Chapter V

NAFTA and the role of ENGOs and Communities

The emergence of the global environment as a major issue in world politics has coincided with the rise of NGOs as a major force in the politics of the environment. The place of NGOs in international governance seems nowhere more securely established than in the field of the environmental action (Jasanoff, Sheila, 1997.p.579).

The United Nations gave the NGOs, recognition as the essential contributors to environmental protection for well over a decade. The 1987 report of the World Commission on Environment and Development's report 'Our Common Future,' urged governments 'to recognize and extend NGOs' right to know and access to information on the environment and natural resources; and also they are to be consulted and to participate in decision making on activities likely to have significant effect on the environment; finally, their right to legal remedies and redress when their health or environment may be seriously affected. Then in 1992 in the UNCED conference its confirmed that number of the NGOs had taken their place with states and intergovernmental organization (IGOs), as participants in environmental management. In Rio with the opportunities, showed that they (NGO) had developed extensive skills in scientific and technical exchange, policy making and policy implementation, which supplemented their more traditional roles in campaigning, activism and ideological consciousness rising.

The term NGO can be applied to an enormous range of environmental, from tiny, grassroots coalitions of conservationists or pollution victims to mature, well funded, technically expert multinational organizations with the bureaucratic character and finally without political accountability. (Ibid)

UN definition of an NGO is the term is used here to mean a private, nonprofit organization that is not beheld either to government or to a profit-making organization.
Under the Article 45 of the NAAEC: the NGOs been defined as any scientific, professional, business, nonprofit, or public interest organization or association which is neither affiliated with, now under the direction of, a government.

NGO influence on global environmental politics has been based on one or more of three factors:

- NGOs expert knowledge and innovative thinking about global environmental issues, acquired from specializing in issues under negotiation;
- Their dedication to goals that transcend narrow national or sectoral interests; and
- Their representation of substantial constituencies within their own countries that command attention and that sometimes influence policies and even tight electoral contests.

In the industrialized countries, most NGOs that are active in global environmental politics fall into one of three categories: organizations that are affiliated with international NGOs (INGO), which are NGO with branches in many countries, many focused on domestic environmental issues or research institutes, whose influence comes primarily from publishing studies and issuing proposals for action: example; Friends of the Earth International (FOE), Greenpeace, WWF all are organized on specific set of area.

The second categories of NGOs are the big US Environmental organization all of which have international programs, such as Sierra Club, the National Audubon Society and the National Wildlife Federation, Environmental Defense, Natural Resources Defense conservation etc; which have used legal, economic and regulatory processes to affect national policy and have become very important actors on international atmospheric and climate issues arose in the early 1970s.

Environmental NGOs in developing are concerned only more with the poverty and other development issues as with strictly environmental issues. So they tend to stress issues such as land use, forest management and fishing rights and redistribution of power over natural resources rather than ozone depletion and global warming. (Fisher, Julie (1993), p. 124)
The mainstreaming of the environmentalism into the public consciousness is now an accepted part of policy making in North America (Adams, Chris 2005, 2-3). In fact the environmental movement has been largely responsible for a remarkable growth in public environmental consciousness and acceptance of environmental protection as an essential public policy. Here it show that the linkage between the public, the environment as a policy issue, and policymaking in general. Public participation within the context of interest groups or non-governmental organization (NGOs). So here carried out the context of the environmental NGOs participation in successful policymaking in the CEC as it attempts to get implemented its stated mission. As because of this the NAFTA was considered one of the 'greenest multilateral trade agreements ever concluded because of its heavy emphasis on environmental considerations through the NAAEC and the specific creation of the CEC' (Mol 2001.125-126).

**NGOs and its Influence:**

The environment organization has raised the environmental awareness in public consciousness and the emergence of a green capitalism.

So here focused some mainstream environmental discourses:

*Environmental Organization and Green Politics:*-

Number of different organizations, groups and movements motivated by differing objectives. The big ten groups are the Environmental Defense Fund, Environmental Policy Institute, Friends of the Earth, Izaak Walton League of America, National Audubon Society, National Parks and Conservation Association, National Wildlife Federation, natural Resources Defense council, Sierra Club and Wilderness Society. The big ten had a combined membership of 8 million by early 1990s and a combined budget of $2.50 million. The membership is richer, more affluent, more politically involved and more active in the democratic process.
The environmental groups have differing aims;

a) NGOs influence international regimes in five ways: they may,

- influence the global environmental agenda by defining a new issue or redefining an old one
- lobby or pressure their own or other governments to accept a more advanced position toward an issue, by advancing new proposals, by carrying out consumer boycotts and educational campaigns, or by bringing lawsuits;
- propose entire draft texts of conventions in advance of conferences;
- lobby and participate in international negotiations; and
- monitor the implementations of conventions and report to the secretariat and/or the parities.

b) NGOs also influence international conferences primarily by providing scientific and technical information or new arguments to delegations that are already sympathetic to their objectives. (Carroll, John E. 1998.p.107-108)

c) NGOs can also provide useful reporting services during these conferences:

