Lessons of NAFTA for APEC

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Few environmentalists and trade liberalization proponents ask whether it is possible to promote trade liberalization while maintaining or increasing the level of environmental protection. The practice is to keep trade and environmental agreements separate or to integrate them into one system. To keep them separate contemplates the need for conflict resolution, and integration suggests that conflict avoidance is the correct solution. This article argues that the North American Free Trade Agreement (NAFTA) model provides significant lessons for the Asia Pacific Economic Cooperation (APEC) forum's attempts to liberalize trade while protecting the environment. APEC seems committed to separate treatment of environmental issues. This study reviews North America's blend of direct integration and linked but parallel agreements, arguing that whereas some of the balances are not ideal, this approach suggests some solutions to increase APEC's level of environmental protection at the same time that trade is liberalized.

The debate between environmentalists and trade liberalization proponents has usually been framed by two questions: How does trade liberalization harm the environment? and How do environmental protection measures interfere with trade liberalization? Few have asked, Is it possible to promote trade liberalization while maintaining or increasing the level of environmental protection? Seemingly, the only two paths have been to keep trade and environmental agreements separate or to completely integrate them into some whole system. To keep them separate contemplates the need for conflict resolution between them, whereas the integrated approach suggests that conflict avoidance is the correct solution.

There are many aspects of trade liberalization that must be reconciled with environmental goals. The following is an incomplete list of the direct or indirect environmental effects of trade liberalization that should be addressed to maintain or increase the level of environmental protection. Free trade

- promotes economic growth and greater uses of fossil fuel for transportation, which results in increased pollution and consumption of natural resources;
- fosters economic growth, which increases consumption, which causes environmental harm;

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- permits dissemination of environmentally harmful products. Economies of scale combined with a lack of environmental harm cost internalization may lower the price of environmentally harmful goods. This so-called magnifier effect may also allow these goods to have the upper hand due to their current market share;
- allows "dirty" industries to migrate and "pollution havens" to be created to attract them. This will put downward pressure on environmental standards everywhere;
- worsens environmental degradation on a global scale. Expanded trade continues incentives for production of globally polluting goods;
- worsens environmental degradation of the "commons" or "public goods." Expanded trade creates an incentive for the overuse of common property resources;
- creates incentives for increased production of export commodity crops;
- allows some dirty technology to be exported when it becomes obsolete or can no longer comply with domestic environmental regulations;
- allows trade goals to trump environmental principles, undercutting communities' rights to make their own environmental regulatory decisions;
- makes it more difficult to adopt optimal environmental standards.

At the global level, the trade and environmental issues have been kept separate. A remarkable number of stand-alone multilateral environmental agreements were successfully negotiated during the many years it took to complete the negotiations of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). Although this may be very satisfying from the standpoint of addressing environmental issues, it does not resolve the potential for conflict between trade agreements and the international environmental conventions nor conflicts between the trade agreements and domestic environmental laws. Because trade agreements go beyond merely reducing or eliminating border tariffs on goods to address nontariff barriers to trade, it can be expected that there will be conflict with environmental policies. Meanwhile, environmental policy is simultaneously moving beyond compelling the end-of-pipe clean-up of pollution to address pollution prevention as well as to examine production and process methods. In some cases, these new approaches to environmental policy fall into the current international definition of a nontariff barrier to trade. Hence the conflict.

NAFTA and APEC are two different types of institutions, with very different memberships. NAFTA is a legal agreement that is binding and relatively enforceable. It has three members, with the United States providing the overriding rationale for the existence of NAFTA and being the dominant treaty negotiator. APEC, on the other hand, is very diverse in terms of the number of its country members and their cultural and socioeconomic characteristics. Although APEC has defined trade liberalization objectives, it is more like a discussion forum for the coordina-

tion of actions by its members. APEC members act in concert, but unilaterally—much different than the rule of law contractual arrangement that is NAFTA. However, like NAFTA, APEC is predominantly driven by the United States' interests in opening markets for its service industry and investment flows. For the purposes of this study, whereas NAFTA may not be a system that the Asian nations would want to emulate, some of the novel solutions to environmental policy heterogeneity may be of particular interest in that region. At the least, the NAFTA experiences in the area of marrying trade and environmental concerns provide a useful starting point for future trade reform discussions.

It is possible to look to NAFTA and its two environmental side agreements to discern some solutions to regional environmental problems and some resolution of the question of how to liberalize trade while simultaneously improving environmental performance. Some of North America's negotiated solutions could form the basis for concerted unilateral action in the APEC region, even if they are taken on seriatim instead of globally. In addition, if APEC continues to address trade and environmental issues separately, there will inevitably be a conflict between the two key policy areas that will require resolution.

This article is organized into three parts. Following this introduction, Part 1 is a brief background on resolving the trade/environment conflict. Part 2 reviews the environmental provisions incorporated into NAFTA itself. Part 2 also includes an analysis of the two environmental side agreements to NAFTA and the three new environmental institutions they created. Finally, Part 3 concludes with a summary of how the lessons of NAFTA might be applied by APEC.

Part 1: Background—Resolving the Trade/Environment Conflict

Current environmental decision making in North America is led by the United States but incorporates some unique elements from the Canadian and Mexican systems. Whereas the United States and Canada have command-and-control oriented systems, in which regulatory schemes with strict directives and fines for noncompliance and nonattainment predominate, Canada has experimented more with financial or tax incentives for environmental compliance. Mexico has more of a pollution prevention approach, with some command-and-control elements added. Mexico has almost no economic incentives for environmental compliance. All three countries have varying levels of enforcement and success in dealing with pollution and natural resources issues. As a result of the injection of environmental protection issues into the debate over NAFTA, during the past 3 years the three nations have embarked on a joint effort to deal with environmental issues. Included

in this rather young collaboration are environmental protections, which are integrated directly into NAFTA, and the creation of three new institutions to deal with environmental problems (see Part 2).

The North American example differs from APEC. The 18 members of APEC, which include all three NAFTA parties, are not currently negotiating a customs union or free trade area per se. Whereas these types of formal arrangements may be contemplated in the future, it is equally likely that many of the same goals will be accomplished through APEC's voluntary, step-by-step basis. The individual members of APEC have vastly differing environmental policy regimes that reveal gaps between the members that are even larger than in the North American context.

