

ENVIRONMENTAL ISSUES

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ENVIRONMENTAL ISSUES

I. Status of Environmental Regulation in Mexico.

A. History.

In the past, Mexico has often suffered criticism for its lack of attention towards the conservation of its natural resources and its environment. The Mexican government's priorities during the past decade aimed instead at achieving industrial growth via new economic policies. As a result, a clear strong need to deal with serious environmental problems finally led the Mexican government to amend its constitution and enact more comprehensive environmental laws. A strong body of regulatory laws was then adopted as a logical and good conclusion.

B. Principal Laws and Regulations.

The Salinas government (1987-1994) brought radical change as environmental protection and restoration became a priority in Mexico. It concentrated on the direct impacts on the environment of new technologies and increasing industrial production. In 1988, the Salinas administration implemented the Ley General Del Equilibrio Ecologico Y La Proteccion Al Ambiente,¹ also known as the "General Law," which replaced a legislation considered inadequate to protect the environment from the ill effects of industrial expansion. Mexico's General Law created the legal structure for the formulation of environmental policy

¹ The General Law of Ecological Equilibrium and Environmental Protection, effective March 1, 1988, Diario Oficial #1 January 28, 1988.

by the National Ecology Institute (INE) and the enforcement of environmental regulations by the Mexican Attorney General for Environmental Protection.

Mexico's body of environmental law compares very favorably with that of the U.S. and in some respects is more stringent. The General Law represents a very rapid rate of progress as it now exemplifies the most advanced and demanding environmental laws in the world.² Nonetheless Mexico's environmental laws remain relatively new and its body of law is still developing.

The General Law protects natural areas, it regulates rational use of natural elements and takes measures to assure environmental protection. It provides for public participation where the Mexican government is obligated to encourage public participation in formulation of environmental policies. This law also establishes measures for control and safety and corresponding penalties for violations. Finally, the General Law defines the authority of SEDESOL, which is the Secretariat of Social Development in Mexico.

The General Law provides for concurrent regulation by federal, state and local government in certain areas, but reserves others to the federal government as, for example, the formulation of general policy and criteria, the regulation of activities related to hazardous materials and waste, and the regulation

² More detailed comparisons of U.S. and Mexican environmental laws can be found in the U.S. General Accounting Office's May 1991 report entitled "U.S.-Mexico trade: Information on Environmental Regulations and environment" 9GAD/NSIAD - 91-227 and in the October 1991 draft "Review of U.S.-Mexico Environmental issues" prepared by the office of the United States Trade representative. Also -See "Regulations to Protect the Environment in Mexico," U.S. Mexico Law Journal No. 73 in 1994.

of highly hazardous activities.³ Under the General Law the following regulations to have been established for (1) environmental impact reviews required of public and private projects (2) air pollution, (3) hazardous waste for water pollution, and (4) noise pollution.

In addition to regulations there are a number of ecological technical standards, the Normas Tecnicas Ecologicas, dealing with auto emission levels, industrial air pollution standards, industrial water discharge standards, standards relating to hazardous wastes and regulations on the transportation of hazardous waste. These are rules adopted by SEDESOL which control the conditions and procedures which must be observed by industry when conducting activities that may be harmful to the environment. The Mexican government has also adopted Official Mexican Norms (NOM) which deal with a wide range of technical environmental standards.

Finally, the Federal Law of Measurements and Standards⁴ was adopted for the implementation of the North American Free Trade Agreement (NAFTA). It establishes standards relating to product and waste measurement and the manner in which these activities are to be performed.

C. Enforcement.

Mexico's laws and regulations apply two types of mechanisms in their protection of the environment: enforcement mechanisms and development

³ Article 5, Sections 1,2,10,19,pp.3-4 General Law - Diario Oficial de la Federacion, January 281988- Gaceta Ecologica, June of 1989.