ECO has been published by NGO at numerous UN sponsored environmental conference since 1972 and provides a combination of news stories and commentary. The Earth Negotiations Bulletin, published by International Institute for Sustainable development (IISD) has provided objective reports of UN environment and development negotiations since 1992

d) NGOs most importantly influence by monitoring compliance with an agreement once it goes into effect. Investigation and reporting by NGO can bring pressure on parties that are violating provisions of an agreement. They can demonstrate the need for more effective enforcement mechanism or creation of mechanism or also help build support for the further elaboration or strengthening of the existing regime rules.
Influencing the structure and policies of major international institutions active in global environmental politics poses a different set of challenges to NGOs. These institutions are GEF, WTO, and NAFTA are considered here.

These institutions have different characteristics that help to explain the degree of success of NGO efforts to influence the policies and structures of each.

NGO successfully influencing the restructuring of the GEF on which both southern and northern NGOs were in full agreement the NGO were highly critical of GEF administered by the World Bank during its 1991-1993, they supported the developing country position for a Secretariat independent of the World Bank and for project approval by a Council of treaty parties. (Young Zeo, 1999, p. 234-267).

In the late 1980s NGOs campaigning for bank reform began to focus on issues of public participation and accountability. About 150 NGO would wide participate in some fashion in a campaign to spur greater openness and accountability and to encourage debt reduction and development strategies that were more equitable and less destructive to the environment. Today, partly as a result of this high profile pressure, about half of the Bank’s lending projects have provisions for NGOs involvement, up from an average of only 6 percent between 1973 and 1988.

Much more difficult still for NGOs is the trade and environmental issues; to which they turned their attention only in 1990. The GATT has one single minded goal, determined half a century ago to reduce tariffs and other trade barriers. The GATT has never had provisions for NGO observers. Environmental activists have been campaigning for increased transparency, participation, and accountability in the WTO, portraying it as a secretive organization lacking in accountability. They argue that NGOs have a crucial role to play in making the world trading system more transparent and accountable. (Esty, Dan 1997)
Environmental NGO in the NAFTA negotiations where, with range of environmental concerns were voiced in the negotiation, the political lobbying and resultant compromises and outcomes. The NGOs influence and inform the policy frame; their voice provided rich alternatives to prevailing ideas and values about trade, development and environmental protection. Also ENGOs made the point clear that the trade, sustainable development and environmental protection cannot be separated from each other in the debate. (Benton & Rennie Short, 1999, p.191)

The North American Free Trade Agreement (NAFTA) was the first free trade agreement between developed countries and a developing country. It is of particular importance in the history of nongovernmental organizations’ (NGOs) involvement with trade policy as different groups from entirely different countries found themselves working to change the same free trade agreement (FTA). Given the considerable differences between the United States, the world’s richest democracy, and Mexico, a developing country (with a one-party political system at the time), it is not surprising that their further economic integration gave rise to concern from NGOs on both sides of the border. Eventually, they had to learn to adapt and work together, creating some of the first effectively transnational groups of NGOs in the process and laying bare some of the tensions between different NGOs’ philosophies when it came to working with the state. As Marcus Noland says “In the aftermath of NAFTA, policymakers can no longer avoid the heated controversies over workers’ protection, human rights, and the environment.” (Noland, M 1999).

From the time that North American ENGOs first turned their attention to proposals to negotiate a continental free trade agreement in the early 1990s, one of their central concerns was that the trade agreement could have a weakening effect on environmental laws, regulations, and standards. The environmental agreement is not the policy accident. It is the response of the cardinal concern of the environmentalist in the NAFTA debate, as they feared that NAFTA would generally erode environmental standards in the trinational area. (Mumme and Duncan 1996,p. 208). Because of the many border issues they also fear that the NAFTA lower the environmental law and regulations, this was main concern. Mexico was the primary target of Complaints about
enforcement failures, it was also felt that the competitive pressure will arise from NAFTA could encourage Canada and US to weaken the enforcement of their own environmental law. NGOs like NDS, EDF, NWF and NRDC wanted the strong environmental provision in the NAFTA. So in response to their concern, the Parties included the preamble to the agreement and because of their persistency the side agreement been signed. As these ENGOs kept the faith in the new institutional arrangement (CEC) believing that would lead them to put their environmental concern in forefront in the trade regime.

**NGOs' first steps to a consistent fight:**

After it had been announced in 1990 that talks for an FTA between Canada, the US and Mexico were underway, environmental NGOs (ENGOs) from all three countries immediately called for environmental issues to be included in the negotiations. Mexican ENGOs were particularly concerned about the consequences of rapid economic growth in their country as well as about increased free trade between countries of such divergent levels of environmental protection. NGOs proposals could not be ignored easily as they were backed by non-environmental NGOs, most importantly by the US trade unions. (Hogenboom, B 2003) In Mexico, trade unions had no influence because of the ruling party's control over the major trade union federation (the Consejo de Trabajadores Mexicanos). (Macdonala, L and Schwartz, M.A. 2000) On the US side, labor unions and protectionist groups feared competition from Mexican-based industries unhampered by higher environmental standards and able to offer far cheaper labor.

