In globalization debates, environmental issues are viewed as the dark side of globalization. The environment is a victim in the ongoing neo-liberal globalization, with increasing liberalization of trade and investment, decreasing control by nation-states within the territories and the growing power of trans-national companies all these factors contribute to the destruction of the environment.

Expanding trade and markets opening across borders require unprecedented collaboration to protect the environment, as millions of people share the North American ecosystem. Collaboration is one mechanism which provides a solution to the problems of all citizens, industry and government in protecting our common environment and economic growth. Cooperation is a dynamic character among trade and environment bodies, and may be most suited to take on these issues.

NAFTA, an agreement between the Canada, US and Mexico, met the high tide of the trade and environment debate, where NGOs, government officials, academics, international experts and scientists, along with broader audiences, shared the same platform, and began considering the fact that environmental implications were a central element of trade negotiations. NAFTA consisted of partners in different levels development. Until then, the only environmental agreement specifically designed to complement a trade agreement was NAAEC and its institution CEC. NAFTA looked to do three things: first, to increase substantially the investment opportunities in the territories of the Parities (NAFTA Article 102 (1) (c)); second, be consistent with environmental protection and conservation (NAFTA Preamble); and third, to promote sustainable development. NAFTA created the NAAEC with the aim of promoting sustainable development based on cooperation and mutually supportive environmental and economic policies. NAFTA gives regional coherence across its parties, while presenting the opportunity and challenge of closer ties that are advantageous to all three parties. As NAFTA has succeeded in advancing economic integration in North America, some dimensions such as trade increased much more rapidly than forecast by most economic models. Liberalization in the auto sector has sparked a movement toward
specialization. There have been great productivity improvements in all three countries. Direct investment in Mexico has been robust, and trade disputes have been managed.

For the US, NAFTA was an economic opportunity to take advantage of a growing export market in the south, and a political opportunity to improve relations with Mexico. US officials hoped to have regional talks that encouraged them, due to slow-paced Uruguay Round of multilateral trade negotiations. NAFTA opened the door for US exporters, who once faced tariffs five times greater on average than US tariffs.

For Mexico, NAFTA opened markets and reformed policies, as it was facing low domestic savings, debt crisis during the 1980s and an overvalued peso, and Mexico wanted import and export growth and capital creation.

For Canada, NAFTA’s advantage was to minimize risks presented by US-Mexico free trade, while it offered an opportunity to extract new commercial concessions from the US.

Among the trade agreements the NAFTA/NAAEC package represents trade rules with well developed environmental provisions. However, there are still growing concerns: persistent high levels of illegal immigration, slow progress on environmental problems, growing income disparities in Mexico, weak growth in real wages and trafficking of illegal drugs. NAFTA faced a peso crisis when it existed and also the security demand of the post September 11 era may pose greater challenges in the long run.

The debate over NAFTA/NAAEC faced a greater challenge in public forums. Many alleged NAFTA would cause a ‘giant sucking sound’ -- US capital and jobs would flee to Mexico, and environmental groups charged that Mexico would become the pollution haven of North America. Resources show some the main problems still exist 10 years later. NAFTA was a major election campaign issue in 2004, North Carolina Senator John Edwards blamed NAFTA for sharp falls in US manufacturing employment, and said trade policies are closing mills and killing jobs. Senator John Kerry called for renegotiating environmental obligations and enforcement procedures. Presidential
candidate Ralph Nader and Naomi Klein said workers were exploited by receiving low wages. (Hufbauer and Jeffrey Schott (2005), p.15-16).

The balance of trade and security was disturbed on September 11th, 2001 when terrorists attacked, which was followed by elevated security measures along US borders causing lengthy delays. To reduce delays, the US negotiated two bilateral agreements – Smart Borders and the Border Partnership Action plan with Canada and Mexico.