Although environmental issues are slowly becoming more important for APEC's members, they clearly take a back seat to economic development. Most important, with some minor exceptions, environmental decision making on a regional level is nonexistent. Instead, to address environmental issues, APEC is mainly evolving as a vehicle to build capacity from the ground up—that is, to promote cooperation to develop national environmental management capacities. Environmental policy takes the form of concerted unilateral national actions rather than a traditional international soft law cooperation agreement. Thus, environment issues are firmly on a separate track. Unfortunately, the development of environmental policy is no longer a luxury; the press of environmental degradation is making it a necessity. How the APEC region's environmental policy making will be developed is crucial. At present, none of the APEC members, including the United States, want to link environmental performance to trade sanctions within the APEC regime (Zarsky, 1996, p. 3).

STRUCTURAL ADJUSTMENTS FOR UNEQUAL PARTNERS

> Variations in environmental policies from one jurisdiction to the next can arise from one or more of three principle sources: differences in environmental conditions, differences in priorities according to the resources available for environmental protection and clean-up, and differences in values. (Blackhurst et al., 1994, p. 24)

There are many difficulties in reconciling the U.S. legal system's confrontational style and the Latin American and Asian systems' conflict avoidance and cooperation styles. Although there are differences between Latin America and Asia, the more significant gap is between these two regions and the third (which includes the United States and Canada). Finding a common legal structure to address environmental issues that is acceptable to these different cultures may be even more difficult than integrating trade and environment concerns. In fact, full integration may be impossible. In the NAFTA context, the United States could almost dictate its terms to the other parties. Within APEC, the United States is

faced with Japan and China and can thus not be as dictatorial. Separation of environmental issues from trade issues with some loose linkages may be the best possible solution. It is partly in this context that the North American example is helpful in looking at how to proceed in the APEC context. As illustrated in Part 2 of this article, NAFTA allows us to identify some environmental issues that can be linked to trade liberalization.

HOW TO LIBERALIZE TRADE WHILE IMPROVING ENVIRONMENTAL PERFORMANCE

As noted above, there are two ways to address the trade/environment conflict: through separate stand-alone agreements, or through linkage. Linkage can take two forms—the integration of environmental provisions into a trade agreement or the negotiation of parallel environmental agreements that both support and are dependent on the trade agreement negotiated alongside them. Interestingly, NAFTA and its two environmental side agreements demonstrate a blend of all these strategies.

Separation

Separating trade and environmental issues may be the right answer because the trade and environment regimes are very different in nature. Historically, separation has been the rule.

> Each of the many international environmental regimes established over the past 20 years was negotiated separately and linkages to other international regimes were only rarely taken into account. (Von Moltke, 1994, p. 4)

While the Uruguay Round negotiations were under way between 1986 and 1994, a significant number of negotiations regarding environmental issues were separately conducted. Among the resulting environmental agreements were the Vienna Convention, the Montreal Protocol, the Basel Convention, the Bamako Convention, and the Wellington Protocol. Also during this time, the United Nations Conference on Environment and Development (UNCED) took place, which produced the Rio Declaration, Agenda 21, the Convention on Climate Change, and the Convention on Biological Diversity. The conference also led to the establishment of the Global Environment Facility (Von Moltke, 1994, pp. 1-3).

Perhaps the environment is better off without the burdensome entanglements of direct integration of environmental issues into trade agreements. More can be accomplished in a shorter period of time by isolating environmental issues and dealing with them directly in stand-alone agreements than if the issues are left to the trade negotiators. In addition, if environmental issues can be dealt with directly,

perhaps it is best not to risk exposing them to the more powerful and arguably more vested interests involved in trade negotiations, many of which still view pollution as an externality rather than a cost that should be internalized.

There are problems with the approach of negotiating separate trade and environmental agreements, however, which stem from

> incongruent patterns of memberships, that is problems concerning relations between countries which are members of both regimes and countries which are members of only one, typically the trade regime. (Von Moltke, 1994, p. 41)

This incongruent membership is the result of a perceived or real fear that participation in international environmental agreements will limit international competitiveness. In an interesting way, such international competitiveness concerns were major motivations behind the environmental components to NAFTA. The perception that Mexico would have an unfair trade advantage from lax environmental enforcement became the vehicle for the inclusion of environmental protections in NAFTA. Another concern involves the external scrutiny of the environmental impact of trade measures:

> From an environmental point of view, the ecological impacts of trade liberalization should be considered before trade barriers are lowered and environmental policies put in place in tandem with liberalization. (Zarsky, 1995, p. 12)

As early as May 1991, the Bush administration announced (in what became known as the May 1 Commitments) that the United States Trade Representative (USTR) would review U.S.-Mexico environmental issues and that NAFTA would be negotiated in a way that would protect U.S. federal and state environmental laws and regulations as well as certain international environmental agreements. It was at this time that the Bush administration began to discuss dealing with environmental issues on a parallel track. Most of the U.S. government reports issued as a result of the USTR review asserted that whereas Mexico had severe environmental problems, it had good laws. All that Mexico needed was greater effort in the area of enforcement. Its efforts were currently hampered by a general lack of resources, which would be provided when NAFTA's impact on the Mexican economy was felt. The problem was that the answer was circular and did not deal with the potential environmental impacts of NAFTA's trade and investment liberalization. Instead, the trade negotiators relied on the argument of some economists that as income rises, so does spending on environmental issues.

Linkage

A few Multilateral Environmental Agreements (MEAs) directly link trade with environmental protection by banning trade in environmentally harmful materials or endangered species. In addition, NAFTA and, to a much lesser extent, the Uruguay Round of GATT acknowledge the direct linkage of trade and environmental issues in other ways by integrating environmental provisions into the body of the trade agreement that either alter the design of the liberalization process or expose some of the trade provisions to environmental scrutiny.

