](#) – This project sought to enhance the availability and quality of information on best practices and analysis of methods to harness emerging green market opportunities, with a focus on [shade-grown coffee](#) and [sustainable palm](#), and issued the report entitled [In Search of a Sustainable Palm Market in North America](#) (2002).⁶

In November 2006, JPAC hosted a [Roundtable on Conservation and Trade](#) and provided Advice to Council [07-01](#).

[Greening the North American Auto Industry](#) – From 2006 to 2009, the CEC sponsored an initiative to support the creation of a North American Suppliers' Partnership for the Environment in the auto industry to promote policies and actions that provide mutual benefits for the environment, trade and the economy.

[Supporting the Growth of Green Building](#) (2010) – Following the 2008 [Independent Secretariat Report on Green Building](#), this project aimed to increase understanding of the potential of

⁵ A separate *Backgrounder* on climate change and energy provides further information on these topics.

⁶ A separate *Backgrounder* on biodiversity conservation provides further information on these topics.

harmonized green building energy efficiency standards to promote market development, innovation and facilitate trade in this industry.

[Trade Flows of North American Used Electronics](#) – In December 2009, the CEC completed a feasibility study to evaluate different methodologies that could be used to characterize or quantify/qualify the flow of used electronics equipment in North America. A validated framework and methodology to analyze flows of used electronics is scheduled for publication at the end of 2013.

[Greening Supply Chains in North America](#) – Through 2005–2010, the CEC implemented its *Puebla Declaration* mandate to help strengthen the capacity for sound environmental management across North America through the development, focusing on Mexico, of an eco-efficiency model, exploring win-win opportunities for financial gain.

CEC's 2010–2015 Priorities: Greening the Economy in North America

Over the 2010–2015 period, Canada, Mexico and the United States intend to focus cooperative work through the CEC on positive steps towards building a North American economy that minimizes the potential negative environmental impacts of economic growth, while enhancing the competitiveness of key industrial sectors in North America.

Fora and projects include the following:

[North America's Energy Market: Aligning Policies and Managing Carbon](#) – In March 2010, industry leaders and experts explored issues related to public energy policies and regional energy markets. Following the meeting, JPAC provided Advice to Council [10-02](#).

[Sound Management of Electronic Wastes in North America](#) – This project aims to quantify and characterize imports and exports of these used electronics, providing decision-makers with information they can use to develop and implement policies and strategies that will better address this problem on a North American scale. In February 2011, the CEC hosted a [Workshop on E-waste Recycling and Refurbishing](#). In connection with this project, JPAC held the forum [Managing E-waste in North America: A Public Forum](#) (June 2011) and provided Advice to Council [11-03](#).

The CEC established an [ad hoc advisory group](#) to provide advice and strategic guidance to the Secretariat related to the Auto Supplier's partnership, on [Improving the Economic and Environmental Performance of the North American Automotive Industry Supply Chain](#).

Other Related JPAC Public Meetings:

- [Greening the Economy in North America](#) (November 2010). Following the meeting, JPAC provided Advice to Council [11-01](#).
- [Round Table Discussion on Sustainable Freight Transportation in North America](#) (April 2011)
- [Addressing the Cross Border Movements of Chemicals in North America](#) (November 2011)
- [North America's Energy Future: Powering a Low-carbon Economy for 2030 and Beyond](#) (April 2012)
- [Greening North America's Energy Economy](#) (April 2013)

Cooperation between the CEC and the NAFTA Free Trade Commission

As noted above, Article 10.6 of NAAEC mandates the CEC Council to cooperate with the NAFTA FTC to achieve the environmental goals and objectives of NAFTA. Since 1994, there have been eleven meetings between trade officials and environment officials. The last one was held in Morelia in 2007. There have been no meetings between the NAFTA FTC and the CEC Council.

JPAC Advice to Council on the relationship between the CEC and the NAFTA FTC, and related matters:

- [98-08](#) Article 10(6) of the North American Agreement on Environmental Cooperation
- [99-08](#) Article 10(6) of the North American Agreement on Environmental Cooperation (NAAEC): Process for Cooperation between the Council of the Commission for Environmental Cooperation (CEC) and the North American Free Trade Agreement (NAFTA) Free Trade Commission (FTC)
- [01-02](#) Free Trade Area of the Americas Agreement (FTAA)

Council Statements on the relationship between the CEC and the NAFTA FTC, and related matters:

- [1996](#) – “The Council agreed to seek a joint meeting with trade ministers of the three countries to review the North American experience towards integrating trade and environment policies. The Council also agreed that senior trade and environment officials from the three countries should meet shortly to explore the possibilities for common ground in advance of the World Trade Organization (WTO) ministerial meeting in Singapore in December.”
- [1997](#) – “A group of trade and environmental officials from Canada, Mexico and the United States will develop recommendations on how the CEC and the NAFTA Free Trade Commission can best fulfill the mandate of the environmental side accord by working together on a number of trade-related activities. The three-year NAFTA Environmental Effects project will report results by the end of 1997. The general objective of the 1997 project was to provide the Council with elements for an analytical approach to assess whether NAFTA’s trade liberalization has influenced the Canadian, Mexican, and the United States economies in ways that have had environmental effects and, to the extent possible, identify any specific environmental effects related to NAFTA. In order to carry on with the side accord’s ongoing obligation in this area, the trade and environment officials group will develop the terms of reference for the 1998 work program on NAFTA Environmental Effects.”
- [1998](#) – The Council adopted “A Shared Agenda for Action,” Of the three major areas of focus, two related to trade and the environment: “[...] The first major area of focus is to pursue environmental sustainability in open markets. Under this topic, the Commission will work to promote trade in environmentally friendly goods and services and explore the linkages between environment, economy and trade. In addition, the Commission will strengthen its ongoing analytical and cooperative efforts in environmental standards, enforcement, compliance and performance. [...] Environment, Economy and Trade Along with the long-term focus on environment and trade set forth in the Shared Agenda for Action, the Council approved specific projects as a first step in fulfilling its goals. These projects, constituting the expanded CEC environment, economy and trade

program, build upon the Council's decision at their October 1997 meeting to strengthen the CEC's work in this area."