All types of NGOs benefited from the fact that apart from the general public "a considerable number" of members of the US Congress were prepared to listen to their concerns - indeed, this new broad public and political support astounded the governments of the member countries and ensured that Mexico's poor environmental policy became a major issue. Although policies in Mexico had been improving gradually, the government neglected their implementation and enforcement, and there was even a "structural lack" of environmental concern from government agencies. By questioning the relationship
between trade and environmental policy, NGOs also questioned the relationship between the state and civil society and their respective roles in protecting the environment.

**The impact of NGOs’ transnational alliances:**

Moreover, an unprecedented number of NGOs established transnational ties and communicated and advised each other across the borders in a way they had never done before, which lead to the Mexican government being put under a new pattern of political pressure even before negotiations for NAFTA had been concluded. But how exactly did their cooperation evolve in the run-up to the agreement, and what was its impact beyond raising awareness of NAFTA’s possibly harmful effects to a large audience and helping to change the role of civil society, especially in the face of economic agreements?

In October 1990, nearly 30 Canadian NGOs attended a large meeting in Mexico City. They had already gathered some experience by opposing the Canada-US Free Trade Agreement (CUFTA) which had become effective in 1988. In January 1991, representatives of NGOs from all three countries concerned as well as academics and members of the US Congress met in Washington, D.C. This meeting had a considerable effect on public awareness of the NGOs concerns about NAFTA. More specifically, as a result of the NGOs work, the US Congress made clear that environmental issued needed to be included in the negotiations. This lead President George Bush to announce in May 1991 that NAFTA would be negotiated using American environmental laws and regulations as its standards (Hogenboom 2003).

**NGOs’ impact on the Bush administration’s plans.**

After the importance of environmental issues had successfully been established by NGOs the debate about specific arrangements began. The Bush Administration’s general strategy was to establish a ‘parallel track’ of bilateral environmental cooperation and draw up supplemental agreements to NAFTA rather than integrating protective measures directly into the agreement. This strategy increased fears of pollution along the Mexican-US border - already a ‘hot topic’ - and the possibility of American industry relocating to Mexico. In response, the US and Mexican governments published a joint “Border Plan”
which was immediately criticized as a “plan to plan” by NGOs because it was so vague on the implementation of policies. When hundreds of people came to public hearings of the plan and NGOs submitted written protest letters the “Border Plan” was revised to a considerable extent. Once again, NGOs had managed to be taken seriously and influence government policy because of their capacity to raise awareness and their coherent protest.

However, after President Bush’s declaration of May 1991, underlying tensions between the ways different types of NGOs viewed NAFTA lead to a split within the protest movement. Moderate NGOs were more prepared to work with the state to make environmental safeguards an integral part of NAFTA while more critical NGOs wanted to take NAFTA into a new direction and transform it from a trade agreement into a development agreement. Therefore, they were much less inclined to compromise and work together with the government.

In August 1992 negotiators presented the so-called “greenest trade agreement” which was nevertheless declared too weak in its language as well as in financial and enforcement terms by both moderate and critical NGOs. Equally, proposals to create a “Regional Environmental Commission” were dismissed by ENGOs. These protests were further reinforced by American trade unions’ complaints about NAFTA’s treatment of labor rights and an immanent Presidential Election. These factors lead the US Congress to delay voting. Luckily for the NGOs, opposition candidates had a greater forum for expressing their views on the treaty because the debate about NAFTA coincided with the presidential campaign as well as the primary election campaigns, (Macdonald/Schwartz 2002).

How NGOs cooperated with the Clinton administration

After President Clinton’s election in late 1992, the US Government promised the addition of supplemental agreements on environmental and labour issues to NAFTA and sought closer relations with moderate US ENGOs which exacerbated the division between moderate and critical NGOs: while moderate NGOs (such as the Worldwide Fund for Nature (WWF), the National Wildlife Foundation (NWF) and the National
Audubon Society) proved willing to compromise on their position by lowering their demands in exchange for an opportunity to actively influence the agreement by working with the government, more critical NGOs (such as Greenpeace and the Sierra Club) drew up a transnational alternative agreement that focused on sustainable development and trade.

Essentially, the US government advocated a stronger and supranational “Commission for Environmental Co-operation” (CEC) and trade sanctions as punishment for a member country that failed to observe environmental requirements. While many Mexican and also some Canadian organizations were concerned that the US would use these measures for protectionist aims, even some more moderate NGOs such as the WWF and the NWF did not support sanctions. The supplemental environmental agreement therefore only provided limited supranational responsibilities for the CEC and very limited opportunities for sanctions to be imposed - its language was careful and often toothless. Still, moderate NGOs had directly influenced the process of negotiation and design of side-agreements together with a US government that was willing to cooperate. They had therefore won a battle which had taken place against a background of resistance from the private sector organizations’ transnational lobbies, who wanted no CEC and no trade sanctions at all.