⁴ Diario Oficial #48, July 1, 1992.

mechanisms. Enforcement mechanisms constitute of (1) regulatory provisions for local and state responsibility for certain matters, (2) requirements for environmental impact studies and (3) ecological standards. The development mechanisms consist of planning, tax incentives, grants and subsidies.

Mexico's enforcement and implementation system is based on a series of permit requirements backed up by inspections. Environmental impact statement requirements must be fulfilled according to Article 28 and 29 of the General Law for authorization for projects subject to approval. The Mexican government maintains control over private and public construction projects prior to their commencement and to maintain control over any activities that have a potential adverse impact on environment. The new companies must therefore present environmental and risk assessment of their projects and must have their SEDESOL permits in order to proceed.

Various penalties may be imposed in the occurrence of non-respect of the General Law or its regulations. For example, temporary or permanent closure, fines or, even, jail. Closure is the most common penalty assessed.

We find three legal categories of penalties: administrative, criminal and civil. Penalties for administrative cases of noncompliance to the general law are fines, facility closing or administrative arrests. The criminal penalties permit SEDESOL to file a criminal complaint with the proper authorities if conduct of an enterprise is suspected to be a criminal violation. Civil penalties consist of sanctions imposed under coordination agreements between the federal and state governments.

There are many facts and statistics which bear out Mexico's commitment to enforcement of its environmental laws. Since the inception of Mexico's new general environmental law through 1991, 1,926 polluting industrial plants were shut down. In 1992, after Mexico reorganized its environmental enforcement activities by creating the Office of the Attorney General for Protection of the Environment under SEDESOL, statistics released by the Mexican government indicate that the Office of the Attorney General conducted more than 4,580 inspections nationwide which led to:

- 3,963 industry citations for some failure to comply
- 714 facilities temporarily or partially shut down
- 105 facilities permanently closed
- Fines or other enforcement assessed against 3,144 facilities.⁵

Border Maquiladoras and non-Maquiladora industry felt the weight of more than 1,050 inspections which led to:

- 942 industry citations
- 121 facilities temporarily or partially shut down
- 22 facilities permanently closed
- Fines or other enforcement assessed against 799 facilities.⁶

⁵ "A Better Mexico, A Better Environment: Environmental Enforcement," p. 1, by the Government of Mexico.

⁶ Supra, p. 1.

Once shut down, plant owners must acknowledge their violation and have an approved plan for compliance in order to have SEDESOL permission to re-open. The posting of a bond is required to insure the required compliance.⁷

D. How to Find Environmental Regulations in Mexico.

Regulations and standards are published in the Federal Official Diary (Diario Oficial De La Federacion) or found in the Ecological Journal (Gaceta Ecologica), copies of which are typically only available in Mexico City. Copies of the more common standards have been translated into English and distributed to a limited extent in legal, consulting and industrial circles.

II. SEDESOL

In 1992, Mexico reorganized its environmental regulatory efforts by establishing SEDESOL, the Secretaria de Desarrollo Social (Secretary of Social Development). It replaced the Secretaria de Desarrollo Urbano y Ecologia (Secretary of Urban Development and Ecology), also known as SEDUE. SEDESOL's responsibilities included environmental policy and enforcement, housing, urban development and infrastructure and included Mexico's popular National Solidarity Program, a wide ranging social program.

To enforce environmental legislation in Mexico, SEDESOL was divided into two main agencies: the National Institute of Ecology (Instituto Nacional de

⁷ (Mexico Environmental Issues by the Embassy of Mexico in Washington, D.C, pp. 25-26)

Ecologica) and the Federal Attorney General's Office of the Environment (Procuraduria Federal de Proteccion al Ambiente).

The National Institute of Ecology dealt with:

- Research, formulation and evaluation of Mexico's environmental protection policies and standards.
- Receipt and evaluation of Environmental Impact Statements.
- Implementation of environmental protection programs.
- Conservation of natural resources.
- Increasing environmental policy expertise at the state level.