The linkage can also be expressed through parallel agreements, and the NAFTA regime has two such parallel agreements dedicated to environmental issues. During the presidential campaign in 1992, there was a question whether then-candidate Clinton would support NAFTA or not. In a speech at the University of North Carolina, he announced that he would support it but only if substantial protections for the environment and labor were incorporated into the agreement. When it became clear that no one wanted to reopen the NAFTA negotiations themselves, the decision was made to use parallel or side agreements. Ultimately, because support for NAFTA was very thin, the negotiators were forced to seriously consider environmental issues to gain more votes in Congress (Von Moltke, 1994, pp. 33-34).

Most important, a close reading of the two side agreements shows that environmental protection is secondary to trade interests. One goal of trade liberalization is to create a level playing field for competition. There is thus an emphasis, even in these side agreements, on harmonization of environmental laws, cooperation, resolution of accusations of lax enforcement, and provision of environmental infrastructure to support the trade structures. Only the Border Environmental Cooperation Commission/North American Development Bank (BECC/NADBank) agreement deals with cleaning up the environmental harm of the preexisting border free trade (or maquiladora) zone.[1] In other words, this may be the only part of the NAFTA regime that addresses the environment directly rather than as an element of trade policy.

THE PACE OF TRADE LIBERALIZATION'S EFFECT ON THE ENVIRONMENT

> On the negative side, trade openness subjects national economies to rising market demand and the pressures of international market prices, which rarely include any, let alone full, calculation of environmental damage.

1. There was good reason for this agreement given the extensive environmental degradation in the border region (see Note 17 below). For example, "52% of Maquiladoras generate hazardous wastes, but only 30% have complied with regulations requiring information to be provided to SEDUE about disposal of their wastes, and only 19% are complying with waste disposal laws" (Stanton, 1994, p. 73).

> With environmental degradation simply outside the market equation, market signals do not give information about the true costs of production. As a result, global production and consumption patterns could be grossly inefficient, in both narrowly economic and ecological terms (Zarsky, 1995, p. 5).

As noted above, Mexico rapidly undertook massive unilateral measures to liberalize its trade with the outside world. The NAFTA negotiations were the motivation and were ongoing at a quick pace under fast-track authority. This may have caused a broad shift in production to export-oriented crops and products. Some of these shifts may have caused harm to the environment.

Trade liberalization at the pace seen in Mexico has outstripped the ability of communities to keep up: They cannot build the needed infrastructure for double-digit population growth. Meanwhile, the federal government cannot develop transportation infrastructure to spread the economic impact throughout the country. Mexico City has massive unemployment, yet Tijuana's is at less than 2%. The suddenness of change also affects the ability of civil society to respond. The people who live in the border communities are not given choices to make. Whenever a new maquiladora springs up, a shanty town appears around it regardless of city planning or rules.

The current rate of trade liberalization is not letting change happen gradually and not allowing government and civil society the chance to deal with its impacts. If we look at the GATT example, which is unlike NAFTA or Mexico's unilateral measures, we can see a more gradual, even laborious, process. This more gradual process would lessen the impact of sudden shifts of production by isolating them. In this way, society might be better able to absorb change.

One suggestion for APEC is to handle environmental governance and trade liberalization by sector instead of globally. An official Mexican government report on the state of the environment has argued for incorporating ecological policy into sectoral development programs internally, not just at the international trade level (Urquidi, 1995, p. 8). This is how trade liberalization negotiations are normally conducted anyway, so it might make sense to approach environmental issues the same way. For example, look at one industry, such as trade in energy, and uate ways in which trade can be liberalized and environmental protection improved at the same time.

There may be some difficulties in approaching environmental issues and trade issues by sectors:

> Progress in achieving cost internalization would go a long way towards ensuring that development and trade policies take account of and address environmental consequences. At the same time, there are limitations to cost internalization. It is not useful in cases where the environmental losses

> are irreplaceable, as in the case of species extinction, since it is difficult to price something for which there is no substitute. Furthermore, it cannot accurately reflect costs to future generations, since we have no way of knowing what value they will attach to environmental resources. Nor is cost internalization necessarily useful when costs are extremely high; the magnitude of the future costs involved in ozone depletion, for example, may be so great that for practical reasons the chemicals contributing to the problems should simply be phased out, rather than priced accurately. (Blackhurst et al., 1994, pp. 21-22)

A crucial question to be addressed by trade regimes increasingly will be how cost internalization can be encouraged, particularly in the energy and transport sectors. When trade effects may lead to clearly identifiable irreversible loss or damage, export and import restrictions have usually not been a problem.[2]

Part 2: Lessons From NAFTA—New Structures for Environmental Decision Making in the North America Region

> NAFTA became the first "traditional" trade agreement to attempt to integrate some environmental considerations into the text of the agreement itself. It also demonstrated clearly that where international environmental management is absent or weak, trade agreements will have a hard time avoiding the shoals of environmental concern. (Von Moltke, 1994, p. 34)

NAFTA, the trade agreement among the United States, Mexico, and Canada, was approved by the U.S. Congress in October 1993 and became effective January 1, 1994.

The preamble of NAFTA states that sustainable development is a commitment of the three countries and that the parties will provide for environmental protection, planning, and enhancement of environmental laws.[3] The pact also has chapters specifically designed to preserve the integrity of environmental laws and regulations. However, the focus of NAFTA is on trade, not the environment. Technically, the environment only enters the picture insofar as environmental laws might be viewed as nontariff barriers to trade.

2. For example, see the Convention on International Trade in Endangered Species (CITIES) and Basel Conventions.

3. "Contribute to the harmonious development and expansion of world trade . . . in a manner consistent with environmental protection and conservation . . . promote sustainable development . . . [and] strengthen the development and enforcement of environmental laws and regulations" (NAFTA, 1992, Preamble).

