

**CEPA Review:**

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**Issue  
Elaboration  
Paper  
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**The Globalization of Environmental Protection  
and National Accountability**

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**Canada**

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Catalogue No. EN40-224/14-1994  
ISBN: 0-662-61204-3

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## EXECUTIVE SUMMARY

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Differences in national environmental policies are raising concerns about competitive distortions in global markets. One Canadian trade expert has observed that "the potential for conflict arising out of different priorities, values and techniques in environmental protection and transmitted as a result of much greater global economic integration is intense." Industry, as well as other stakeholders, has called upon governments to ensure that the environmental measures they adopt become increasingly international in outlook. While environmental and other groups have called upon governments to ensure that environmental protection is included in trade agreements.

The opportunities afforded by information processing in a globally competitive economy, as well as by potential efficiency improvements in patterns of trade, production and consumption, are immense. Information, and especially its attributes (i.e. it is expandable, substitutable, transportable, diffusive and shareable), makes it possible for people and countries to learn and to develop new approaches to environmental protection that take account of global environmental and economic interdependence. Progress in promoting and fostering the sustainable use of the environment rests as much upon cooperative international efforts as it does upon domestic efforts.

Recent national and international efforts to integrate environmental, development and trade policies suggest ways in which the *Canadian Environmental Protection Act* (CEPA) may be amended to better support and effect national accountability in environmental protection. Amendments should be considered in five broad areas:

- a revised Declaration that places people at the centre of concerns for sustainable development, while stating that preventive environmental care is essential to the well-being of the planet and Canada;
- a revised Preamble, based on several of the principles identified in the Rio Declaration, that will situate preventive environmental care in the context of sustainable development;
- the publication of a set of principles against which Canada's progress toward domestic and global sustainable development may be measured;
- the provision of a balanced "tool-box" that enables the federal government to adopt universal standards, harness market forces and develop regulations through a mix of environmental measures that minimizes the cost to Canadian society of local, regional and global environmental protection while enhancing the level of environmental protection in Canada (the principle of subsidiarity should be engrained in national endeavours); and
- the strengthening of publishing and reporting requirements in support of national accountability and in recognition of the interdependence of domestic and international policy-making.

# **The Globalization of Environmental Protection and National Accountability**

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## **INTRODUCTION**

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This discussion paper examines the potential for and the means of strengthening the *Canadian Environmental Protection Act* (CEPA) given the continuing globalization of environmental protection and requisite national environmental accountability. The first section provides background information on new directions in environmental protection as a result of globalization. The second section presents areas where CEPA needs to be strengthened. The final section suggests possible adjustments to CEPA to better support and effect national environmental accountability.

## **1. BACKGROUND**

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As the economy has become globalized so too has environmental protection. The transboundary nature of environmental issues is causing countries to look beyond their borders to resolve issues such as ozone depletion, global warming and the loss of biodiversity. The most dedicated effort by a country acting alone will have minimal impact on global environmental concerns.

A strong consensus on the priority of global environmental problems and the need to foster sustainable development was forged among scientists and governments at the 1992 United Nations Conference on Environment and Development (UNCED). One of the major outputs of UNCED is the Rio Declaration - a statement of 27 principles that places people at the core of concerns for a sustainable future. The principles indicate to all individuals and all sectors of society that the three pillars of sustainable development (society, economy and the environment) are mutually supportive at the local, regional and global levels. Also, they indicate that peace, development and environmental protection are interdependent and indivisible.

Recent efforts to foster compatibility between trade and environmental policy-making signal a new era in government decision-making. Proponents of trade and of the environment are learning through dialogue that liberalized trade and environmental protection can be mutually supportive within the context of sustainable development. There is increasing recognition that trade and environmental policies are equally important to the welfare of citizens and that they must be considered on equal terms. In addition, the interdependence of domestic and international policy-making is increasingly recognized.