The Office of the Attorney General for Protection of the Environment, on the other hand, dealt with:

- Enforcement, including investigation and assessment of penalties.
- Public complaints.
- Support of state and local enforcement.

SEDESOL could require specific industries to install pollution control systems and equipment and require companies to measure and report air emissions and also regulate water quality.

As of December 1st, 1994, SEDESOL's responsibility for environmental regulatory programs, has been transferred to a newly enlarged fisheries ministry to be called the Secretaria de Pesca y Medio Ambiente (PESCA), the Ministry of Fisheries and Environment. This ministry is now responsible for environmental enforcement policies. PESCA will have jurisdiction over other

natural resources, possibly including forest products, but mining appears to remain under the control of SEDESOL.⁸ Zedillo has appointed Julia Carabias Lillo to head this new environmental agency. Prior to this task she was head of INE (Instituto Nacional de Ecologica).

III. Environmental Considerations for Doing Business in Mexico

While site assessments have not been common in the due diligence phase of acquisition in Mexico, they are recommended and are increasingly a part of foreign investment that includes real estate acquisition. The use of environmental representations and warranties and indemnity provisions is also recommended in Mexican business and real estate purchase and sale documentation.

For companies new to Mexico the decision to establish operations in Mexico may trigger application for the environmental impact report requirements of the state or federal government. If the operations of the company are considered to be high risk, then the environmental federal government agency will be the permitting agency and if not the application will be handled by the state environmental authorities.⁹ In the event the industry is not high risk, but produces a hazardous waste, it will be subject to regulation at the federal level as well as the

⁸ Borderlines issue of December 1994, vol.2, no 4

⁹ Article 5, Sections 1, 2, 10 and 19, pp. 3-4, General Law (Diario Oficial de la Federacion, January 28, 1988), Gaceta Ecologica, June of 1989; Article 5, Section 11 and Article 6, Section 4, General Law, supra.; e.g., see also Title 2, Chapter I, Section I, Article 13, p. 9, Periodic Oficial del Estado de Baja California, February 29, 1992.

state level.¹⁰ If the initial environmental assessment or preventive report indicates the operations or construction of a facility could have adverse ecological effects on the environment or violate federal environmental regulations or standards, then an environmental impact report will be required.¹¹ In the event the federal or the state concludes in its review of the environmental impact report that the work or activities are highly risky,¹² a risk assessment will also be required.

Maquiladoras are specifically required to comply with all environmental regulatory requirements by the Maquiladora Decree as a condition of their Maquiladora permit.¹³ A checklist of applicable requirements for Maquiladoras is attached as Appendix 1.

One requirement currently applicable to Maquiladoras that has been a source of business to U.S. environmental service providers is the requirement that hazardous waste which is the product of temporarily imported hazardous material must be returned to the country of origin.¹⁴ The procedural requirements for the return of hazardous wastes are set forth in more detail (as they have operated at

¹⁰ Article 5, Section 20, p. 4, General Law, supra.

¹¹ Regulations to the General Law of Ecological Equilibrium and Environmental Protection with respect to Environmental Impact, Article V (Diario Oficial de la Federación, June 7, 1988), Gaceta Ecologica, p. 34, June 1989.

¹² Supra, Article 6, p. 35.

¹³ New Decree for the Development and Operation of the Export Maquiladora Industry, Article 18, Diario Oficial de la Federación, December 22, 1989.

¹⁴ Article 153, Section 6, the General Law of Ecological Equilibrium, supra, p. 127. See Article 15, New Decree for the Development and Operation of the Export Maquiladora Industry, supra.

the California-Baja California border) in Appendix 2. The return requirement is scheduled to end pursuant to the phase-in of the North American Free Trade Agreement in the year 2000. Mexico's challenge is to ensure that infrastructure exists to deal with the hazardous waste in Mexico.