NAFTA Protects MEAs From Trade Challenge

NAFTA protects certain MEAs from trade challenges by asserting that they supersede NAFTA in case of an inconsistency. Whereas this is a major international law accomplishment, it is limited in that only a few conventions are designated.[4] The few agreements listed are the only international environmental provisions that preempt NAFTA, and they only do so if the parties act pursuant to them in a manner "least inconsistent" with the principles of NAFTA (NAFTA, 1992, art. 104). Further, this listing may create the negative implication that treaties not listed can be challenged.[5]

NAFTA Prohibits Reducing Environmental Standards to Attract Investment

NAFTA's somewhat contradictory goals stem from the fierce political pressure that was applied by divergent camps for trade liberalization, on one hand, and greater international environmental protection, on the other. The result is a treaty that appeals to environmental interests in part by prohibiting the weakening of, or the failure to enforce, environmental laws for the purpose of encouraging trade or investment (NAFTA, 1992, art. 104, 906[2], and 1114). Unfortunately, NAFTA failed to provide for enforcement of these provisions and did not deal with already differing laws that might give one jurisdiction an unfair advantage over another. This lack of enforceability may be a nonissue because the average industry's cost for environmental compliance is usually only 1% to 2% of its total operating expenses; other factors, such as tax regimes and labor costs, are far more likely to dictate where a multinational corporation is likely to invest.

4. The treaties currently listed are the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the 1986 U.S.-Canada Agreement Concerning the Transboundary Movement of Hazardous Waste, and the 1983 U.S.-Mexico La Paz Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area (NAFTA, 1992, art. 104).

5. Treaties omitted include, but are not limited to, the 1911 Treaty for the Preservation and Protection of Fur Seals, the 1948 Washington International Convention for the Regulation of Whaling (and its 1956 Protocol), the 1949 Washington Convention for the Establishment of an Inter-American Tropical Tuna Commission, the 1952 Tokyo International Convention for the High Seas Fisheries of the North Pacific Ocean, the 1954 International Convention for the Prevention of Pollution of the Sea by Oil, the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, the 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, the 1973 London International Convention for the Prevention of Pollution from Ships (MARPOL), the 1974 Paris Convention for the Prevention of Marine Pollution from Land-Based Sources, the 1985 Vienna Convention for the Protection of the Ozone, the 1989 Convention for the Establishment of a Latin American Tuna Organization, the 1992 United

NAFTA Sets General, Multilateral Rules on Sanitary and Phytosanitary Measures (SPSs) and Other Standards-Related Measures (SRMs)

NAFTA allows member countries to adopt SPSs[6] designed to protect human, animal, and plant life or health (NAFTA, 1992, art. 712). The SPSs must be nondiscriminatory and based on scientific principles. However, the amount of acceptable risk a member country is willing to take in designating SPSs is a social value.

NAFTA preserves the right of parties to apply standards to the level needed to achieve the level of protection desired (NAFTA, 1992, art. 712). In so doing, NAFTA calls for use of the best method rather than the GATT standard of least trade restrictive. Most important, it is acceptable under NAFTA to adopt environmental measures to avoid risk, even if there is not sufficient evidence of the risk yet shown. In other words, the precautionary principle is institutionalized.

NAFTA also allows parties to adopt other SRMs for "legitimate objectives,"[7] such as safety, protection of human, animal, and plant life, or health, environment, or consumers. In designating SRMs, the role of science is not as central as for SPSs (NAFTA, 1992, chap. 9). SRMs are defined under NAFTA as standards,[8] technical regulations,[9] or conformity assessment procedures.[10]

Nations Framework Convention on Climate Change, and the 1992 Convention on Biological Diversity (not yet ratified by the U.S. Senate).

6. A sanitary or phytosanitary measure is defined as "a measure that a party adopts, maintains, or applies to

1. Protect animal or plant life or health in its territory from risks arising from the introduction, establishment, or spread of a pest or disease;
2. Protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food, beverage, or feedstuff;
3. Protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin, or disease-causing organism or pest carried by an animal or plant, or a product thereof; or
4. Prevent or limit other damage in its territory arising from the introduction, establishment, or spread of a pest, including end product criteria; a product-related processing or production method; a testing, inspection, certification or approval procedure; a relevant statistical method; a sampling procedure; a method of risk assessment; a packaging and labeling requirement directly related to food safety; and a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation" (NAFTA, 1992, chap. 7B, art. 724).

7. Unfortunately, NAFTA failed to address state or local referendums and regulations based on consumer preferences (e.g., a ban on fur from leg-hold traps).

8. A standard means any document "approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a good, process, or production or operating method" (NAFTA, 1992, art. 915).

Specifically, NAFTA requires its parties to (a) use international standards when they are sufficient to achieve legitimate objectives;[11] (b) conduct risk assessments or base SRMs on "available, relevant information"; (c) accept other parties' SRMs as equivalent and compatible with their own, provided that they adequately fulfill their objectives; (d) make conformity assessment procedures as compatible as practicable with those in other territories;[12] and (e) ensure that SRMs do not pose any unnecessary obstacles to trade (NAFTA, 1992, art. 902 and 904).

NAFTA's language on SPSs and SRMs influenced the Uruguay Round final language.[13]

NAFTA Promotes the Harmonization of Environmental Policies and Standards

As discussed above, NAFTA prohibits the lowering of environmental standards to attract investment. Another issue raised during the debate over NAFTA concerns the harmonization of environmental laws. It is generally desirable, from a trade perspective, to harmonize environmental laws across all three NAFTA countries. In this way, a product manufacturer does not have to deal with differing standards and regulations. One product can be sold anywhere. On the environment side of the equation, there are two concerns: first, a fear that harmonization would focus on the lowest common denominator and that harmony would most easily be found at the lowest environmental standard; and second, that harmonization would discourage innovation in environmental regulation. Under NAFTA, only the first concern was addressed. Although upward harmonization is encouraged (NAFTA, 1992, art. 713, 714, 905, and 906), NAFTA offers no incentives for this upward har-

9. Technical regulation means any document that "lays down goods' characteristics or their related processes and production methods, or services characteristics or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a good, process, or production or operating method" (NAFTA, 1992, art. 915).

10. Conformity assessment procedure means any procedure used, "directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration or approval used for such a purpose" (NAFTA, 1992, art. 915).

11. Legitimate objective is defined to include safety, protection of human, animal, or plant health; protection of the environment; protection of consumers; sustainable development; and fundamental geographical or infrastructural factors. Protection of domestic production is explicitly not a legitimate objective (NAFTA, 1992, art. 915).

12. For example, parties must not employ procedural requirements that are stricter than necessary, they must initiate and complete any procedure as expeditiously as possible, and they must process applications in a nondiscriminatory manner (NAFTA, 1992, art. 908).