The CEC and Nongovernmental Organization:

The traditional way in promoting compliance with international law is through adjudication of claims by one state that another state is violating its legal obligations. But in most of the time the state to state complains did not work did not played the important role in promoting compliance with international environmental law. So even the prominent Environment treaties usually did not provide for compulsory, binding adjudication, and states almost never invoke and the voluntary procedures they do include. So it is argued that states do not bring environmental claims against one another because they are vulnerable to such claims themselves, and do not want to trigger retaliatory actions or establish undesirable precedents. So the private parties such as
environmental groups, avoid such road block go ahead with the complaining of the states before international tribunal.

The prominent and diverse North American environmental NGO community will be crucial to the credibility and the relevance of the CEC work. In the Commission the NGOs relationship and its procedure and submission process in dealing with the environmental issues clearly stands out. NGOs through the JPAC give a way to the most dynamic and innovative element of the fact-finding and information management mandate for the Secretariat. CEC set out a process where any ‘NGO or person established or residing in Canada, Mexico or the US may make a submission’ asserting the party failure in the enforcement of the environmental laws. (CEC 2002, 11-13).

CEC has defined NGO as a ‘scientific, professional, business, non-profit, or public interest organization or association which is neither affiliated with, nor under the direction of a government.’ (CEC 2002, 57). While the CEC with its ability is powerless to enforce laws or impose punishment, but it can exercise the power through the citizen submission process to spotlight problems in each country and bring specific environmental issues to the attention of governments, industry and the public at large.

ENGOs their direct participation makes them a influencing the policy. Their participation in environmental policy making is crucial to the development of regulatory regimes, especially when viewed from the perspective of transboundary governance (Alper and Salazar 2005, 25)

The proliferation of ENGOs over the past several decades has altered the landscape of environmental policymaking, as they have played an essential role in the process of legitimizing multilateral negotiations. Their increase level of participation of ENGOs has led directly to an increased integration of economics and environmental measures at the international level. As we seen in the light of the debate of the NAFTA negotiation. It shows that ENGOs are now ‘providing a new international forum to engage domestic government officials and to highlight concerns about domestic governance (Markell 2003.)’
Citizen Submission Procedures:

Before examing the NGOs role in submission on enforcement matters and factual records will study the Citizen Enforcement submission Procedures.

The citizen submission process has been lauded by some as a major innovation in reconciling international trade and was described by one environmentalist as ‘a bold, progressive experiment, truly unique in the world.’ (Blair, David J. 2003, p.236). Number of NGOs considered this as the most important part of the side agreement, and also is been the model for the trade agreement of future as well as of the existed one in dealing with the environmental issues. This mechanism has strengthened their capacity and ability also given them opportunities to participate and bring greater transparency to the environmental practices of government. With the negotiation under way to expand NAFTA to include other hemispheric partners in the Free Trade Agreement of the Americas (FTAA) initiative and the WTO initiatives, NGOs are actively involved in the new trade agreements thinking they will threaten the ability of governments to maintain and strengthen environmental laws and also undermine the enforcement of laws. There is also bit dilemma because of the new trade negotiation, the citizen submission is coming under more intense scrutiny and is being used as this being the yardstick for many ENGOs assessment any government undertaking to ensure the environmental sustainable of trade agreements. The NGOs effectiveness depends on the performance and active performance depends on the citizen submission mechanism that which to the extent how it (citizen submission process) will influence the trade agreement.

The criteria for submissions are different from the criteria for Part V - as it deals with the dispute resolution process set out in the Agreement, cases in a number of ways. Citizen submissions do not need to demonstrate that enforcement failures have an effect on trade and do not have to demonstrate a persistent failure to enforce environmental laws.

The Articles 14 and 15 deals with the citizen submission procedures and factual record procedure. NAAEC article 14 provides that the Secretariat may consider a
submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law. Submission should not be more than 15 pages.

The citizen submission must: 1) be written in an acceptable language; 2) clearly identify the submitter; 3) provide sufficient information, including any documentary evidence on which the submission is based to allow the Secretariat to review the submission; 4) be aimed at promoting enforcement rather than harassing industry; 5) indicate the matter has been communicated in writing to the relevant authorities of the challenged Party and indicate the response, if any; and 6) be filed by a person or organization residing or established in the territory of a Party.

When this criteria is met then the Secretariat conduct a second internal review under article 14 (2) to determine whether the submission merits a response from the challenged Party. Secretariat consider 1) whether the submission alleges harm to the submitter; 2) is there a submission alone or there is a combination with other submissions, raises matters whose further study would advance NAAEC goals; 3) whether private remedies available under the Party’s domestic laws have been pursued; and 4) whether the submission is drawn exclusively from media reports. If the submission does not satisfy the criteria the Secretariat will notify the submitter and terminate the process. If it satisfies the requirements then the Secretariat will forward a copy of the submission and information to the challenged party for a response. The Party will deliver its response: 1) whether the matter is the subject of a pending judicial or administrative proceeding in which case the Secretariat will terminate the submission and 2) any other information the Party wishes to submit, such as whether the matter was previously the subject of a judicial or administrative proceeding, whether private remedies are available to the submitter, and whether such remedies have been pursued.

