Chapter VI

Role of NAAEC in Greening the NAFTA

NAFTA has been primarily designed to facilitate commerce, not environmental progress in the economic area yet it claims that NAFTA is the 'most environmental trade agreement ever signed.' (Johnson, Pierre Marc and Andre Beaulieu (1996), p.p117). Moreover, President Bush boasted that the 'NAFTA contains unprecedented provisions to benefit the environment. And Ambassador Hills claimed that the NAFTA is the first such accord to include provisions to protect and improve the environment.'

The important of border issues and other environmental concerns that seeped in the NAFTA debate, for which the NGO were fighting and demanding, further to address continental substantive environmental norms or for systematic trinational cooperation on the environment which was limited from the NAFTA side. During the debate NAFTA foster a legal and political dynamic that to promise for ongoing dividends for environmental protection, and also for a better consideration of the environmental issues of the North America. As Steve Charnovitz observed: 'the hyping of the NAFTA’s environmental accomplishments transformed the trade and environment debate. For the foreseeable future, all US trade agreements are going to be evaluated for their greenness.' Enter the North American Agreement on Environmental Cooperation, NAFTA moves beyond trade and investment to become the NAFTA package, an incomplete yet groundbreaking attempt to integrate the social agenda of trade in and around trade institutions.

NAAEC is divided into two parts: a first set of issues is covered in part one till four, which provide a framework for environmental cooperation that fulfills the environmental pledges of NAFTA, addresses the broad agendas of the environmental community, and literally enumerates the ecological challenges North Americans face

1 In the 1994 election for the House of Representatives and the Senate have drastically changed the climate for environmental initiatives in the US Congress. It remains to be seen whether this new context will endure during NAFTA expansion discussions.
today. The second is the dispute settlement procedure, concerns itself with a second set of issues related to a peculiar kind of environmental dispute: that which occurs when one party alleges that another is not effectively enforcing its laws.

NAAEC provides the institutions CEC which act as a point of inquiry and receipts for comments from non-governmental organizations and persons concerning the environmental goals and objectives of the NAFTA. Though CEC has limited input in the work of the FTC, but it has served as the official interlocutor of the NGOs seeking to question the environmental record of NAFTA.

NAFTA did include the specific provisions throughout the Agreement build upon these commitments. They are:

- NAFTA assures that standards for food additives and contaminants are based on the best science available. Article 713.3 of NAFTA states that nothing shall be construed to prevent parties from adopting a sanitary or phytosanitary measure more stringent than the relevant international standard;

- NAFTA affirms each country to maintain high health, safety, and environmental standards also encourage the parties to harmonize their standards on these issues;

- Agreement states that no country shall lower its health and environmental standards for the purpose of attracting investment;

- NAFTA preserves each country’s right to enforce international treaty obligations, specifically concerning endangered species, ozone depleting substances and hazardous wastes;

- Agreement includes investment provisions which promote the development of more stringent environmental standards on new investments;

- NAFTA’s dispute settlement panels may call on environmental experts to provide advice on factual question related to the environment.

But many of the group in all three countries, expressed dissatisfaction over the stringency of the policy. So in response the parties undertook negotiation of side-agreement NAAEC to make the partners to commit themselves to undertake the
important environmental policies regarding the development, implementation and enforcement of environmental laws. The supplemental agreement helps to insure that:

- That without affecting the rights of the states and provinces standards, the agreement may enact more stringent environmental measures;
- Agreement make assure that parties will not lower the standards and enforcement should be strengthened;
- The agreement impose obligation that countries should report of their environmental and should promote environmental education and scientific research by providing greater transparency of governmental procedures; (Article 4 of NAAEC).
- Cooperative efforts to be provided to accelerate the border clean-up and infrastructure development;
- An institution CEC a comprehensive mechanism created to evaluate and settle the disputes of parties. CEC promote and facilitate cooperation among the parties, it address the disputes and queries that arise between the parties regarding the interpretation or application of the NAFTA.

Commission will:

- Helps in exchange of information on criteria and methodologies of the standards;
- Foster public discussion on environmental concerns;
- Assess transboundary problems and promote integrity approach to deal with the environment;
- Commission acts only on the submitted concerns of the issues and will also deal with the dispute settlement procedure (Art. 5 of NAAEC) if the party is persistently fail to enforce the environmental laws. (Frey, Bertram (2003), p.3)

Commission laid down the sanctions and penalties (Art. 34 and 26, and Annexes 34, 36A, 36B and 41 of NAAEC), for the failure of their environmental laws. For US and Mexico the sanction are in form of punitive trade tariffs or fines; for Canada they would
be in the form of monetary penalties alone. As annex 36A set a separate set of procedures for cases Canada is involved.