## **The Globalization of Environmental Protection**

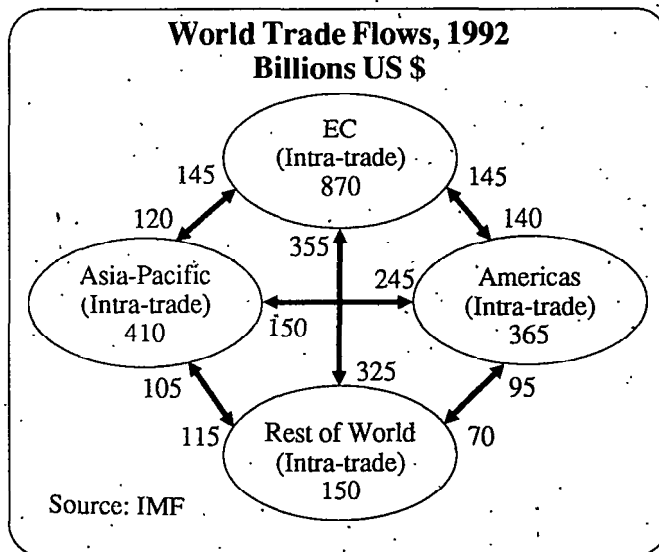
Existing global and regional environmental protection regimes are evolving as new international environmental agreements are signed to address regional transboundary pollution or to protect the global commons. Regional transboundary issues being addressed within these regimes include acid rain, smog, air toxics and hazardous wastes. Some of the global commons issues being addressed include climate, stratospheric ozone, oceans, biodiversity and Antarctica.

Canada, together with other signatory countries to recent agreements, has achieved some innovations in international environmental policy-making. Provision was made, for example, to take into account knowledge of ecosystems and the regional nature of specific environmental problems in both the VOC Protocol and the new SO<sub>2</sub> Protocol - achievements that set the tone for incorporating knowledge of ecosystems in other arrangements such as the North American Agreement on Environmental Cooperation (NAAEC). Additional innovations include the incorporation of trade measures in both the Montreal Protocol and the Basel Convention, as well as the provisions for technology sharing and financial transfers set-out in both the Montreal Protocol and the Biological Diversity Convention.

In a world that aspires to sustainable development, our systems of governance continue to evolve. Progress in promoting and fostering the sustainable use of the environment rests as much upon cooperative international efforts as it does upon domestic efforts. The opportunities for Canadian leadership are present in many fora, including the United Nations and its agencies, the Group of Seven industrialized countries, the North American Commission on Environmental Cooperation, the World Trade Organization, the Organization of American States, the Asia-Pacific Economic Community and the Organization for Economic Cooperation and Development (OECD).

Ecosystem health and trade are in principle mutually reinforcing, but in practice conflicts have arisen between the two. Canada is a trading nation whose economic prosperity rests on a smoothly functioning trading system. It is therefore important that trade policies account for environmental concerns. Similarly, it is important that environmental policies not be used as disguised barriers to trade, and that impacts upon trade be taken into account.

Currently, 75 percent of Canada's exports are to the United States, while 65-70 percent of our imports are from the United States. Less than 7 percent of Canada's gross national product is exported beyond North America. Canada must adjust to a more globally organized, information-based economy as the major economies and the major trading blocs of the world are transformed.



Canada's small population and economy present natural barriers to the growth of its industry and commerce. A few large resource companies dominate Canadian exports, and fewer than a hundred firms are responsible for the majority of exports. It has been suggested that Canada's domestic market is both too small and too open to offer a secure base for Canadian manufacturers. It has also been suggested that Canadian companies need to become more competitive to maintain a reasonable share of the domestic market and to gain access to new markets.

Countries are creating new opportunities for trade by facing up to environmental issues and by ensuring that trade becomes a means of strengthening rather than evading environmental responsibilities. Changing consumer demands and the growing importance of environmental considerations in international markets provide an opportunity for Canadian businesses that needs to be acted upon. World markets for environmental protection goods and services are expected to double from \$280 billion to \$560 billion by the turn of the century. The redesign of industry's manufacturing and industrial processes to prevent pollution requires engineering, scientific, analytical and management expertise.

At the same time, countries are choosing to protect biodiversity to maintain their opportunities for discovering and developing new foods, drugs and industrial products for future consumption and trade. Newer industries based on pharmaceutical and biotechnological research and development are among those that will benefit from economic and environmental foresight. The long-term viability and competitiveness of global markets depends as much upon sustaining biodiversity as it does upon innovation, quality management and regulatory

frameworks that encourage businesses to innovate and to become environmentally responsible.

Governments, businesses, communities and individuals are coming to understand that avoiding or minimizing the creation of pollutants can be a more effective and efficient strategy for protecting biodiversity than control/abatement and remediation strategies. Pollution prevention reduces risks to human health and biodiversity in a way that is fundamentally different from that of pollution control. Rather than focus on end-of-pipe controls to capture pollutants, pollution prevention focuses on front-end decision-making to avoid or minimize the creation of pollutants.