13. In December 1993, negotiators were able to introduce "some minor environmental provisions into parts of the Round and into the structure of the World Trade Organizations" (Von Moltke, 1994, p. 33).

monization of standards. No provisions are made for capacity building or technical and financial resource transfers to promote or facilitate harmonization. This lack of financial resources for capacity building and compensation for some environmental measures taken in the global interest is one of the most important factors limiting upward harmonization.

NAFTA Provides for Improved Consideration of Environmental Issues in Its Dispute Resolution Procedures

There have been a number of challenges to environmental laws and regulations as nontariff trade barriers under GATT/WTO (World Trade Organization) (e.g., the tuna/dolphin and reformulated gas cases). There also have been some challenges to environmental laws under the U.S.-Canada Free Trade Agreement (e.g., the beer can dispute). To date, no challenges to environmental laws as nontariff trade barriers have been made under NAFTA.

The NAFTA provisions for the resolution of conflicts represent an important departure from those contained in GATT. Under GATT, the burden of proof is on the challenged party to demonstrate that its law is not unduly restrictive of trade; by contrast, under NAFTA, the burden is on the party challenging an environmental law (NAFTA, 1992, art. 723 and 914). In addition, a defending NAFTA party can have any dispute that arises under both NAFTA and GATT heard before a NAFTA panel, which effectively ensures that the defending party enjoys the benefit of any doubt about the purpose or impact of the challenged measure (NAFTA, 1992, art. 2005[4]).

If a challenge to an environmental law involves scientific or technical issues, the NAFTA dispute resolution panels may consult with experts (NAFTA, 1992, art. 2014-2015). These provisions afford governments whose laws are challenged an opportunity to present the testimony of any scientific expert on whom it relied in drafting and enacting the law, provided the opposing party agrees to allow the expert to testify (NAFTA, 1992, art. 2014). Unfortunately, the NAFTA trade dispute procedure still lacks public participation and transparency.

If a panel finds that a state or local measure is inconsistent with NAFTA, that measure is not automatically preempted or invalidated. Rather, the parties are required to reach some kind of resolution that conforms to the recommendations of the dispute resolution panel's final report (NAFTA, 1992, art. 2018). If a NAFTA panel finds a measure to be inconsistent with the treaty, and the parties involved are unable to reach a mutually satisfactory resolution, the aggrieved party is authorized to retaliate by suspending trade benefits to an extent roughly commensurate with the cost to the aggrieved party of the measure found to be in violation (NAFTA, 1992, art. 2019).

THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION (NAAEC, 1993)

The stated goal of the Clinton administration in calling for an environmental side agreement was to make sure that economic growth with Canada and Mexico, as a result of NAFTA, would not come at the expense of the environment. The focus of the environmental side agreement is on conflict resolution, the harmonization of environmental laws to avoid conflicts, and cooperation in the enforcement of current laws; the agreement also provides for the maintenance of a separate independent body to act as watchdog for the environmental law enforcement of the parties. For these reasons, the side agreement will have a significant effect on health and environment issues in North America.

The Commission for Environmental Cooperation (CEC) created by the side agreement is governed by three commissioners. The work program of the CEC will be carried out by its secretariat staff. This staff also will provide technical, administrative, and operational support for the commission and its related committees. The legal staff of the secretariat will review submissions from nongovernmental organizations (NGOs) and individuals who assert that a party to NAFTA is failing to effectively enforce its environmental laws. Finally, the commission is supported by a 15-member Joint Public Advisory Committee (JPAC).[14]

The CEC is thus unique in that it contemplates the United States' yielding a significant leadership role in place of a consensus-based decision-making structure at the commission, the secretariat, and the JPAC levels—even for dispute resolutions.

Despite the name of the commission, its cooperation role is not given great focus in the side agreement nor did advocates of the creation of the institution put as much stock in this aspect of its functions as they put into the more litigious functions contemplated by the dispute resolution, citizen petition, and access to justice provisions. Simply stated, the CEC will have a cooperation function that will include face-to-face communications of the three environmental ministers and tripartite cooperation on the dissemination of information on environmental protection issues, transboundary environmental harm, and natural resources accounting methods (NAAEC, 1993, art. 10, 12-13).

The CEC will work toward upward harmonization of environmental laws in the United States, Mexico, and Canada (NAAEC, 1993, art. 3). From the standpoint of trade liberalization proponents, this function of the CEC was key. It was to be the means to achieve the level playing field

14. The Joint Public Advisory Committee (JPAC) has played a significant role in the implementation of the Commission for Environmental Cooperation (CEC). It has been the key point for much of the public input into the CEC. In addition, the members of the committee have worked very hard to reflect a North American identity by thinking of themselves as representing the continent as a whole rather than their home nations.

by which trade could be made most easy. Some industrialists went so far as to say they did not fear stringent environmental laws as long as they were uniform. Without the CEC's seeking to harmonize action, no one country within North America was as likely to go ahead on a unilateral basis.

Environmental Dispute Resolution, Enforcement, and Sanctions

It was the areas of dispute resolution, enforcement of environmental laws, and sanctions for noncompliance with the side agreement into which the major environmental groups—that, in the end, supported NAFTA—poured their resources. Led by the Natural Resources Defense Council and the Environmental Defense Fund, two organizations heavily staffed with lawyers, these aspects of the side agreement got the most concerted attention.

Government versus government. Formal government-to-government disputes regarding each other's lax enforcement of environmental laws and regulations will be resolved through the CEC. Two of the three NAFTA parties must agree to accuse a third party of lax enforcement. The commission will impanel environmental experts to hear each party's arguments. These experts may conduct hearings similar to the trade dispute resolution procedures in the main trade agreement (NAAEC, 1993, art. 22-36). This is a ground-breaking development in international law to create a formal mechanism for dispute resolution of purely environmental matters. Historically, few environmental regimes have been designed for purposes of dispute resolution (Von Moltke, 1994, p. 49). An even more important international law accomplishment is the inclusion of international sanctions or "snap backs" on trade agreement benefits for the punishment of lax enforcement. According to some analysts, the conflict resolution mechanisms are too limited because they are reached after too many standing and evidentiary hurdles, as well as nonpublic votes by the commission. However, unlike many other international dispute resolution mechanisms, the CEC dispute resolution process has deadlines for submissions of pleadings and evidence, which ensure a relatively short time frame for the resolution of disputes (by international standards).