With this agenda of cooperation of NAFTA/NAAEC package attempt has been made to examine on the GATT and NAFTA in comparison:

Uruguay Round established WTO in 1995, reduced tariffs on many industrial products, imposed limits on agricultural subsidies, but failed to create specific provisions addressing environmental issues.

At the end of the Uruguay Round, trade ministers adopted the Decision on Trade and the Environment which anchored environment and sustainable development in WTO work (Colyer, Dale, (2004), p.7) With the implementation of the WTO agreement, a Committee on Trade and Environment (CTE) established to consider all aspects of the trade-environmental interface.

Its preamble commits members to protect and preserve the environment in accordance with the objective of sustainable development.

GATT language is more restrictive in determining the levels of environmental and health protection above the international standards, while NAFTA allow the freedom in maintaining.

GATT provision’s led to the backsliding in the stringency of environmental standards. Which we saw the case filed by Mexico against US Tuna/Dolphin case were the GATT ruled US as ‘unilateral protectionist trade measure violating the international commerce pact’.

With this little brief it’s said NAFTA and its side agreement have developed the extensive institutional framework in addressing the environmental issues and also in considering the other several multilateral environmental agreements that have been negotiated and implemented by the international community. GATT/WTO with its lack of coordination has been failing to further the concerning of environment.
The present study focuses NAAEC and its institutions CEC in greening the NAFTA from outside. Study included the role of the transparency, NAFEC and also green building objectives of the NAFTA/NAAEC package.

**Green building:**

The obvious geographic connection made the three countries of North America to link together, because of thinking that major development in one country can and does have a powerful impact on its neighbors. All the three countries share energy dependency and security concerns and all have governments based on liberal democracies. It is imperative that all three governments should approach the issue of development cooperatively.

Green building defined and supported the networks, interaction that inspires the trust and reciprocity, positive behaviors of the political engagement and volunteering.

North America has a unique opportunity over these next years to create a sustainable built environment for present and future generations. Green residential building in the US has traditionally been a grassroots effort, with origins stemming from the energy crisis of the 1970s\(^2\) and the solar home movement of the 1980s. Green housing support established in early 1991. It's all when global warming has sparked public interest in environmentalism rivaling that of the early conservation movement of the 1072s. So mainstream interest in green building coupled with increased evidence from the scientific profile. To respond to the controversy a solution and opportunities has been the proposed so the diverse group took interest in the recognition of the programs; banks and lenders recognizing a unique marketing tool; designers and architects tapping new

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\(^2\) On the moment of the Earth Day on April 22\(^{nd}\) 1970s, 'Environmentalism' emerged as a broad term addressing common concerns over crucial issues that affected all forms of life on earth. The Energy Crisis of the 1970s illustrated that environmentalism with concerns over resource scarcity. It was recognized that the consumption in US was the root cause of the energy crisis and also US policy flaws were recognized as a major cause of the crisis and also Arab oil embargo. Policies were introduced are oil price decontrol became a central policy issue; Carter Administration takes a new perspective and emphasizes deregulation of the energy industry; in 1974 Congress passed the Geothermal Energy Research Development and Demonstration Act as well as the Solar Heating and Cooling Demonstration Act; Solar Energy Research Development and Demonstration Act and Federal Non-Nuclear Research and Development Act. National Energy Act (1978), Department of Energy created in 1977.
and exciting technologies and resources; government agencies enacting green building incentives and mandates; and academia and the research community developing new products and systems.

In order to enact significant environmental change, industry leaders have proposed several targets for green housing market penetration. The American Institute of Architects (AIA) '2030 Challenge.' Proposes to achieve carbon-neutral buildings (commercial and residential) by 2030 through immediate reduction of energy use in new and renovated buildings to 50 percent of the national average, followed by a further 10 percent reduction every five years thereafter. The US Conference of Mayor unanimously adopted the 2030³ The US took lots of the measure into account in order to achieve the green building goals. But in order to achieve the market transformation necessary to meet targets like the 2030 Challenge, the three governments of North America might undertake the following actions to capitalize on existing market drivers and overcome barriers to green residential building.