Then there is third internal review takes place to determine in light of any response from the Party. Secretariat will warrant whether the development of factual record is required to develop factual record. There is no provision for to made public the response of the Party or nor the submitter is give any opportunities to reply to any
information contained in the response. If the Secretariat decides that not in any way warranting for the development of factual record, then the case is terminated. But if the factual record is made then the party failing have to enforce the law.

Some of the Enforcement Submission Flaws:

1. the submission process imposes no time limits on the Secretariat in talking the time to review of the complaints with article 14 (1) or 14 (2). Or on the preparation of the draft and final factual records.

2. submitter has almost no opportunity to participate in the review process. A submitter is not allowed to see, given a chance of much less reply to, the challenged Party’s response. The citizen has no ability to determine the response of the Party is accurate or not. The submitter almost relies only on the Secretariat to pursue the claim.

3. its believed that there is lack of a guaranteed remedy. Submitter file the obstacle course of the articles 14 (1), 14 (2); the Secretariat determines that the Party’s response is inadequate; the Council votes to allow the Secretariat to prepare the factual record. But the submitter has no direct ability to force a Party to effectively enforce its environmental laws. Even if the party is failing to effectively enforce its environmental laws, the violation may never be redressed.

With this flaw there are other problems which the mechanism faces: the political constraints of the three countries; despite its modest accomplishment and potential till date, the submission process still have the political challenge which is jeopardizing environmentalists support for the process.

Since the existence of the citizen submission there are fewer submissions because of the lack of awareness about the mechanism as in 1995 there were two submission, in 97-98 there were seven and again in 1999 fell to two (Ibid 304).

Another reason is that, the time it take to develop the factual report, in 2001 out of 21 submission only 2 cases has resulted in the public release of the reports. This is because of the Secretariat did, as the submission does not conclude the adequately
information means not clear indication. So in 1999 the Council decided that Secretariat will provide the clear guidelines for submission so that the NGOs and individual submitters will be clear in providing the information.

Other drawback is that some times the submissions are withdrawn; Council may reject to prepare the factual record. Mainly also the government fail to enforce, which the Quebec failed to enforcement the standards related to the wastes originating from hog farms. In May 2000 council meeting the Canada and Mexico voted in against the submission and US in favors in preparing the factual report. Its argued that the environmental regime at the time of factual record get changed so that will not serve the new regime except the explaining the history.

Sometimes the environmentalist wait for long years that they don't even get the proper explanation for reaching this decision as in Centre Quebecois du Droit de L’Environnement, submittter in the Quebec Hog Farms submission, wrote to the Council expressing its disappointment and dissatisfaction with the action, as it did not consider the part of the side agreement of the NAFTA.(Ibid p.307).

Delay in the cases procedure show the capacity of the Secretariat, since the 1998 the legal officer is been increased and a Submission on Enforcement Matters (SEM) established, which showed significant increase progress in reduction of the time taken of the process. But delay appeared when the party is inaction, e.g. in the case of the Oldman River II submission, as the court case unnecessary involved did not let to develop the factual record; other case on BC hydro submission, Canadian officials did not do meeting with the secretariat to set the record, and also in Metales y Derivados submission delayed because it had not received information from the Mexico.

Secretariat Submission and NGO

While the Secretariat considering a submission from NGOs, business enterprises, individuals, asserting that a Party is failing to effectively to enforce its environmental
law, i.e., failing to meet its obligation under NAAEC,¹ Such consideration is given the special procedure distinction from that submission of the NGO on other matters² so CEC is empowered to a limited extent to investigate a party’s carefulness in enforcing domestic environment legislation. In some the submission the CEC is empowered within certain limits, to investigate a party’s carefulness in enforcing domestic environmental legislation. Set of rules are applied while dealing with the enforcement issues:

1) establishing that the submission is of the right kind; 2) persuading the Secretariat to request an explanation from the party; 3) following the explanation, getting the Secretariat to still recommend the establishment of a ‘factual record’; 4) bringing the Council to approve such recommendation with a two-thirds majority; 5) hoping that the Council will allow the publication of the completed ‘factual record’.

A study the submission on the enforcement matter in the Secretariat is relevant: the submission must assert that a party is failing to effectively enforce its environmental laws and must not venture into other areas.³

The Secretariat will examine whether sufficient information has been provided and whether it appears ‘to be aimed at promoting enforcement rather than at harassing industry.’⁴ The submissions show the evidence and also try to bring the matter to the attention of the domestic authorities, if the domestic laws are silent on the issue.