IV. Business Opportunities.

Opportunities in Mexico for U.S. and Canadian environmental businesses exist today and are being taken advantage of currently. These opportunities existed prior to NAFTA, but are now considerably expanded under NAFTA. U.S. hazardous waste service disposal companies were among the first in the U.S. environmental business community to discover a market in Mexico. U.S. companies have also been successful, in the past, in establishing hazardous waste transport businesses as well.

NAFTA has broken new grounds in lowering trade barriers and thus increasing access for U.S. environmental technologies. NAFTA requires the removal of tariff and non-tariff barriers to U.S. environmental exports. Under NAFTA, tariffs on most pollution control equipment (previously as high as 20%) have been eliminated since January 1st 1994 or will be within five years of NAFTA's implementation.

A. Environmental Technologies Market.

The environmental technologies market consist of goods and services intended to prevent, control and monitor environmental problems ranging from hazardous waste management to analytical and consulting services. The U.S.

Department of Commerce formed in April 1994 the Interagency Working Group on Environmental Exports. The working group found Mexico to be the most promising foreign market for environmental goods and services. The Mexican environmental technology market is expected to expand at about 25% a year to become an \$8 Billion market by 2000.¹⁵

The major needs for environmental goods and services in Mexico include the following:

1. To provide adequate treatment of municipal and industrial effluent -- estimates are that currently there is only a 16 percent capacity;
2. To develop sufficient solid waste disposal capacity -- estimates are that while 75 percent is currently collected, only 40 percent of what is collected is adequately disposed of;
3. To alleviate severe air pollution -- autos are the largest polluter and few industries have pollution control equipment; and
4. To increase capacity to treat hazardous waste -- only 30 percent of the needed capacity to treat hazardous waste exists and disposal is not adequate.

From those needs, it can be seen that there are opportunities for (1) site clean up technology, (2) waste water treatment and potable water supply systems, (3) air pollution monitoring and control equipment and services, (4) hazardous waste treatment transportation and disposal, and (5) municipal solid

¹⁵ From Commerce Secretary for Trade Development.

waste management. While the opportunity may not be equally ripe in all sectors, Mexico is clearly a market for the future.¹⁶

Other opportunities are suggested by the Border Environmental Plan which calls for numerous border infrastructure projects. Furthermore, Mexico's government contracting will be open to U.S. and Canadian contractors under NAFTA over a transition period. U.S. firms will gain access to the Mexican procurement market which includes PEMEX, Mexico's state-owned oil company, and CFE (Commission Federal de Electricidad), the Mexican electric company. Both PEMEX and CFE hold enormous purchasing power in order to comply with new Mexican environmental laws designed to curb pollution.

In addition, many Mexican firms seeking to bid on environmental clean-up projects lack a complete understanding of environmental pollution hazards. They will therefore need U.S. companies' expertise to team with them in order to win the contracts.

The strongest geographical areas of demand for environmental technologies in Mexico are Monterey, Guadalajara, Mexico City, and the state of Mexico. Those areas account for both 50 percent of the country's gross domestic product and 50 percent of its population. The environmental technologies market in Mexico is valued at an estimated \$2.6 billion for 1995.¹⁷

¹⁶ The Environmental Technologies Exports Working Group 1993 reports.

¹⁷ See Commerce Department Report entitled "Mexico: Environmental Technologies Export Market Plan" issued in November 1993 (10 ITR 1964, 11/24/93).

The Mexican market for environmental technologies is one of the leading export opportunities for U.S. companies and better government involvement, communication, assistance and coordination is needed to effectively hold a large market share.¹⁸

B. U.S. Government Programs to Support U.S. Industries' Efforts to Penetrate Foreign Markets.

The U.S. Export Import Bank (EX-IM BANK) provided over \$800 million in overseas environmental project financing for the year 1994. The Bank's new business development group is developing specific finance programs for targeted markets. Its first initiative is the negotiation of a memorandum of understanding with BANOBRAS (Mexican Development Bank) to help provide financing for U.S. exports building municipal waste water treatment facilities in Mexico.