Among the NAFTA countries: Canada, Mexico and the US has the common vision to empower green homebuilding in their respective countries; shared information, mutual support, joint communication and other strategies, in order to better understand market drivers, barriers and potential environmental impacts from market transformation. Among the green building strategies, the Documenting and sharing commonalities of the North American countries enhanced the global effort, though each region will naturally approach green building in a unique manner. Mexico may have more multi-family housing and Canada may have more cold-weather construction, but housing in all three countries needs to achieve healthy interiors, water conservation, energy conservation, reduced materials consumption, etc. adopting parallel initiatives in all three countries will help to drive green building practices. The three countries of North America can support the creation and adoption of international criteria and standards for green building as well as for energy performance, with provisions for climate and culture-specific variations but with a common goal for positively impacting the environment.

Sustainable solution with other countries helps to achieve some of the confident choices and improve to take immediate action for the improvement of the human and environmental health and also to clean coal, carbon misuse, nuclear power and biofuels which are options for solving environmental crisis in North America, as all these technologies carries significant risk as well as benefit. Countries encouraged for immediate action for investing in proven but underutilized solution for green housing, such as resource conservation and renewable energy. Its believed that the green housing building of North America would greatly benefit from pursuing joint research opportunities to leverage expertise and resources in all three countries and to avoid duplication of effort. The collaboration of industry, national laboratories, private research companies and research universities in Canada, Mexico and US represents significant potential to promote and perfect green building materials and methods. Potential research topics include building science, occupancy evaluations/ performance data, materials reduction/reuse/recycling, life-cycle analysis and energy analysis tools, and net zero-energy buildings.

Most related research today is aimed at energy efficiency in building and renewable energy technologies, with very little emphasis on other aspects of green buildings. A report released in March 2007 by the USGBC cited only 0.2 percent of the US federally funded research budget targets green building.4

Also encouraged government, industry, educational and advocacy groups to support the dissemination of research and training information to a broad North American audience to further industry professionals' and consumers knowledge of green buildings. Though each country has conducted informative research on advanced solutions for sustainable, but not succeed in transferring findings to the actions. So now countries together took initiatives promoting sustainable and affordable initiative like having the Green Building Council products or equipment, so that the national organization can report to it, as it is subset of the CEC. Such Council can help to facilitate relationships

between supporters of green building and realtors, appraisers, financial institutions and policy makers in all three countries to accelerate green building.

In the vision of the green building in the North America was the response to the challenge represented by climatic change and its consequences. (Fernando Mayagoitia Witron, paper 4a: p. 1). In Mexico the green building a somewhat complex, though the population was not growing much there the life expectancy was increasing. So the market growing for the building and financing housing in Mexico and in light of the direct relationship of housing and the environment, it taken into account the electricity, water facility and sewage system. In comparison to the US and Canada, Mexico is no. 14 in the world in terms of the total carbon dioxide volume of emission, (US ranking no.6 and Canada in 7). (Ibid, p.4) In Mexico the primary objective is to improve the population's quality of life. To achieve this objective it is necessary to surpass the national economic growth rate registered in recent years (4.2 percent) and also count on energy resources necessary for growth. National energy policy aims to establish a balance between promoting economic growth and protecting the environment. Consequently aimed at guaranteeing the energy needs of both productive and household activities in a context of efficiency and harmony with the environment. As a signatory to the Kyoto Protocol, Mexico is allowed to market emission reduction certificates (ERC) in registered mitigation projects. And also government and private funds created to develop the projects that will be linked to the Clean Development Mechanism (CDM), that allows the issuing the ERCs. Semarnat promoted an agreement with the Secretariat of the Treasury (Secretaria de Hacienda) the creation of the Mexican Carbon Fund (Fondo Mexicano de Carbono - Fomecar), which promoted the projects.