- [1999](#) – "The Council noted that the discussions between trade and environment officials on Article 10(6) of the North American Agreement on Environmental Cooperation (NAAEC) have been very useful in elaborating the operational relationship between the CEC and the Free Trade Commission (FTC). Trade and environment officials have also been discussing areas of future joint work with regard to the environment, economy and trade. The Council emphasized the importance of this work and encouraged the ongoing process to move forward. The Council recognizes the sovereign right of governments to legislate in the area of the environment. The Council fully supports and encourages the FTC to continue discussions on NAFTA Chapter 11 (relating to the investor-state dispute settlement process). The Council offers to provide any assistance required by the FTC."
- [2000](#) – "We welcome as an important step forward the joint meeting of the CEC Article 10(6) Environmental and Trade Officials Group and the NAFTA Working Group on Standards-Related Measures to be held on 23 June 2000, in Ottawa."
- [2001](#) – "Advancing environmental goals demands collaboration across sectors and building relationships with key partners. In this regard, we have identified the following initiatives: [...] Consistent with NAAEC Article 10(6), we will explore with our trade counterparts the possibility of convening a joint meeting between the CEC and the North American Free Trade Commission, aiming for 2003. As a first step, we instruct our senior officials to work with their counterparts on an agenda and outcomes for our consideration."
- [2003](#) – "In our 2001 Regular Session, we decided to explore with our trade counterparts the possibility of convening a joint meeting between the CEC and the North American Free Trade Commission. We believe there are trade and environment matters that merit discussion. We thank our officials for their continuing efforts in developing a detailed agenda for a possible trade and environment ministerial meeting. We have requested the NAAEC Article 10(6) working group, at a senior level, to report back to us on a proposed agenda and their work on crosscutting trade and environment issues of concern before the next Council Session."
- [2004](#) – "We want to build on the CEC's recognized expertise on trade and environmental linkages, and to address specific trade and environmental issues more effectively. We will enhance the positive working relationship that has been developed with our trade counterparts to ensure trade and environment policies are mutually supportive. We will continue our work with the NAFTA Free Trade Commission, under the Article 10(6) Working Group, to develop a strategic plan on trade and environment [...]"
- [2005](#) – "Promoting a better understanding of trade and environment relationships is central to the CEC's mission. The Strategic Plan will help us increase our capacity to identify and address trade-related environmental concerns, enhance the relationship between the CEC and the NAFTA Free Trade Commission (FTC) and bring more focus to the work of the CEC. Our goal is to promote policies and actions that provide mutual benefits for North America and we endorsed several initiatives to accomplish this over the next five years. These include: improving our capacity to assess NAFTA's environmental effects; establishing key elements to enhance markets for renewable energy; developing tools and practical approaches to foster green purchasing; developing a North American approach to reduce the cost and harm caused by invasive alien species; and improving enforcement of environmental laws, particularly at our borders."
- [2007](#) – "We also reaffirm our interest in addressing trade and environment in an integrated manner and welcome the discussions of the senior trade and environment officials from the three countries to promote long-term competitiveness and

environmental sustainability in North America and cooperation with the Free Trade Commission of the North American Free Trade Agreement (NAFTA).”

- [2012](#) – “Earlier this year, the CEC Executive Director participated in the meeting of the NAFTA Free Trade Commission. Pursuant to Article 10(6) of the NAAEC, we look forward to working with the Free Trade Commission, through the relevant officials, to ensure ongoing cooperation and communication.”

NAFTA Chapter 11 and the Environment

In March 2003, JPAC held a [Public Workshop on NAFTA's Chapter 11 and the Environment](#). JPAC Advice to Council on this matter included the following:

- [02-04](#) The Commission for Environmental Cooperation (CEC) of North America and the North American Free Trade Agreement (NAFTA) Chapter 11
- [02-09](#) The Commission for Environmental Cooperation (CEC) of North America and the North American Free Trade Agreement (NAFTA) Chapter 11
- [03-01](#) Seeking Balance between the Interests of the Public and Investors in the application of chapter 11 of the North American Free Trade Agreement (NAFTA)

Council Statements on this and related matters:

- [1999](#) – “The Council recognizes the sovereign right of governments to legislate in the area of the environment. The Council fully supports and encourages the FTC to continue discussions on NAFTA Chapter 11 (relating to the investor-state dispute settlement process). The Council offers to provide any assistance required by the FTC.”
- [2002](#) – “We have agreed to: [...] Take the necessary steps to facilitate public input on the work on Chapter 11 of the North American Free Trade Agreement (NAFTA) underway by the Chapter 11 Experts’ Group of the NAFTA Free Trade Commission. We agreed to work with our trade counterparts to arrange a forum where interested parties can express their views on the operation and implementation of the Chapter.”