Private party versus government. The CEC can also investigate and attempt to resolve complaints of nonenforcement of environmental laws (i.e., the governments will be held accountable for enforcement) (NAAEC, 1993, art. 5). Such CEC investigations can be prompted by citizens, NGOs, businesses, and governmental entities (NAAEC, 1993, art. 13-15). To reach this ground-breaking development in international law, the negotiators overcame some, but not all, sovereignty concerns. Unfortunately, the CEC has no subpoena or police powers to conduct its investigations and must rely on the parties and the public for information. In addition, two of the three NAFTA parties have to agree that a factual record of an investigation should be prepared and then after the secretariat prepares the record, a two thirds vote by the council is again required to make it public. This second vote and its potential to limit the CEC's transparency is a rather critical flaw, which, if exercised, would undermine the institution's credibility.

Guarantees for Access to Justice: Private Party Versus Private Party Actions

> Ensuring a right of action to citizens would not be enough on its own if citizens fear that corruption of the system may put their lives or liberty in danger by exercising that right. (Stanton, 1994, p. 79)

In reliance on the tremendous success of third-party litigation in the United States to address pollution problems and natural resources preservation, the environmental groups working with the Clinton administration in the drafting of the side agreement suggested language requiring the NAFTA parties to guarantee citizen suit rights and guarantee access to reasonable remedies for environmental harm. The language is intended to ensure a domestic right of action for those who can show an injury from a failure to enforce environmental laws (NAAEC, 1993, art. 6).

Possible Institutional Weaknesses

The CEC has been criticized for its lack of complete independence and authority, but this weakness is the unavoidable result of compromise and the fear of delegation of sovereignty. Some criticisms include

- the executive director has not been given sufficient authority and independence;
- public access to reports or complaints can be blocked;
- a two-thirds vote of the three commissioners is required to investigate a complaint from a nongovernment source;
- consultation requirements regarding environmental disputes will result in excessive delays;
- the CEC agreement only seeks to promote but does not make a commitment to guarantee the public's right to know;
- there are strict limitations on citizen complaints; and
- there is no provision for amicus briefs.

Evolution of the CEC

At their inaugural meeting in March 1994, the three CEC commissioners[15] decided that the focus of the CEC will include pollution prevention, technology cooperation, and the compilation of a study on the environmental effects of NAFTA. During the 1st year, the emphasis was to be on environmental conservation and the enforcement of environmental regulations. The key goal, because the CEC is part of a trade agreement, is to prevent unfair trade advantages for one country's industry as the result of lax enforcement of environmental laws. The official work program of the CEC, adopted at the commissioners' first meeting, also included

- conservation and ecosystem protection;
- enforcement of domestic environmental laws;
- pollution prevention;
- economic incentives, such as user fees, to reduce pollution;
- technology transfers to help Mexico improve its capacity to inspect and regulate polluters;
- transboundary pollution issues; and
- NAFTA effects and consultation.

During 1995, the CEC issued draft guidelines for submissions under Articles 13 (requests for reports) and 14 (public complaints of lax enforcement of environmental laws). These guidelines outline the showing that must be made for a valid submission, who has standing to make such a submission, and how the submissions will be handled procedurally.

Although the work program includes enforcement as an area of concentration, the expected focus on enforcement/dispute resolution has given way to an emphasis on cooperation/harmonization.

THE BORDER ENVIRONMENTAL COOPERATION COMMISSION AND THE NORTH AMERICAN DEVELOPMENT BANK

The debate over NAFTA worked to bring further attention to North American environmental problems. The seriousness of the U.S.-Mexico border region's environmental crisis, coupled with concerns about increasing environmental degradation under NAFTA, pointed to the need for immediate action to address the situation.[16] Thus, the governments

15. As of that date, the CEC commissioners were Carol Browner, administrator of the EPA; Carlos Rojas Gutierrez, the secretary of Mexico's National Institute of Ecology, Ministry of Urban Development and Ecology (now replaced by Julia Carabias of SEMARNAP); and Sheila Copps, the minister of environment Canada (now replaced by Sergio Marchi).

16. The U.S.-Mexico border region is defined as extending 100 km/62 miles north and south from the border. The region constitutes the most populous and most rapidly growing region of North America. In 1960, the population of the U.S.-Mexico border region was

of Mexico and the United States formally agreed, in November 1993, on institutional arrangements to assist communities on both sides of the border in coordinating and carrying out environmental infrastructure projects (see "Agreement Between the Government," 1993). This agreement furthers the goals of the environmental side agreement to promote growth along the border while reducing negative environmental impacts.

In the November agreement, the governments established two separate institutions:

1. BECC with headquarters in Ciudad Juarez, Chihuahua, Mexico, to assist local communities and other sponsors in developing and implementing environmental infrastructure projects and to certify those projects for NADBank financing.
2. NADBank with headquarters in San Antonio, Texas, capitalized in equal shares by the United States and Mexico, to provide $3 billion in new financing to supplement existing sources of funds and leverage the expanded participation of private capital.[17]

The BECC/NADBank structure shatters many precedents. It is a balanced structure, with equal financial support and equal votes for the United States and Mexico. BECC/NADBank represents the first instance of the United States' sharing equal decision-making and spending power. The United States has normally maintained an upper hand in development banks by tying its larger contributions to equally larger voting rights.

By structure, these entities will be balanced, even-handed, binational, equal membership organizations, and, by promise, they will have sufficient funding to meet their mandates. Those who worked on the creation of the NAFTA environmental institutions were concerned about not repeating the mistakes of the past. First, the BECC was made separate to avoid its being driven by finance considerations only. Second, NADBank was limited to only financing projects certified by the BECC to assure that only sustainable development projects were financed. Sustainable development concepts require that "development today must not undermine the development of present and future generations."[18] This

1 million, and today it is more than 11.5 million. It is nearly impossible for border communities to keep pace with growth and provide adequate infrastructure.