90 percent of energy consumed in Mexico comes from non-renewable energy sources (mainly oil and natural gas). So the important aspects to address are the greenhouse gas emission and the impact on climatic change and diminishing hydrocarbon reserves. (Ibid, p.19)

A recent report by the Canadian Green Building Council describes the purpose of green buildings: Green building strive to balance environmental, economic and social
considerations in design, construction and operation. Energy, water and resource efficiency; occupant comfort and well-being; site development and community context; and the economics of building construction and operation are key considerations. In comparison to conventional buildings, green buildings take advantage of natural processes to generate less waste, less pollution and reduce their overall environmental footprint. Voluntary guidelines are found everywhere than the regulation in Canada, Health Canada’s Exposure Guidelines for Residential Indoor Air Quality may advocate practices similar

The North American vision for green residential building could result in the creation of a common set of sustainability principles and planning or design tools for green construction, with each country having region/context – appropriate policies and programs to address differences in building codes, regulatory environments and climate. These tools would be used to enhance quality of life and balance environmental, economic and social considerations and would reduce environmental impacts through construction, operation and retrofit activities which focus on minimizing on a broader, life-cycle basis rather than short-term costs. For this vision realized to reduce consumption, renewable use of resources, internalization of costs by occupants, create environmental tools, continual improvement, define and monitor performance and communicate performance. To realizing the vision the North American countries will require a common vision for green residential building. It must be recognized that the barriers to the proliferation of green residential construction within Canada will be magnified by working across international borders. Both the diversity of the actors involved as well as regulatory and non-regulatory barriers will need to be addressed and overcome.

The trilateral agreement on the objectives of a sustainable residential construction sector. The strategy’s are:

* A consistent and comprehensive protocol to promote environmental stewardship

• Tools to support innovation and learning
• Performance metrics and tools to support value over price, and
• Capacity building within the industry to support knowledge based service.

So to promote the vision into action for the green residential building across North America requires the leadership of an organization representing the interests of all three countries. The CEC may provide an instrumental role in driving the process of establishing a North American vision. In realizing the vision of the green building its not only a job of the government but also of the industry and financial sector and finally the consumer demand are the main driving force for green to be desirable.

Green building in Canada, Mexico and United States is the process which makes the way to positively impact global issues such as pollution, dependence on fossil fuels, resources scarcity, lose of natural habitat and species and climate change. It represents the a strategy to reduce the human impact on environment generally defined as high performance, sustainable structure that more efficiently consume and harvest energy, water and material while reducing the negative impacts on human health and the environment through a holistic approach to design, site usage, construction, operation, maintenance and deconstruction at the end of a building useful life.

Two of the challenges today the global population facing is the climate change and social and economic inequality resulting from resource scarcity. So green housing address these challenges by taking into consideration the environmental and human health; protection of ecosystems; preservation of natural resources (including water, agricultural land, timber, minerals, ore, quarry products and fossil fuels); reduction of atmospheric pollutants associated with energy use and materials manufacturing and creation of safe, non-toxic indoor environment.

Significantly the goals of NAFTA are to promote trade and harmonization of environmental regulations across North America. Trade in green building technologies, however, is currently limited, because of the requisite testing and evaluation services and jurisdiction is difficult and costly.
The Canadian standards Association have different performance standards. Their standards are performance based, such as; use of climate appropriate products and technologies minimize the use of eco-inefficient products, enhance standards across North America could keep harmful or inefficient building products manufactured in one country from being dumped and therefore used in the market of another. The harmonization of product certification standards and the inclusion of environmental targets would facilitate and promote better quality and more environmentally friendly construction materials and methods within search country and trade of better products across boarders.

**The European Union experience**

'Thematic Strategy on the Urban Environment' (Commission of the European Communities, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee and Committee of the Regions: Towards a Thematic Strategy on the Urban Environment (Brussels, 2004)). This strategies intended to provide a holistic approach to key environmental issues that are characterized by their complexity, the diversity of actors concerned and the need for innovative an multiple solutions. The Thematic Strategy focuses on four cross-cutting themes, including sustainable urban management, sustainable urban transport, sustainable construction and sustainable urban design. The Commission’s vision states: "sustainable construction is a process here all the actors involved (e.g. owner, financier, engineer, architect, builder, material supplier, permitting authority) integrate functional, economic, environmental and quality considerations to produce and renovate buildings and a built environment. (p.15)

The Canadian Green Building Council (CaGBC) administers the LEED rating system in Canada. It was created to promote and accelerate the design and construction of high performance building. The Council comprising design and building industry representatives created a vision for a transformed built environment leading to a sustainable future. Its members work to identify industry-based opportunities to affect market transformation by promoting better environmental building practices through
professional training and awareness. The CaGBC also works collaboratively with local
decision-making to design tools for municipal policy-making and programs for green
building implementation. Both these professional associations have great potential to
move the green building agenda forward in Canada through the promotion of recognized
green standards and the provision of training and education to their members, the public,
and decision makers. In Canada, standards, policies and funding support for green
building initiatives vary across jurisdictions. Although constitutional authority for
housing is vested with provinces and territories, responsibility for housing standards and
land-use planning is generally delegated to local governments. At the federal level, a
number of government departments influence housing policy and technologies.