NAFTA is believed to be more attentive to environment-related concerns than some of the preceding trade agreement, including the Canada-USFTA, the old GATT, the Uruguay Round and the original European trade liberalization texts. Toward the end of the agreement it is realized that it is an unfinished structure on the environmental grounds, as it did not provide continental substantive environmental norms, with this there also broader concerns. These concerns compelled the public and the NGO community to lobby, and helped for the emergence of the green agreement with their different drafts, causing leaders to frame a side agreement on the environment without needing to reopen the NAFTA’s main text, in order to make the trade regime more environmentally sensitive. The NAFTA preamble refers to the promotion of ‘sustainable development’ and Article 102 speaks of establishing a ‘framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this agreement.’ The text also declares that the parties will work jointly ‘to enhance the level of safety and protection of human, animal and plant life and health, the environment.’(Art. 906 (1)) (Johnson, Pierre Marc and Andre Beaulier, (1996), p.124).

NAFTA is commonly referred to as a treaty in the popular press, although NAFTA is not a US treaty; it is an executive agreement entered into under authority from Congress and went into force following subsequent legislation. NAAEC is a simple form of treaty that does not require formal instruments of ratification by the national legislatures of Canada, Mexico or the US. It is more formal than a memorandum of understanding, which could create no binding obligations under international law. In American legal parlance, NAAEC is an executive agreement: it binds the member countries from 1st January 1994 unless they withdraw from NAAEC. (Ibid, p.127).
The NAAEC is in many ways an innovative agreement. It may well be the first international agreement to seek to coordinate the overall environmental protection efforts of several countries. Most other agreements focus on particular environmental issues, such as eliminating ozone depleting substances or protecting biodiversity. In an age when environmental problems are increasingly cross-border in nature, and corporations and goods move freely across national borders, institutions such as the CEC are very much needed.

The CEC is also the first regional environmental agency in North America with innovative tools, almost unlimited jurisdiction, and unprecedented opportunities for participation by civil society at the international level.

The lessons to be drawn from the CEC’s experience should be of great value to all those interested in environmental protection and economic integration, regional and global environmental organizations, and participation of civil society in international policy. Surprisingly, however, the CEC has received little scholarly attention to date. Here I intended to fill that gap by providing a comprehensive analysis of how the organization has fulfilled, or failed to fulfill, its mandates.

This package has given the public participation a path in a complex and difficult issue. The environmental effects of trade-related growth, particularly in the border area, have proved to be a lightning rod for NGO criticism. It is because of NGOs that the environmental issues have received as much attention under NAFTA.

The study here focused on the liberal trade order NAFTA, and how it addresses environment protection from 1994 to 2004. I started by reviewing the existence of the sustainable development word in international conferences since the 1987 Brundtland Report, where sustainable development was seen to give rise to the integration of the trade and environmental goals and global interdependence. Then I moved on to the describe the genesis of environmental policies of North American countries, which makes known the formation of the NAFTA/NAAEC package that how well it is included the environmental statutes and regulation. The CEC, without which the goals of the NAAEC
cannot be fulfilled, studied the structure of the institution, and also examines the
harmonizing, spreading, and improvements in environment legislation and
implementation in the three NAFTA countries. Article 14 and 15 provides ground to
NGOs to challenge the NAFTA/NAAEC package for its failure to enforce environmental
in the three countries. The conclusion addresses the role of public participation in
NAFEC, and the obligation of NAAEC in painting the NAFTA green, and conclude that
NAFTA is greener than the GATT. Early in the 1990s the international community
produced Agenda 21 and the WTO, each promising to exert influence in shaping public
policy for decades to come. But NAFTA became the first international trade pact to
envision the need for an international forum where synergies and tensions arising from
trade and the environment would be addressed. It is also distinctive as it includes dispute
settlement mechanism and side-agreements on labor and environmental issues.