Should Secretariat be satisfied with the submission then it require and enquire the response of the Party against whom it is filed; it will assess the complainant using three criteria: a) whether the harm is due to the alleged failure to effectively enforce environmental laws; b) the nature of the harm; and the c) the magnitude of the harm.⁵

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¹ Here submission is documented assertion that a party is failing to effectively enforce its environmental laws, made by a party or organization established in the territory of a party.
² Some of the submission makes no reference to a 'persistent pattern', here NGO seeking Council action on an enforcement matter is lower than that of a party trying to convince a dispute settlement panel to determine that another is violating the Agreement’s enforcement provisions.
³ The submitter must identify specific provisions of the applicable environmental law (Article 45 (2) [Article 5.1]. the submission must also contain a ‘succinct account of the facts’ and include any documentary evidence in which the submission may be based [Article 5.3].
⁴ The NAAEC specify that this evaluation will be made in particular through an inquiry into the potential ‘economic benefits for the submitters,’ a focus on party actions or omissions ‘rather than compliance by industry’ and the ‘vexatious or frivolous’ character of the submission. (Art. 5.4).
After considering the response, the Secretariat may then recommend to the Council to be prepared the factual record without consultation with the NGO or person that initially submitted the complaint. When the secretariat gets the permission to prepare the factual report, though it had equipped with adequate research and investigative capabilities it will consider the information provided by third parties including governments, publicly available information, NGOs submission, JPAC submission or information of the independent experts.\(^5\) It is generally agreed and also observed that the Secretariat cannot include an evaluation or judgment, or any recommendations for remedial action and also nor consider that the Council will take any specified action or make recommendations following receipt, or release of the factual record. (Tollefson, Chris, 2000, p.4). Once the NGO submission has activated the preparation of factual record, the NGO initiator has no further role in the process other than providing further substantive information that may be used later by the Secretariat.

When the factual report releases to the public by the 2/3\(^{rd}\) vote of the Council permission, by that its believed that it will not give rise to damaging pattern of secrecy for CEC inquiries in enforcement matters. The JPAC though contribute information at the drafting stage, but the factual record in draft or final form will not be available to the JPAC until the Council makes it available by 2/3\(^{rd}\) vote. (Art. 16 (7)).

**NGOs and JPAC:**

The NGOs role in the Joint Public Advisory Committee (JPAC), has to evaluated on the basis of citizens of the three North American countries a chance to speak out on key environmental issues. It deals with the environmental issues compliance with the environmental laws in North American, and environmental networking among the communities. The public are invited to attend any of the consultations and even they can submit written comments on the discussion topics if they don’t attend the meeting. The greater involvement and effectiveness of the public giving rise to the improvement of the

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\(^5\) In accordance with its laws, in Art. 21 (1) (a) probably refers to access to information, protection of privacy and other sunshine laws. Article 42, also protects matters related to national security, a serious limitation if one considers the well-documented environmental impacts of military establishments and activities, as well as those of the nuclear industry.
environment in North America. JPAC is been more transparent and have proactive instruments which provided and facilitate the NGO participation, of the three different nations. JPAC make them all the join in the commitment to preserve and enhance our common environment and achieve a sustainable society. JPAC invite the public to participate in consultation of the stated purpose:-

- establish a policy or directive;
- assist in the preparation of the program of the CEC;
- obtain views in the context of specific project; and
- address a specific issue or set of issues.

JPAC activities engaged in the collection of information, consultation and participation.

More than 100 individuals, business and environmental organization of the North America make recommendations at public consultation sessions of every year, which will be held by the Commission for Environmental Cooperation in Canada, Mexico and the United States.

In 1995 a session each was held in Ottawa, Mexico City and Washington, D.C. by JPAC, for the recommendations on proposed procedures for submission on enforcement matters under Articles 14 and 15 of the NAAEC. The participants in Canada were Canadian Chemical Producers' Association, the Canadian Labour Congress and the Sierra Club of Canada. In Mexico City, the business group such as the Confederacion de Camaras Industriales, the Consejo Nacional de Industriales Ecologistas (CONIECO) and several NGOs and finally in Washington, DC, the Electronic Industries Association, the National Advisory Committee (NAC), represents both business and environmental organizations, and also the National Wildlife Federation etc..

The variety of groups of all the three countries had a consensus requested that in the procedures of submissions, there should not be restrictive interpretation especially as it relates to the use of the words 'environment' and 'harm.' As Jean Richardson, an Environmental Scientist and American member of JPAC said, 'it's remarkable that there
were many more similarities than differences among the recommendations made by the public in the three countries.' (Publications and Information Resources, 1995)

**The interests of pro-free trade NGOs:**

In Canada, most pressure came from the “Canadian Business Council on National Issues”, in the US, from the “American Business Roundtable” and in Mexico from “Coordinadora de Organismos Empresariales de Comercio Exterior”. However, the influence of these business NGOs must not be over emphasized (Macdonald/Schwartz 2002). The Canadian and the US governments were already well accustomed to channeling business’ demands for consultation through elaborate mechanisms that reduced their direct impact and influence on policy, such as the “International Trade Advisory Committee” in Canada, and the “Sectoral Advisory Committee” as well as the “Advisory Council on Trade Negotiations” in the US (Macdonald/Schwartz 2002). In Mexico pro-free trade NGOs were unable to exert influence on the government as there was a “historic lack of relationship” between the public and the private sectors in addition to the considerable dominance of the ruling party (Macdonald/Schwartz 2002) in a state that did not have elections generally accepted as free until 2000.