The Trade and Development Agency (TDA) has devoted 50 percent of its grants to environmentally related initiatives. For example, the Agency funded a conference to brief U.S. industry on the results of TDA-funded environmental projects in Mexico.

The Overseas Private Investment Corporation (OPIC) has actively supported the U.S. environmental technology sector. To support U.S. business expansion in America, it organized an environmental investment mission to Brazil, Argentina and Chile. Unfortunately OPIC does not deal with Mexico because the two never signed the required bilateral agreement.

¹⁸ Market Export Plan, Nov. 2nd, Department of Commerce.

C. Mexican Positive Incentives.

Mexico's Government-owned development bank, Nacional Financiera (NAFIN), has been assigned the role of supporting the development in Mexico of an environmental service industry. NAFIN has thus far invested in environmental business venture capital funds and directly in environmental service business start ups. NAFIN looks to make a profit in its investment which should bode well for stable and effective environmental enforcement policies as well.

As another incentive, certain environmental improvement investments may qualify for Mexican tax credits. An additional tax credit incentive may be available to qualifying companies.

D. The Strategy to Get U.S. Firms into Mexico's Environmental Technical Market.

The U.S. must develop new strategies to expand the international competitiveness of U.S. environmental technologies industry. The U.S. must encourage continued technology development and commercialization, and foster new public and private partnerships if it is to sustain a competitive position in the export of environmental technologies. The competition is fierce in the environmental technologies market. However, the U.S. still possesses the greatest market share of technology exports to Mexico. Germany is the U.S.' main competitor, it has committed 3.5 million in 1994 to promote exports of its environmental technologies, thus becoming a strong competition to the U.S. and Canada.

Clinton is expected to press Mexico over the next year to prepare to speed tariff reductions for products for environmental technology exports. The goal of the U.S. government is to discuss with SECOFI (Mexican Secretary of Commerce and Industrial Promotion) to accelerate tariff reductions for environmental technologies within the NAFTA framework. Pressure on Mexico from the U.S. because of the U.S.'own internal political pressures should increase these opportunities.

V. NAFTA and Environmental Issues

NAFTA has successfully established the importance of environmental issues to a greater degree extent than any other trade agreement. NAFTA presents the first instance where environmental issues have been linked to an international free trade agreement, and trans-border international environmental issues. The North American Agreement on Environmental Cooperation (NAAEC) and the Agreement concerning the Establishment of A Border Environment Cooperation Commission and a North American Development Bank constitute NAFTA's environmental side agreements. Three new NAFTA Agencies, which constitute legal institutions, have been created by these environmental side agreements:the North American Commission on Environmental Cooperation (NACEC), the Border Environmental Cooperation Commission (BECC) and the North American Development Bank (NAD BANK). They are intended to deal with primary issues tied to lingering doubts relating to Mexico's commitment to enforcement and the availability of resources to deal with existing and anticipated problems.

A. The North American Agreement on Environmental Cooperation

The North American Agreement and Environmental Cooperation, (NAAEC) was adopted on September 14, 1993 by executives of Canada, U.S. and Mexico. The NAAEC creates new opportunities to address trade-related environmental issues in North America. The agreement provides for an extensive cooperative work plan on environmental issues and standards, and obligates each country to enforce domestic environmental laws effectively and transparently. The NAAEC contains the following sections: (1) objectives, (2) obligations, (3) environmental commission, (4) provisions on cooperation, (5) dispute resolution, (6) general provisions, and (7) final provisions. In addition, it also contains five annexes which constitute an integral part of the accord: annex one: monetary enforcement assets, annex two: Canadian domestic enforcement and collection, annex three: suspension of benefits, annex four: extent of obligations, annex five: country-specific definitions.