A recent National Round Table on the Environment and the Economy report even
sets out a vision of urban Canada in 2050 that is based on the large-scale implementation
of sustainable planning principles and energy-efficient measures.

Green building refers to the use of environmentally preferable practices and
materials in the design, location, construction, operation and disposal of buildings. It
applies to both renovation and retrofitting of existing buildings and construction of new
buildings, whether residential or commercial public or private.6 The report suggest that
NA leaders can significantly improve the well-being of North America. Advanced
energy-saving technologies applied in building can result in enormous reductions in
demand for fossil fuels and emissions of greenhouse gases (GHG). Better design and
building practices can also help address environmental challenges such as natural
resource depletion, waste disposal, and air water and soil pollution. Green building can
also help achieve gains in human health and prosperity. Though there is transformation,
in green building procedure only small percentage of building in North America. By
some estimates, green building currently accounts for about two percent of new non-
residential building and 0.3 percent of the residential market in US and Canada. Mexico

6 Green building in North America: opportunities and challenges... art 13.... Secretariat report, 13/3/08,
no reliable figures shown. But expected to grow rapidly in all three countries in the future.

Green building refers to design and construction practices that significantly reduce or eliminate the negative impact of buildings on the environment and occupants. Potential positive effects of green building practices includes sustainable use of energy, materials and water along with lower resource and waste disposal costs as well as increased comfort and well-being for occupants. Buildings designed in an environmentally conscious manner represent an important opportunity to accrue environmental benefits for generations.

Despite these environmental and economic benefits, green building represents only a small fraction of the new construction in North America.

In Canada Mexico and US commercial and residential building operations account for about 20, 30 and 40 percent of the primary energy consumption, respectively. They typically also account for 20 to 25 percent landfill waste and 5 to 12 percent of the water consumption. The US Green Building Council estimates that green building on average, currently reduces energy use by 30 percent, carbon emissions by 35 percent, water use by 30 to 50 percent, and generates waste cost saving of 50 to 90 percent.

Promoting mutually beneficial cooperation:

North America presents an opportunity for governmental and nongovernmental institutions and industry in the three countries to work to improve the building sector. Effort can help strengthen the economies of North America by spurring new markets and business opportunities for manufacturers, utilities, and other companies. Europe has strong green building programs and segments of Asia and Latin America are beginning to embrace green building. Green building will help ensure North American competitiveness in the global market for products, technologies, and practices essential to North America’s future. These include more efficient heating and cooling systems, advanced building materials, water-reclamation systems, and high efficiency appliances, advanced insulation systems, energy-efficient lighting, and many more.
As part of the development of this report, the CEC Secretariat's Green Building Advisory Group issued a Statement and Advice on Recommendations for the Secretariat. The Advice on Recommendations sets forth a specific path for how North America can accelerate the market uptake of green building and make it the standard practice for all new and existing buildings. The CEC Secretariat has adopted the Advisory Group's Advice on Recommendations as its recommendations for this report. These recommendations are designed to support and build on the many ongoing efforts already occurring in North America by the federal, state/provincial and local governments as well as many industry, trade and nongovernmental organizations.

**Transparency and Public Participation:**

The term ‘public’ is defined as to accommodate all the persons, organization or groups of people in North America. The public participation is intended to be evolving as parallel with the development of the CEC. CEC facilitates cooperation and public participation to promote conservation, protection and enhancement of the North American environment for the benefit of present and future generation, in the context of increasing economic, trade and social links between Canada, Mexico and the US.

The importance of public participation is emphasized in the NAAEC preamble, thought as a appropriate mechanism for disseminating information, educating and consulting with the public of North America on their activities, and also to meet the challenges of the components of the CEC (Council, Secretariat and JPAC).

In 1998 the Council developed an approach in recognizing the public involvement to ensure open and effective dialogue and engagement among all sectors of the public. Framed the mechanism of public involvement in the work of CEC, for increasing the public understands of the CEC’s role, mandate, program and budget. This mechanism expected to be flexible and promote inclusiveness in order to be responsive to the economic, social and cultural differences among and within our three countries. It is not intended to established rigid principles that inhabits restrict or limit public participation,
but aims rather to structure participation such that it contribute to the CEC’s consideration of the merits of the issues.