The struggle of NGOs in reconciling trade with environmental goals across the
three NAFTA countries brought about the existence of the NAAEC. It is proved in the
third chapter in the formation of the NAFTA/NAAEC package that NGOs tried hard to
get the side agreement signed by Canada, Mexico and the US. NGOs provided reports to
appropriate authorities with their specialized information that government officials use to
both monitor and prosecute violations. In this sense, American NGOs took active part in
the treaty implementation and enforcement efforts. Canadian NGOs played an active part
by demanding that environmental safeguards be included in NAFTA, but were not as
effective as of American NGOs. In Mexico, the government did not allow NGOs to
participate in the debate. The government of Mexico had a freer hand in negotiating the
deal, because public participation was absent. NGOs were active in focusing the
Secretariat to prepare a factual report by providing the details of non-enforcement of the
laws. However, some of the Secretariat's public consultations have received good marks,
such as those conducted for the San Pedro River Ribbon of Life report. It is still not clear
how public consultations should or could feed into the work of the CEC, a problem that
has plagued the Secretariat in the past. CEC enables NGOs to be in the spotlight, but the
authors were constrained in their creativity. After initiating the Secretariat to prepare the
factual record, NGOs have no further role in the process other than providing substantive information.

Secondly, it is assumed that the performance of the CEC was impacted at different levels of economic development between Canada, US and Mexico, which gave rise to different environmental priorities, strategies and capacities to address problems. This external factor affects the functioning of the CEC. Mexico lacks experience with the public participation and transparency in policy-making, creating difficulties at times for the CEC to implement the citizen submission process in Mexico. The Mexican government is not very responsive to public calls for environmental action, but the CEC provides supranational action against it, an extraordinary and unprecedented concession by itself. It provides an avenue of access to the Mexican policy process that has been unavailable to Mexican environmental groups, and provides the distinct advantage of linking domestic policy to an external system of accountability. However, there are cases in which the Mexican government stopped the proceedings of the Secretariat investigation by saying the matter is under jurisdiction of the government.

In Canada, the provisions of the NAAEC bind the country in the same way it does in US and Mexico, but in dispute settlements Canada follows an altogether different set of rules. The two special sections in NAAEC apply. First, Annex 36A exempts Canada from the application of NAAEC provisions on trade sanctions in the case of an unpaid monetary enforcement assessment, but if Canada fails to assess the case, then the CEC and the complaining party can take the case to the court. Neither the proceedings nor the order are subject to domestic review or appeal. If the panel determination were to be unacceptable, it might be tempted to exercise its veto — notwithstanding the inevitable political fallout. Second, Annex 41 addresses the difficult issue of implementing an obligation to enforce environmental laws in a relatively decentralized federation, where the jurisdiction over the environment is shared and contested between the federal and provincial government.

In the US, Executives consult on issues of interest to the NAAEC. It commits the administrator of the Environmental Protection Agency to set up a governmental
committee to provide advice on the implementation and further elaboration of the Agreement. A role of the panel will be on informing states about dispute settlement proceedings or areas of implementation which ‘directly relate to, or will potentially have a direct impact on, the states.’ (Johnson, Pierre Marc & Andre Beaulieu (1996), p.225). Differing constitutional arrangements and federalist systems also impacted the political and legal commitments the Parties under CEC initiatives.

Thirdly, The Joint Public Advisory Committee (JPAC) has been viewed as a critical link between the public and CEC, but the process used by JPAC for translating and prioritizing the comments, positions and requests presented at public meetings by NGOs for the Council have not been clear, thereby limiting the credibility of the JPAC. JPAC promotes North American Cooperation in dealing with ecosystem protection and sustainable economic development, and ensures active public participation and transparency in the action of the Commission. JPAC acts independently of the Council and does not seek or receive instruction from any government or the Secretariat. JPAC is the most innovative among the three institutions, its role includes ‘keeping the Council honest and help the Secretariat’s independence.’ JPAC is CEC’s public face, and through many public meetings plays an important role both as intermediary between the Council and the concerned public, and as a sounding board for ideas. JPAC has been experienced failures and frustrations in terms of engaging the public and affecting the Council’s agenda and regional environmental policy, and in maintaining a wide range of NGOs and other stakeholders. It is quite difficult for JPAC to translate and prioritize the comments, positions and requests of public meetings to the Council, and the Council will not always follow the advice of JPAC. One examples is Alt Reps. JPAC protracted advocacy in support of an effective citizens submission process in arguing it damaged its relation with the Council and the Alt Reps. The Council dismissed the case as JPAC was stuck with technical details and procedural concerns. In fulfilling the challenge of being the public’s conscience and strategic partner, JPAC has typically taken a confrontational approach with the Council.