1. NACEC

The North American Commission on Environmental Cooperation (NACEC) ¹⁹ was created under the NAAEC and designed to address and resolve environmental issues which will arise between the parties. The NAAEC is unique in International Law, it is composed of the U.S. Environmental Protection Agency (EPA) administrator and the Environmental Ministers of Canada and Mexico. Based in Montreal, the commission is the principle organization for environmental oversight. The commission serves primarily as a forum for

¹⁹ Part Three of the NAAEC.

discussion of environmental policy, and any problems that may arise regarding free trade. Its task also consists of reviewing any alleged failures of NAFTA signatories to enforce environmental law and may recommend sanctions against violating nations.

The NACEC is backed up by citizen complaint mechanisms²⁰ and dispute resolution procedures possibly leading to trade sanctions. The Commission encourages enforcement, compliance and cooperation and calls for extensive information exchange on enforcement.

The NACEC was officially established in 1994, but its first year of real operation is 1995. Its focus is research projects, environmental-data collection and border cooperation. This year the NACEC has begun a series of "brainstorming sessions" between industry, government and community leaders to help plot its course for this year.

The NACEC's future may be affected by Chile's accession to NAFTA as its role might be questioned. The geographic proximity and contiguous ecosystems of Canada, Mexico and the U.S. makes them share some trade and environment concerns that may not extend to Chile.²¹

²⁰ Art. 14(1) (part 5); Art. 36 suspension of benefits.

²¹ BNA International Environment Daily BNA, Inc. January 1st 1995, U.S. Efforts on Climate Change Seen Tied Economy.

B. The Agreement Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank.

This agreement created two new international "bilateral" organizations who will assist the public and private industries in their realization of border environmental projects.

1. BECC.

In response to interest in improving border environmental conditions and infrastructure, the U.S. and Mexico entered into the BECC in November 1993. The BECC, Border Environmental Cooperation Commission, was created to certify environmental infrastructure projects along the U.S. Mexico border for financing by the North American Development Bank and to cooperate with the NAD BANK in other national and international institutions. The function of BECC is to assist states, local government, and public and private entities in both countries to design and finance environmental infrastructure projects in the border region. The BECC certifies the financial and technical feasibility of projects, which will constitute the project's green light. The language of the agreement specifies that funding be used for projects in the areas of water pollution, wastewater treatment, and municipal solid waste; the language specifying these types of environmental infrastructure was used so the monies were not used on projects such as roads and airports, but be concentrated on environmental matters.

The BEEC is governed by a Board of Directors which consists of 10 members, five each from Mexico and the United States. The BEEC contains a

specific provision for broad public participation as well as an Advisory Council to advise BECC's Board of Directors. The BECC's first public session on November 17th 1994 triggered a wave of disappointment as it failed to offer an effective forum for public input. It did not allow sufficient time to business people, state and local government officials and NGO representatives, as to permit real presentations of their ideas. In addition, the BECC's new rules of procedure have been heavily criticized for reducing public input. The next public meeting of BECC officials will be in March 1995, at which time they will decide who will manage the commission. Selecting a general manager has been delayed as board members did not agree whether it should be an American or Mexican. The two countries have finally agreed that a U.S. citizen will lead the BECC and a Mexican citizen the NAD BANK. In the mean time the BECC is governed by two temporary Mexican coordinators.

State and local governments along the U.S.-Mexican border may develop and submit environmental projects for technical review by BECC, which can assemble a funding package from private or government sources or NAD Bank. Although the methods of submitting a proposal for funds and of distributing the funds have not yet been firmly established, private entities and government agencies may simply present their written environmental projects to the BECC which will review and evaluate them. The BEEC is headquartered in the Mexican border town of Ciudad Juarez, Chihuahua, opposite El Paso, Texas.

2. NAD BANK.

The North American Development Bank (NAD BANK), based in San Antonio, Texas began its operations on October 1, 1994. It provides financing for projects certified by the Border Environment Cooperation Commission financing endorsed by the U.S. and Mexico for community adjustment and investment in support of the purpose of NAFTA.