**Public Access and NGO Involvement:**

This is the crucial part of the democratic principles. In recent time NGOs its role has been raising and their active involvement in the bringing the light the issues and also raising their voice to be heard in all debate of national or international level. Specially in the environmental areas they are very active in all the country. The North American NGO community are crucial to the credibility and the relevance of CEC’s work as their submission are of most dynamic and innovative element of fact-finding and information management mandate of the Secretariat.

The Rio Declaration on Environment and Development, adopted in 1992, has very important Principle 10 that says ‘each individuals have appropriate access to information concerning the environment that is held by public authorities including
information on hazardous materials and activities in their communities and the opportunity to participate in the decision-making process,

NGO community believed that open set of institution would be more sensitive to environmental issues with the public input would generally translate into more environmentally conscious decision-making. Public consist of all the organization of trade and environmental NGO some NGOs which are generally grass root organization and some of them are supported by large corporation.

Private corporations are also filing the submission under the Art. 14 and 15 of NAAEC, as their main desire is to prevent foreign competitors from gaining a competitive advantage. So make active the CEC’s inquiry into a specific sector of the environmental regulations and enforcement in other member countries. This shows that environment and commercial objectives are covered.

Participation of the NGOs are not same in all the trade agreement, as in GATT is criticized for the secrecy of its dispute settlement procedure the unavailability of even basic documentation and the impossibility of NGO making their voices heard in the organization. Even in Canada-US FTA proved just as deaf to the calls for more transparency and access. While in the debate of NAFTA/NAAEC had to meet a very high standard of openness and also NGOs counted that influence should be unhindered their access to CEC also and its undertaking. But NAFTA in accessibility and transparency, it is unfortunately replica of the previous trade agreement. The NAAEC, it had to provide for some degree of transparency and openness, and it represents a modest but encouraging improvement over past exclusionary practices. Nevertheless preamble⁶ and the objectives⁷ show the transparency and openness. (Johnson, Pierre Marc & Andre Beaulieu, 1996, p. 164).

But still NAAEC fall short in realizing goals, the transparency and openness in some of the specific provisions. Before going to the NAAEC submission restriction, let

⁶ Emphasis, 'the important of public participation in conserving, protecting and enhancing the environment.'
⁷ One of the objectives is 'promote transparency and public participation in the development of environmental laws, regulations and policies.'
see the NAFTA's Art 1114, which is the pollution havens investments clause, not been allowed to NGO participation in the relevant consultative role given to the Council. NGOs cannot even been allowed to present evidence establishing that a NAFTA party is lowering environmental norms in an attempt to attract investments. This could have allowed the anti-rollback provision of NAAEC that seeks to achieve the same objective as NAFTA Art. 1114: preventing the competition in trade and investment from putting too much downward pressure on environmental norms. Article-3, say Levels of Protection Recognizing the right of each Party to establish its won levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations, each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.

There are also some provisions unduly restrict public access to the submissions procedure; mostly public submissions on enforcement matters have to pass a difficult test of thoroughness and nonharrassment. 9

Secondly the Secretariat may refuse to request a response from the party involved, even if the submission is acceptable.

Thirdly the Draft Internal Procedure for Handling Article 14 submissions ought to be commended. Due process, administrative fairness and importantly the CEC's

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8 Art. 1114: Environmental Measures: 1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns. 2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement. Section B- Settlement of Disputes between a Party and an Investor of Another Party.

9 As though a submission would be presumed to be aimed at damaging industry rather than protecting the environment) (Art. 14 (1) NAAEC.
credibility required that the CEC to go beyond the minimal requirements of the text and disclose the steps taken in respect of the submissions prepared by NGOs.

But over all the CEC shows more sustained and meaningful relationship with the NGOs, as compared to the Multilateral Organization, such as the Asia Pacific Economic Cooperation Forum (APEC) and its committees, the OECD, and NAFTA. The public registry of submissions and responses will be a key element of a more open scheme presented by the NAAEC.

The public submissions and development of the factual reports is a crucial advancement for the NGOs which make them for the involvement in the North American environment debate. But still in the Mexico the Government is least responsive to public calls for environmental action; it has been argued that even though the CEC provide for the path to access to the Mexican policy process but still unavailable to the Mexican environmental group.

NAAEC provisions enable the CEC with the help of NGOs to cast the spotlight on the public authorities that fail to fulfill their obligations in failing ineffectively enforcement of domestic environment instrument. It also sanctioned NGOs activism to focus the Secretariat and the Council, and the parties themselves on the worst areas of environmental neglect.