Fourthly, although the Secretariat prepares reports for the Council by promoting considerable public participation in its work, consultations have been perceived by some
as not being broad-based or representative enough, with important sectors of civil society being left out entirely from the consultation processes, such as indigenous groups from Mexico. It is true that Secretariat has less discretionary authority — to accept a submission it has to satisfy certain criteria, and as we saw in Chapter IV, NGOs face difficulties in fulfilling such criteria while filing cases. To file a case, the drafter must residing in that territory (Art. 14 (1)(f)). For example, a Mexican citizen would be unable to file a complaint about inadequate enforcement of environmental standards in Canada, in an industry were the goods produced do not compete with Mexican exports to Canada, and never leave Canada to compete in Mexican. In another example, an NGO based in Vermont filed a submission on forestry management in Washington State. Such private submissions have no bearing. The internal and external borders of NAAEC parties are irrelevant. However, though the public advisory committees, public consultations and citizen submission processes provide a number of avenues to promote transparency and public participation in CEC’s work. There are difficulties in maintaining a fight; while addressing environmental issues requires building a strong grassroots constituency, especially in Mexico, top-down and externally financed environmental reforms will not be sufficient to address the impending environmental crisis. The lack of a strong consistency within the CEC may be due to frustration over the perceived futility of public participation mechanisms, which prompts some citizens to withdraw from on-going consultation processes.

Fifthly, continued large asymmetries in the capabilities of Canada, the United States and Mexico require considerable capacity building, including data sharing, and training and exchange of best practices, in order to avoid “environmental cooperation fatigue”. Because the countries are not equally developed economically, there are asymmetries. Compared to US and Canada, Mexico is rather weak, and must have an agreement with the other two developed countries to access economic opportunities, first to attract foreign capital, and second, because of the environmental agreement Mexico wanted to move from limited environmental cooperation (largely on US-Mexico border issues) to a broader scheme entailing stronger commitments and actions.
The NAFTA/NAAEC commitments have helped advance Mexico’s environmental record. The procedure has improved the Mexico’s focus on the pollution-control and natural-resource-management challenges it faces. NAAEC has also encouraged Mexico to invest in data, training and other important prerequisites for enhancing environmental performance. Sharing training and the exchange of best practices are an integral part of many of the CEC initiatives that have been the key for the success of the some cooperative initiatives. One example was the PRTR, as it emphasized the value of PRTRs as tools for sound management of chemicals, and for encouraging improvement in environmental performance, and for providing the public with access to information on pollutants in their communities. Capacity building was one of the goals of the CEC, and those efforts appear to be particularly important for Mexico, due to its limited resources and difficulty in participating fully in some CEC programs due to a lack of institutional capacity.

Over all the CEC is most successful at promoting voluntary environmental cooperation, compiling, analyzing and disseminating information, and convening different parties and stakeholders in a neutral forum to discuss regional environmental issues priorities for all three countries. However, the CEC’s work is hindered by a lack of a defined program and differences between Parties.

The assessments of the report (IRC (1998) and TRAC (2004)) are still relevant today:

- The CEC continues to advance North American environmental cooperation especially in the area of information sharing and capacity building;
- Decision-making at the CEC remains challenging; and
- There is an ongoing need to focus work and generate concrete and measurable results.

The CEC’s way of conducting business has evolved overtime, particularly in terms of:

- New organization-wide planning efforts;
- An increasing level of Parties oversight in the Secretariat; and
- The desire to improve corporate communications.
Some operational factors create challenges in addressing an evolving context and maintaining an efficient organization. These factors' most notable concern:

- CEC human resources planning;
- The comprehensiveness and clarity of CEC administrative policies and practices, and
- The transparency of budgeting and financial processes.