While the primary purpose of the NAD bank is to provide financing for projects certified by the BECC and to encourage private investment, up to 10 percent of its funding may be used for community adjustment and reinvestment as endorsed by Mexico or the United States. The "Community Adjustment and Reinvestment Program" (CAIP) is meant to assist communities which suffer from NAFTA-related effects, such as the relocation of plants. The U.S. expects the creation of the NAD BANK and the BECC will be a boom to U.S. pollution control providers because of the resulting focus on trans-boundary environmental issues and the planned financing of up to \$3 billion in public and private funds to build border environmental infrastructure. Municipalities generally do not have the money to invest in the development of a project proposed in the associated feasibility studies. NAD BANK could develop a technical assistance program which would make available terms of export help in the process.

The NAD BANK is governed by a U.S. manager and a Board of directors which oversees the operations of NAD BANK and approve its budget and all financial operations. The U.S. plans to set up an office in L.A. for the manager.

The first "installment" of NAD BANK's capital shares is expected to be contributed by the United States. Both the U.S. and Mexico are expected to eventually contribute a total of \$450 million, capitalized in equal \$225 million shares by U.S. and Mexico, which will provide \$2 billion to \$3 billion in loans or guarantees for border environmental infrastructure projects and NAFTA- related community adjustment/investment in the U.S.

VI. Trans-Border Environmental Issues.

The Mexican and U.S. have been cooperating since the 1983 La Paz Agreement with respect to border environmental issues. The 1983 La Paz Agreement was signed between President Reagan and then President De La Madrid. The La Paz Agreement established an area of 100 kilometers on either side of the U.S. Mexico border within which the parties agreed to cooperate for the protection, improvement and conservation of the environment. Such cooperation is very important in the Maquiladora industry because of its strong connection to U.S. manufacturing and its proximity to the border. Since the La Paz agreement, five annexes have been added, each of which deals with a specific transborder problem. Under this agreement a positive working relationship has developed between the environmental regulatory agencies of both countries, the EPA and SEDESOL, as each of them act as national coordinators to implement this agreement.

The goal of this U.S. Mexico cooperation is to enhance for both countries enforcement capacities while respecting national sovereignty and

jurisdiction. To serve this purpose the U.S. Mexico Pollution Work Group was created. In the past, the EPA and SEDESOL-SEDUE have also entered into cooperative projects as part of the La Paz agreement with respect to air pollution problems in Mexico City.

A number of other cooperative projects have resulted from this agreement. A U.S. Mexico Cooperative Enforcement Strategy Work Group was created in 1991. Another is one of the most successful projects, the Maquiladora Industries Hazardous Waste Management Manual prepared by the U.S. Mexico hazardous waste work group. The manual is an excellent introductory and working text on U.S.-Mexico transborder environmental issues and laws.

Another very important joint effort is the successful relationship that has developed between the EPA and SEDESOL in connection with training programs for SEDESOL's inspection staff. The EPA and the U.S. Environmental Training Institute (USETI) are part of a special training initiative from Mexico. They have hired a coordinator to USETI activities in Mexico. They offer a permanent training facility and new possible locations are currently being explored. As of October 1994, 600 Mexican inspectors had been trained or were scheduled for training in Mexico. Future training of policymakers in designing and implementing programs to enforce environmental laws and enhance compliance is projected. There has also been training planned for Mexico and U.S. customs environmental officials. The growing network of enforcement cooperation is enhancing efforts in this area. The EPA will also continue to train environmental auditors and enforcement personnel in SEDESOL, Mexico's equivalent of our EPA.

Finally, the most recent U.S.- Mexico cooperative effort is the: Integrated Environmental Plan for the Mexican-U.S. Border Area (first stage -- 1992-1994). The border environmental and infrastructure projects include sewage and waste water treatment plants and municipal solid waste systems.

VII. Environmental Protection as a Trade Issue.

International agreements have long utilized trade measures to protect endangered species and address transnational pollution problems that threaten the "global commons". But now in drafting trade agreements, countries must carefully balance the twin goals of free trade and environmental protection. The environment should not suffer at the expense of international economic development.