Three notable public submission features in respect on the environmental law enforcement are:

a) the initial stage of the process should be, in principle, invulnerable to an attempt by the Council to stop the Secretariat from considering an NGO submission and requesting an explanation from the impugned party.

b) as NGOs and the citizens from any part of North America may make a submission regarding any state or province of their own country or any other party in the NAFTA area.
c) there is neither a trade test nor an expansive “persistent pattern” criterion for public submission.

The first private submission to the CEC Secretariat occurred on 7 June 1995: case filed by the National Audubon Society, Grupo delos Cien Internacional, and Centro Mexicano de Derencho Ambiental all three filed a petition asking the CEC to investigate a contamination incident at the Silva Reservoir, in a heavily populated area of Guanajuato state in central Mexico. NGOs chose to submit to the CEC which can according to the Art. 13, deals with the general investigations and reports and not Art. 14, claim that environmental laws are not enforced. So did not want to get confrontation with the Mexican government. But the end result is that the Commission, the NGOs and the Mexican government appear willing to move forward toward a solution.

Three main reasons support cautious optimism: the permanency of the channels for public submission, the existence of the JPAC, and the fact that NGOs particularly the Canada and American NGOs that played such an important role in the NATA/NAAEC debate, are eagerly lining up to exploit NAAEC mechanisms at their disposal. Whether at UNCED, IUCN or the financial institution like the World Bank, the NGO community has long established that it can provide an essential contribution to international environmental debates.

So the public submission and assessment process ensure the participation the business actor and environmental grouping monitoring and assessing the implementation of NAAEC. CEC is required to refrain from erecting too many walls between itself and the public so that its relationship with NGOs be advisory, observer and make recommendations regarding the implementation of NAAEC.

The distinction activity of the NAAEC are – the procedure of the dispute settlement provision and cooperation, is the main for the consideration because of the principle of ‘green’ trade competitiveness it embodies, may be thought of as new international economic law.
When the NAAEC’s public involvement is compared with GATT and CUSFTA then it is leaping forward and also if it is compare to UN institutions dealing with environmental issues, NAAEC is in the favorably in most respects, but when it is looked at current level of access to environmental administration it shows that much the desired is to be achieved.

**A success for moderate NGOs despite their internal tensions:**

Moderate US ENGOs broke the civil and political opposition to NAFTA by working together with all three governments as well as Mexican and American private sector organizations. Hence, the US Congress’ ratification in November 2003 of the NAFTA package they helped to design “can be considered a success for the moderate NGOs”. The effect of this success: “the politics of trade policy making had changed for good”. (Falk A. 2001)

After NGOs had initiated the debate and ensured that it was taken up by politicians where possible they had remained a valuable source of constructive criticism. Despite their institutional differences in size, membership, financial situation and relative freedom to act in the political sphere considering the difference between Mexico and its northern neighbors, NGOs were successful in constructing a valid transnational opposition. The adaptability of NGOs meant that they could create “advocacy networks” that provided them with new channels of access to government negotiators and make resources available across borders. However, the strength and effectiveness of transnational NGOs depends on local groups and campaigns, (Heijden, Van Der. 2002) another indicator of the ‘grass roots’ change in civil society’s attitude achieved during the campaign for changes to NAFTA.

It is significant that the tension between NGOs from different nations was contained within the movement and that the only split among NGOs occurred between moderate NGOs (in other words, those ideologically predisposed to cooperate with existing power structures) and critical NGOs (those seeking to overcome them). Those moderate NGOs benefited from ‘losing’ their more extreme partners - an effect desired
by the Clinton administration, too. Indeed, moderate groups were able to convince more critical groups to back their ideas because more extreme groups knew they would benefit from the legitimacy offered by working with their politically more acceptable partners.

NGOs had demonstrated that they could no longer be ignored by governments seeking to further economic integration. One may even go so far as to say that, in the globalizing political landscape, they have taken over some of the roles traditionally belonging to political parties. Trade policy is now viewed as a tool for improving developmental factors such as environment and labor in member countries and it has been “politicized to an unprecedented degree.

At the same time, while an important example of transnational activism and cross-border politics, the achievements of the debate about NAFTA should also not be overstated: the supplemental agreement’s provisions have only had a limited effect on Mexico’s environmental policy performance and the “narrow approach” of the agreements on environmental protections, as well as the absence of substantial funding mechanisms let NAFTA fall short of many an NGO’s imagined ideal. It is safe to assume therefore that although NGOs were highly effective towards the beginning of negotiations, let alone by putting the issue in the public eye, their effectiveness diminished toward the end of negotiations when the organs of the state were clearly able to exert control on those groups attempting to influence them.

Pierre Marc Johnson, chair of the body said, while delivering the report of the Ten Years of North American Environmental Cooperation, in Montreal ‘we believe that the governments are probably micro-managing articles 14 and 15 of the NAAEC, which is the citizen submissions process… we’re suggesting to the (environment) minister they should feel comfortable leaving the Secretariat to do its work in this process,’