Guidelines for public participation found in other CEC documents, such as the ‘Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of NAAEC,’ the ‘JPAC Public Consultation Guidelines, and the ‘North American Fund for Environmental Cooperation Administration and Funding Guidelines.’

In the broadest sense the purposes of the public participation includes providing information and public education and if needed ask for input, not only from stakeholders, but also from any potentially affected public. This involves circulating documents for comments, providing for exchanges via the Internet and offering formal participation through structured public meetings, such as the annual Regular Session of Council and JPAC regular sessions.

Public participation involves the two-way process of communication; one is to communicate to the public and other is to developing the procedures for the public to bring the information and viewpoints to the CEC. For facilitating the two ways process of the public participation the CEC should:

a) facilitate and gather information to improve the understanding of the public of the CEC’s role, working program and activities as well as its identified priorities;

b) assure wide dissemination of reliable, timely and useful information on the work of the CEC using a variety of mechanisms;

c) contribute to public understanding, education and empowerment, recognizing that this is essential for resolving environmental problems and participating in environment decision-making;

d) provide the public with a means to interact constructively with the CEC;

e) promote opportunities for the participation of the public in all of the three countries; and
f) enhance the understanding of both the CEC and the public by including and considering also those sectors of the public that are not active participants. (CEC, 22\textsuperscript{nd} October 1999)

Transparency and public participation are two aspects of the agreements that are more successful at altering domestic environmental behavior than are coercive enforcement measures. NAAEC has successfully achieved one of its primary goals: to promote a transparent environmental regime that emphasizes public participation. The Citizen Submission process is the great example of the transparency and public participation in this agreement. (Goldschmidt, Mark R., 2001-02. p.1).

The public participation and transparency persuade nations to comply with their international environmental treaty obligations. The idea came into mainstream by the Principle 10 of the Rio Declaration on the Environment and Development.* (it stated: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities..... and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.) (Ibid). NAAEC article 14 and 15 of citizen submission, gives the public participation to file the case against any countries and also being active till the final record is published.

**Role of the Transparency and Public Participation:**

The transparency and the participation are active and best in their interest in the international environmental agreement. As the treaty members find it hard to allege the other party who are also member and on top also find difficult in proving the harm done to the environment. So the role of the public is important were it is unrestricted. in its work. Below are role of the public participation.
1. **compliance versus effectiveness:**

In assessing the compliance and effectiveness of the countries the public participation is a main in determining in dealing with environmental enforcement. Compliance refers to sticking to the obligations and to the treaty's preamble or articles.

Effectiveness shows an agreement's impact on the countries. The international environmental agreement changes domestic behavior of the countries in eliminating the problem which are created. Effectiveness also show that its adherence to the treaty procedural obligations, substantive requirements and spirit of the treaty. The research project of the International Institutional for Applied System Analysis indicate that efforts to open public participation in the environmental policy development process have influenced domestic policy decision and enforcement.

2. **Non-Governmental Organizations:**

NGOs plays a crucial role in monitoring the implementation and compliance of the country with the agreement to the treaties, as the getting information is difficult so the NGOs put pressure on government to release the information of the environment. They mobilize the public opinion, set political agendas and communicate with other NGOs throughout the world.

3. **The Role of Public Participation in monitoring the enforcement:**

In some of the international treaty the participation of the public is restricted, as we see in the GATT, there are sanctions to counter the violation but the trade sanctions overrule the environmental sanction. In other treaties compliance relies on the transparency and public participation. Here parties are accountable and try not to depart from the agreed norms.

4. **The Need for the Transparency and public Participation:**

Transparency make the public know about failure of the countries in compliance with the treaty. The word is defined as adequacy, accuracy, availability and accessibility
of knowledge and information about the policies and activities of parties to the treaty and of the norms, rules and procedures established by the treaty. (Chayes, Abram et al., 1998, p.41). The need of the transparency and participation is because to collect the information is compliance of the treaty; show the accurate, reliable and legitimate of the information provided by it; forcing the failure to get analyzed and processed effectively of the treaty; and finally if there is transparency the treaty organization made available to industry, NGOs and public as well as government.