This voluntary trilateral cooperation on environmental issues constitutes the majority of the CEC's current work. This cooperative work cluster two main themes: enhanced stewardship of shared continental ecosystems and natural resources, and environmental sustainability in open markets.

The successful areas of the CEC are:

1) Conservation of biodiversity: the CEC started the North American Bird Information Network (NABIN), whose data-gathering and mapping exercises are essential for developing a sound basis for subsequent conservation actions. Another example, the North American Bird Conservation Initiative (NABCI) has received increasingly strong support from both policy-makers and conservationists in all three countries. The US Fish and Wildlife Service recently adopted the CEC eco-region for its Bird Conservation Regions, which will be used for future integrated bird conservation and management initiatives, by collecting the data and development of frameworks as a part of the conservation of biodiversity, on which the CEC will develop conservation strategies and implementation plans.

2) Toxic substances: The CEC developed the PRTR for North America in dissemination of information compiled by these systems. CEC's on-going capacity building for government, industry and non-governmental organization on PRTR system in Mexico, has brought Mexican people to consider the environmental policy as first priority. The Sound Management of Chemicals (SMOC) program has facilitated the elimination of the use of DDT and chlordane
in Mexico as well in US and Canada. SMOC kept its obligation to comply under the international environmental accords.

However, there is some drawback to these institutions:

The NAFEC, the funding agency for North American community based environmental projects, helps build trans-boundary networks and has supported the goals and substantive work of the CEC. Over all it is has been effective in encouraging public participation in environmental matters and addressing specific environmental needs in a decentralized manner. However, CEC’s 2000 reports show that a reduction in funding is impacting the efficiency of the program.

Article 10(6) – Coordination with the NAFTA’s Free Trade Commission. the weakest point of the NAAEC is the lack of the meaningful coordination between the CEC and FTC.

Article 10 (7) – obligates Parties to develop within the three years recommendations on the environmental assessment of projects with trans-boundary impact. Although parties formalize the recommendation, the agreement could not be concluded because of disagreements between State and Federal governments regarding environmental assessments along the border.

There are factors affecting the implementation of the NAAEC and the operation of the CEC:

Internal factors:

The CEC has the ability to influence such internal factors such as the program planning processes. The CEC made improvements in the setting of environmental priorities and clarifying lines of action within its work program, but remaining ambiguities may forestall effective implementation by the Secretariat, the Parties or the other stakeholders. This is particularly true given the limited budget of the CEC, which is
also frequently cited as a factor that constrains the CEC and the implementation of the NAAEC.

The operation of the CEC has been hampered by wavering political support and conflicts amongst the Parities, and between the Council and the Secretariat. The CEC lacks a high degree of institutional legitimacy and it is generally not very well-known within the three countries. The CEC also lacks a strong broad-based constituency, which may be due to some of the other factors mentioned above, such as limited financial resources to facilitate public participation, low institutional legitimacy, and an overly broad mandate. Although the public participation mechanisms are innovative, they are at times not well integrated into the substantive work of the CEC and need to be strengthened to ensure broad representation and credibility.

External factors:

The disparity in the economic development of the three countries impacts the commitment of the Parties to the agreements.

CEC focuses on hard North American environmental data to facilitate better policymaking and make proper use of its investigatory power under Article 13, 14 and 15 to draw attention to important environmental issues. The CEC has built a reputation as a source for environmental information in the past, it should continue to look for opportunities to perform in the future. The CEC Article 13 Secretariat Reports and Articles 14 and 15 citizen submission process have demonstrated the potential to focus attention on environmental issues and problems and should also be improved upon and employed to the extent possible. Overall the CEC appears to be very tightly controlled politically. It can still be effective for cooperation and spotlighting issues, and should solidify its role as an information hub and policy analysis center. Given its regional scope, the CEC is well-positioned to respond to a growing need to apply a regional lens to understanding and improving environmental policies and practices.