17. Mexico and the United States will each contribute half of the $450 million in paid-in capital and half of the $2.55 billion in callable capital. It has been estimated that leveraging these moneys could produce $20 billion to $60 billion for environmental and social adjustment projects.

18. This definition of sustainable development is from the World Conference on Environment and Development of 1987 (see the Brundtland Report, 1987) and was reaffirmed and made part of the Rio Declaration on Environment and Development. It has been incorporated into the NAFTA regime by inclusion in the preamble of the environmental

means that BECC/NADBank projects must not adversely harm the environment or local culture. At the same time, the projects must improve the quality of life for those living on the border. Neither the Inter-American Development Bank nor the World Bank started out with the express goal of sustainability and thus focused on capital-intensive projects that, in many cases, were detrimental to the environment.

The BECC has a binational board of directors with 10 members, 5 from each country, and decision-making procedures structured to ensure that the views of states, local communities, and members of the public are taken into account. The commission is required to consult with an advisory counsel of 18 members, 9 from each country. The BECC will be managed by a general manager, a deputy general manager, other officers, and a small staff. The total number of employees will be about 18. Each country contributes an equal share of the operating budget of the commission.

The Role of Civil Society

There are two levels for the role of civil society, including NGOs: first, in the creation of the institutions and, second, in the implementation of the institutions. Interestingly, it is not the same group of NGOs and individuals that have been involved in both levels.

Much like the environmental side agreement discussed above, the BECC/NADBank agreement was negotiated in a very short time frame. Again, the Clinton administration called on a small number of national environmental groups to help it design a way to pay for the environmental cleanup along the border and thus quiet a few more critics of NAFTA. The original concept for NADBank can be found in the work of Raul Hinojosa and Carlos Melcher, who had proposed such a development bank for broad-based economic development focused on the integration of the economies of the three NAFTA parties. To a certain degree, the environmental community hijacked this concept and redirected it to finance the construction of badly needed environmental infrastructure along the border. Some of the original concept can still be seen in the so-called domestic window of NADBank, which will make use of 10% of its funds to provide adjustment compensation to communities adversely affected by the trade agreement.

During the implementation phase, the BECC has established procedures for public participation, including written notice and opportunity to comment on general guidelines and on applications for certification of projects. The BECC's annual report has been made available to the public. The board of directors holds public meetings each quarter. Interestingly, during the implementation phase, the larger national environmental groups that were instrumental in creating the institutions have been replaced by more local environmental and development-oriented NGOs and individuals for whom issues related to the border are the primary focus.

side agreement and by inclusion in the sustainable development criteria for certification of Border Environmental Cooperation Commission/North American Development Bank (BECC/NADBank) projects.

Certification Criteria

The BECC has adopted ground-breaking rules for citizen participation, transparency, and capacity building. The BECC certification criteria are on the cutting edge in the field of sustainable development, and it is hoped that their use will enhance the quality of life of those who live on the border now and in the future. The criteria were first adopted in August 1995 by the BECC board of directors following the extensive public review and comment process. They were revised in late 1996 to account for lessons learned during the 1st year of use.

The criteria are utilized by the BECC to evaluate and certify environmental infrastructure projects. To be certified by the board of directors, project sponsors must comply with general criteria and five specific criteria, including (a) environment and human health; (b) technical feasibility; (c) financial feasibility; (d) community participation; and (e) sustainable development.[19]

These criteria, if strictly applied, will ensure real, long-term solutions to many environmental problems in the border region. NADBank meanwhile has issued its fundamental documents, including its Loan and Guaranty Policies and Operational Procedures.

Cooperation Regarding Shared Resources

BECC and NADBank must work with states and local communities, private investors and NGOs in developing effective solutions to environmental problems in the border region, giving preference to projects involving water pollution prevention, wastewater treatment, municipal solid waste disposal, and related projects. In other words, the BECC/NADBank structures are intended to provide public goods. Those affected are often the poorest communities along the border that must function every day without these basic services. It has been established over and again that public works, such as those proposed to be financed by NADBank, are exactly the type of infrastructure that helps to reduce poverty. Moreover, NADBank is supposed to provide these public goods without grants or giveaways; this is a self-supporting lending institution.

Possible Institutional Weaknesses

Despite these positive qualities in the areas of public participation and project certification, concrete projects must be built and pollution cleaned up. The most glaring threat to successfully reaching this goal is

19. This list is based on the revisions adopted by the BECC in November 1996.

NADBank's high interest rates. NADBank is restricted by Congress and the U.S. Department of Treasury to market-based interest rates, rather than concessionary interest rates such as those offered by all other development banks. Market rates, particularly in Mexico, are so prohibitively high that communities cannot afford to take advantage of what the BECC/NADBank structure has to offer. This is the dilemma that must be resolved before we can learn if the NAFTA environmental institutions will live up to their promise.

Evolution of the BECC and NADBank

It has been 3 years since two new U.S.-Mexico border institutions were created to clean up the border environment. Although it is unfortunate that construction has not yet begun on any of the 12 BECC-certified environmental infrastructure projects, NADBank recently announced that funding had been arranged for 4 of the projects. However, the creation and operation of the BECC/NADBank institutions has resulted in some fundamental changes in how environmental issues are dealt with in the border region. The BECC/NADBank requirements of public participation have led to major breakthroughs in the opening of Mexican civil society. They have begun the arduous process of capacity building and democratization of decision making, which, if accomplished, may have a more lasting impact than any sewage treatment plant ever will.

Part 3: Conclusions

> The right question, if NAFTA is the issue, is whether environmental conditions have a better prospect of being improved with NAFTA and its associated environmental institutions in operation or without them. Let us imagine a border area with virtually all the maquilas and pollution that are there now (because most of them would be there with or without NAFTA) and without BECC and the CEC and the broader economic benefits of NAFTA to the two countries. I think that there can be no doubt that the border area would be even worse off in a no-NAFTA situation than it is with NAFTA and with BECC. At the very, very least, it is much too soon to reach conclusions much stronger than my own expression of opinion. Rome was not built in a day, and the border environment will not be cleaned up in a year or two, or even in a decade, and nobody promised otherwise (personal communication, S. Gaines, February 12, 1996).[20]

Although conditions may be worse than 3 years ago, this situation may not be caused by NAFTA. In fact, it is unlikely. Very few changes

20. Sanford Gaines handled environmental issues for the U.S. trade representative from the end of the NAFTA negotiations and through the BECC/NADBank agreement negotiations. A copy of his e-mail on file with author.

have taken place as a result of NAFTA. NAFTA is to be phased in over more than a decade. Meanwhile, the CEC and BECC/NADBank side agreement institutions are just beginning to function. Thus, it may be too early to fully interpret their outcomes. With this caveat in mind, the following is a summary of the lessons to be learned from the NAFTA experience.