Transparency also allow one party to observe the other party's deviation from treaty, and also whether they following the obligation.

Also noted some other benefits of transparency:

1. the creation of communities of interested parties, especially scientists and specialists in the topic; 2. an increase in the amount, quality and availability of information about issues involved, so that they can be readily understood; 3. the involvement of domestic officials and bureaucracies, so that their personal interests and reputations become issues at stake; and 4. the generation of international momentum toward domestic compliance with environmental laws, which increases the benefits of compliance and the costs and consequences of noncompliance for adhering countries. (Goldschmidt, Mark R., 2001-2002). In combination of the public pressure group and the greater inflow of the scientific and technical information concerning the activities of member countries makes likelihood of compliance with an international agreement.

5. Changing the Environment:

The recent years in the international environmental arena giving rise to the coordination for the solution of any problem. The environmental agreement environment i.e., of the set up scheduled is been changing, as we see in the international agreement the fact finding is becoming more frequent and allowing the public to scrutinize the party's record of enforcement of domestic law and compliance to the international environmental agreement. International legal system is shifting from static to the dynamic one were leading the system were the state and non-state actor can play a lead role. Nowadays
citizens and NGOs giving greater recognition, they are influencing not only the international behavior but also the domestic behavior, so the state centric system is changing.

6. Three strategies for Compliance:

To encourage compliance with international agreements three broad strategies are:

a. sunshine strategy it make the party behavior open to the public and other member scrutiny, i.e., the official or unofficial monitoring is an important which takes place, unofficial monitoring rely on NGOs, expert communities and corporate actors to encourage compliance with the treaty. Agreements such as the World Heritage Convention and the Convention on International Trade in Endangered Species (CITES) use NGOs in their implementation. (Ibid).

b. positive incentives, it induces the countries to comply with a treaty, in forms of the special funds, technical assistance, training programs and materials, access to technology, and bilateral and multilateral assistance, international organization and the private sector. Eg: World Heritage Convention, the Montreal Protocol and the International Tropical Timber Agreement, provide for funds that assist a party's ability to comply with those treaties.

c. the coercive measures are through the sanctions, penalties and the withdrawal of membership privileges to a convention. It is the last resort. Eg. GATT.

So considering the role of the Transparency and Public Participation will see the objectives of the NAAEC. The preamble of the NAAEC states that primary goal is to promote a transparent environmental regime that emphasizes public participation, further recognized 'the importance of the public participation in conserving, protecting and enhancing the environment.' Article 1, outlines ten objectives for the treaty, including the promotion of 'transparency an public participation in the development of environmental laws, regulations and policies,' Article 4, creates transparency and encourages public participation by requiring member countries to promptly publish any law, regulations, or procedure covered by the NAAEC and to publicly release information concerning
noncompliance. Parties committed to ensure to include private access to remedies for alleged violation of the agreed environmental laws and regulations. Article 14 & 15 the citizen submission process act as the mechanism of transparency, providing the private access to provide and compile the accurate information available, analyze effectively and try to pursued to get the factual record publish.

As we have studied the role of NGOs in the debate of NAFTA over formation of NAAEC, it shows that the transparency was provided; the side agreement was realized because NAFTA provided to phase out of tariffs and also provide the legal instrument to remove unnecessary nontariff barriers to trade.

**North American Funds for Environmental Cooperation (NAFEC)**

NAFEC is created by the CEC in 1995, but started operating in May 1996, as the means to fund community based projects in Canada, Mexico and US that promote the goals and objectives of the CEC. NAFEC is not a mandated activity of the CEC but its seen as an important compliment to mandate CEC work. NAFEC has shifted the focus of its grant making accordingly to the changing priorities of the CEC, and to ensure that NAFEC objectives are clearly targeted and strategically aligned with the key CEC program areas.

NAFEC in its fifth year of grant making having received 2,014 proposals and awarded 142 grants totaling US $ 5.4 million, till now 86 projects have been completed and 56 still remains active. In December 1997, an interim evaluation of NAFEC was prepared by SAL consulting to review the administrative and process related strengths and weakness of the program.

NAFEC seeks to support activities or the projects that are: a) community based, b) small and project based, and c) cooperative partnership. And also the projects that: a) enhance the projects of the CEC as presented in its three-year program plan and Budget and link the results of those projects to other components of CEC’s work program, b) leverage additional support from other sources, and c) strengthen and build the capacities
of local people and institutions and their participation within CEC processes and within other processes of regional relevance. (Outlined in the 1999/2000 Program Plan).