One perfect example of collision between international trade and environmental policies is the Mexico vs U.S. Tuna-Dolphin Case. In 1972 the U.S. adopted the MMPA, the Marine Mammal Protection Act, which regulates the domestic tuna fishing industry, limiting the number of dolphins American vessels may kill, and requires foreign fleets to meet U.S. standards in order to export to the United States. Thus the U.S. used a Trade policy to enforce its provisions by mandating the imposition of various embargoes on imports from non-conforming countries.

In 1990, conflict erupted under the MMPA between the U.S. and Mexico. The U.S. cited Mexico's failure to meet the applicable standards for dolphin takings and imposed imbargoes on Mexican yellow fish tuna imports in

accordance with the MMPA. Mexico issued a complaint to the GATT (General Agreement on Tariffs and Trade), which both Mexico and the U.S. are parties to, and requested that the council examine the MMPA for possible inconsistencies with GATT provisions. The council established a dispute settlement panel ("Panel") to consider the complaint. That Panel found the MMPA embargo provisions to be inconsistent with the GATT as it consisted of an import restriction inconsistent with the GATT and could not be protected under the later because its effects were extraterritorial. The MMPA was later challenged a second time under the GATT by the European Union.

The U.S. has not respected either of the GATT panel's decision and has yet to repeal the embargo against Mexican tuna. The Mexican government's Secretaria de Pesca claims that Mexican tuna fisherman have since changed their methods but the embargo remains. Mexico is unable to force the U.S. to remove the ban or to pay compensation for the lost exports because of the one country veto provided by the GATT. There is now talk amongst the GATT members of eliminating that veto but critics predict this will open floodgates to untold numbers of challenges to U.S. environmental and health laws.

This decision from the GATT Panel demonstrates the risk which domestic laws and environmental protection policies will face of being inconsistent with international agreements. This situation confirms the importance of environmental side agreements like the NAFTA ones to assure that all countries party to the agreement agree on preserving their natural resources and protecting the environment. This therefore reduces the need to use international trade policies

as tolls to protect the environment and thereby reduces the risks of international disputes arising from such trade policies.

Some predict a struggle within WTO (World Trade Organization), which superseded GATT on January 1st 1995, over some of the international environmental treaties which contain trade-related provisions.

VIII. Environmental Issues Regarding Chile's Accession to NAFTA

Clinton's administration will ask for fast-track authority early this year to rule on Chile's accession to NAFTA. The Republican leaders have offered their approval provided there are no strings tied to labor and environmental provisions.

Many Democrats want environmental provisions which are an important part of the Clinton Policy. One issue to be resolved is whether Chile will be required to accept the NAFTA side agreements before it can become a partner in the pact. It would be difficult for Chile to enter NAFTA without embracing the environmental side agreement.

Aside from NAFTA, the EPA is currently in the process of drafting a bilateral agreement with its Chilean counterpart, CONAMA (National Environmental Commission) to carry out specific environmental projects. Possible areas of cooperation include training on environmental impact assessment, hazardous waste and pollution prevention. The cooperation between Chile and the U.S. on the draft bilateral pact is entirely separate from any talks to bring Chile into NAFTA.

Chile has already adjusted to acceding to the environmental side deal. It passed a major environmental framework law in March 1994 but CONOMA has yet to develop regulations to implement the new law.

In addition, the new hemispheric integration, decided on during December's Miami summit, poses the same concerns as Chile's accession to NAFTA, as it might also cause harm to environmental issues. The U.S. draft plan of action on trade, to be used as the coordinator of the negotiating exercise, contains the adoption of implementation of policies that improve the condition of labor and the protection of the environment, but Latin American officials noted that inclusion of the language on labor and environmental in the trade section of summit plan of action was likely to be opposed by the Rio group.

Such a link of environmental and neighbor enforcement to trade is thus being questioned and U.S. administration may have to rethink this link if it wants the new Republican-controlled Congress to grant fast track negotiating authority for future trade pacts.