WHAT WAS DONE RIGHT IN NAFTA?

- NAFTA preserved the right to implement multilateral environmental agreements. The members of APEC could expand on NAFTA's success by recognizing MEAs and by creating an automatic means of listing new MEAs that will preempt any regional trade arrangements (perhaps as a majority of APEC members sign one).
- NAFTA created new ways to resolve trade disputes involving environmental regulations. APEC members may want to consider adoption of similar procedures to increase the protections for any individual member's environmental regulations that might be undercut by a WTO trade dispute panel if challenged as nontariff barriers to trade.
- NAFTA prohibits the reduction of environmental standards to attract investment. APEC may wish to adopt similar measures to avoid the creation of unfair competition based on a perceived comparative advantage in a lack of environmental regulation.
- NAFTA also urges upward harmonization of standards while preserving the right of the NAFTA parties to adopt new standards including SPSs and SRMs. APEC can look to these provisions as a starting point for the sharing of information on the success of individual members' standards and work toward a "best methods" approach.

WHAT WAS DONE RIGHT IN THE TWO SIDE AGREEMENTS?

- The NAFTA environmental side agreement created new ways to resolve purely environmental disputes. The members of APEC may wish to adopt similar provisions so that a mechanism is in place in the event that one nation must seek to resolve a purely environmental dispute with another APEC member (for example, Japan may need such a dispute resolution mechanism to address acid rain problems caused by China's burning of coal).
- NAFTA's environmental side agreement created domestic citizen suit guarantees. APEC may consider encouraging its members to adopt similar guarantees, which in effect enlist civil society's assistance in curbing environmental abuse.
- The environmental side agreement created the right of private party actions on an international level to address lax enforcement of environmental laws. Again, adopting similar provisions within the context of APEC would enlist civil society's assistance in curbing environmental abuse (in this case in an international context).

- NAFTA and its side agreements created significant mechanisms for public participation in two of its new environmental institutions. For the most part, this is an appropriate follow-through for the participants in UNCED who have signed the Rio Declaration and Agenda 21. For this reason, APEC's members can look to the public participation provisions as one example of how to achieve subsidiarity.
- BECC has created an advanced set of guidelines and criteria for the certification of infrastructure projects that, among other things, incorporates sustainable development requirements. Within the increasingly dynamic APEC region, new investment will necessitate the construction of new infrastructure. For this reason, APEC would do well to consider using a set of guidelines and criteria to evaluate such projects.

A POTENTIAL FOR POLICY CONVERGENCE

First, APEC would do well to examine how the NAFTA regime addresses key environmental provisions. Some are incorporated directly into the trade agreement, whereas some others are built into parallel side agreements. Second, APEC can examine the NAFTA experience from the perspective of what could have been done better. In undertaking these examinations, APEC can consider whether it can use a step-by-step process to gradually adopt some of the environmental promises made in NAFTA and its parallel agreements. Arguably, APEC's members can make these same promises and make the same movements toward improved environmental performance through its open system without a contractual agreement as used in the North American context. In fact, the members can focus and act unilaterally on individual promises with the understanding that NAFTA may provide lessons for a loose framework for APEC's regional environmental promises and actions. In the long term, APEC may need to consider the dispute resolution provisions of NAFTA and its main side agreement to resolve conflicts between trade and environmental policy.

In particular, NAFTA's environmental side agreements, despite their rapid negotiation, do seem to support capacity building through information exchanges, enforcement cooperation, training programs, and scientific collaborations. To the degree that APEC's current path of unilateral concerted action on the environment is pursued, it might find some valuable models and examples in the NAFTA environmental side agreements. In this way, as is happening in North America, APEC could pursue a balanced management of its environmental policy convergence. Perhaps the CEC, or an institution like it, could facilitate APEC's creation of common frameworks, policies, and guidelines for national environmental and resource management.

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References

Agreement between the government of the United States of America and the government of the United Mexican States concerning the establishment of a border environment cooperation commission and a North American development bank, 32 I.L.M. 1545 (1993).

Blackhurst, R., Ferretti, J., Hanson, A. J., Islam, N., von Moltke, K., Ricupero, H.E.R., Runnals, D., Sahnoun, H.E.M., & Witoelar, E. (1994). *Trade and sustainable development principles.* Winnepeg, Canada: International Institute for Sustainable Development.

Brundtland Report: World Commission on Environment and Development. (1987). *Our common future.* Oxford, UK: Oxford University Press.

North American Agreement on Environmental Cooperation (NAAEC), 32 I.L.M. 1480 (1993).

North American Free Trade Agreement (NAFTA), 32 I.L.M. 605 (1992).

Stanton, L. (1994, Fall). A comparative analysis of the NAFTA's environmental side agreement. *West-Northwest,* 2(1), 71-81.

Urquidi, V. L. (1995, October). *Economic and regulatory policy instruments in developing countries, with special reference to Mexico.* Pacific Trade and Development Conference—PAFTAD 22 Environment and Development in the Pacific, Ottawa, Canada.

Von Moltke, K. (1994). *International environmental management, trade regimes and sustainability.* Unpublished manuscript, International Institute for Sustainable Development.

Zarsky, L. (1995, November). *APEC, citizen groups and the environment: Common interests, broad agenda.* Paper presented to Citizens Forum on Trade and Environment, People's Forum 2001 Japan, Nautilus Institute for Security and Sustainable Development, Toronto.

Zarsky, L. (1996, July). *APEC Ministerial Meeting on Sustainable Development.* Toronto, Canada: Nautilus Institute for Security and Sustainable Development.

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