NAFEC Objectives:

Formal objectives:

- support projects that are community-based, respond to a specific issue or problem and lead to concrete results;
- meet the objectives of the CEC and the NAAEC;
- strengthen and build the capacities of local people, organizations and institutions;
- support cooperative partnerships and regional networking that address issues of North American relevance;
- share environmental information at the North American level;
- support projects that leverage additional support and promote innovative and replicable ideas;
- support public participation;

Informal objectives:

- emphasize projects that link trade and the environment;
- promote holistic models for environmental problem-solving, moving away from categorical, “silo” approach;
- inform the CEC from the grassroots level

Proposals of the NAFEC support are of those which demonstrate:

a) short and long term desirable are clear and achievable;

b) administrative costs and overhead are not excessive and are justified; and

c) the grantee has the institutional and organizational structure necessary to ensure the projects success. (CEC, 2002, Administration and Funding Guidelines NAFEC CEC: Revised version approved by the Council on December 11th).
It is expressed that “the CEC was set up as the environmental watchdog, for the North American public. NAFEC plays a key role in keeping this NAFTA promise.” The data of the report indicated that, NAFEC has made a significant contribution to achieving the goals and objectives of the CEC and its programs. 1) NAFEC generally supports capacity building among community groups; 2) NAFEC provides the CEC with a public constituency that informs policy-level programming at the CEC; 3) NAFEC promotes direct and indirect public participation within the CEC by encouraging grantees to take an active role in JPAC and other CEC processes; and 4) NAFEC creates a natural information clearing house to fill a North American-focused information distribution gap.7

NAFEC support to the CEC goals and objectives:

The NAFEC supported a number of projects related to CEC programs8 citizen monitoring and increasing public access to environmental information (linked to both the Pollutants and Health, including the PRTR initiative, and to Enforcement initiatives within the Law and Policy program);

a. Migratory species and habitat conservation: (with a specific focus on species of interest to CEC, such as migratory birds, and on regions like San Pedro where CEC is particularly involved);

b. Cross- border management of shared ecosystems: (including CEC priority areas such as the Gulf of Maine and the Bight of the California, and testing approaches such as Marine Protected Areas, which are of interest to CEC); and

c. linking biodiversity conservation and green goods and services: (with an emphasis on areas of interest of CEC such as shade coffee and sustainable tourism);

The CEC Secretariat and the JPAC sponsored a public symposium and workshop on May 2007 in Seattle, Washington, as part of public consultation for the Secretariat’s independent study concerning green building in North America. The participant are

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7 Internal Review of the North American Fund for Environmental Cooperation (NAFEC), June 2000, p. i.
8 Environment, Economy and Trade; Conservation of Biodiversity; Pollutants and Health; and Law and Policy.
architects, planners, policy makers and developers pioneering green building to discuss the opportunities and challenges facing this emerging industry. Public and expert comment on the background papers presented at this event will help inform the study's policy recommendations to the governments of Canada, Mexico and US. NAAEC and CEC were created after a strong public pressure to write environment protection into NAFTA, if it leaves the articles 14 and 15 in freer way which can lead to raise even the delicate issues.

As citizen submission process has been interesting not only in that it can annoy a government and put some sort of shame on them but essentially It sort of forces governments to rethink their implementation policies, After the file of the complaint about lack of enforcement of an environmental law, the secretariat publicly releasing a factual record, which carries no enforcement power but can lead to an internal review and perhaps brig public embarrassment to the party.

As the three country benefited for the NAAEC but Mexico is exceptional as the pesticide control and pollution prevention were improved thanks to the agreement while management of chemicals has improved In all three countries. Also government has been made more accountable to their environmental law. The requirement is that the CEC must respond t the calls from business, indigenous people and academics to engage them more actively in the activities of the CEC while maintaining the active engagement of environmental NGOs. Runnall call this as diplomatic language. (President of the Canada-based International Institute for Sustainable Development (IISD))

But NAFTA's "green guardian" suffered from inflated hopes, according to Runnalls. "The expectations at the beginning were fairly high that this thing would go into the boxing ring and do battle with the bad guys in the free trade commission ... So far as I know, despite lots and lots of efforts by the CEC during the first 10 years, the trade ministers and the environment ministers have never been in the same room at the same time."