Governments may choose to effect front-end thinking by adopting a policy mix that includes measures that are explicitly environmental in their objectives and/or that adjust existing policies that serve more general social and economic purposes. Governments, for example, may choose to take advantage of regulation, persuasion, property rights and/or targeted economic instruments to achieve their environmental objectives. At the same time, governments may choose to "fine-tune" the economic framework for environmental objectives through impending macroeconomic or general economic reforms. The Canadian Manufacturers Association, for example, has estimated that within Canada's domestic market alone the elimination of barriers to trade - which includes the harmonization of environmental measures - may result in savings to the economy of up to \$6 billion a year.

### **Environmentally Sustainable Policies**

Policies that are environmentally sustainable will be those that move us toward development that is consistent with the 27 principles in the Rio Declaration.

Through *Agenda 21*, another major output of UNCED, the international community recognized that "environmental policies should deal with the root causes of environmental degradation to prevent environmental measures from resulting in unnecessary restrictions to trade." In a number of published reports, the OECD has indicated that the "root causes of environmental degradation" are market failure and (government) intervention failure. Market failures stem from the failure of markets to properly value and allocate environmental assets. As a result, the market prices of goods and services do not reflect their full environmental costs. Intervention failures, on the other hand, occur when government policies fail to correct for, create and/or worsen market failures.

Three environment-related market failures are usually identified: externalization of environmental cost, improper valuation of ecosystems and inadequate definition of property rights. It is usually stated that most environmental problems are related to environmental policy failures or the lack of appropriate environmental policies. Within OECD work programs, a great deal of analysis has been directed to understanding environmental policy failures, to developing appropriate environmental policies and to defining ways of integrating



these policies into domestic market mechanisms. Less is known about the environmental effects of other types of policy measures, such as export subsidies, and how environmental considerations might be integrated into international market mechanisms.

Inefficient patterns of trade contribute to environmental degradation in much the same way as inefficient patterns of consumption and inefficient patterns of production do. Simply stated: "Different goods, traded in different markets, under different conditions, have different environmental effects. Some may require regulation or even prohibition; others should be promoted to the greatest extent possible. Specific analysis of the positive and negative effects of trade and its liberalization is needed for various sectors, goods and markets. Such analysis must be both exact and even-handed and must include the admittedly difficult procedures for internalizing the environmental costs of goods."

In 1993, the International Institute for Sustainable Development (IISD) convened an international working group to develop a "concise set of principles" to be shared with the environmental, trade and development communities. In undertaking this year-long project, the IISD was interested in determining "how trade can serve sustainable development - how the expanded exchange of goods and services can create new livelihoods and the wealth needed to address poverty and environmental restoration without degrading global and local ecosystems."

Following the project, the IISD proposed seven principles to guide policy and decision-making:

- efficiency/cost internalization;
- equity;
- environmental integrity;
- subsidiarity;
- international cooperation;
- science and precaution; and
- openness.

The principles (for descriptions, see Annex 1) provide "both a model for future action and a benchmark by which existing policies may be measured." The International Institute for Sustainable Development has indicated that while "it will be tempting in some cases to pick and choose principles that serve the needs of the moment or the interests of the drafters in formulating trade, environment and development policies, the principles are an interdependent and mutually reinforcing whole, and must be taken as such if they are to help achieve sustainable development."

The International Institute for Sustainable Development has stated that "implementing the principles will take time; progress in some areas will depend critically on progress in others. There needs to be, for example, cooperative effort to build capacity for sound science and cost internalization in some countries, as well as technology sharing and increased financial transfers as laid out in *Agenda*

21. There may also need to be special concessions during a period of implementation. Some models of this approach already exist, including the Montreal Protocol and the Biodiversity Convention."

Liberalized trade is a key to resolving environmental issues, since it is only with better economic conditions that developing countries will have the ability to pay for social and environmental improvements. The North-South dimension to sustainable development requires our cooperation with and the commitment of developing nations to fulfil both global and domestic environmental objectives. Through trade agreements such as the North American Free Trade Agreement (NAFTA) and its environmental side-agreement, the North American Agreement on Environmental Cooperation (NAAEC), a pilot framework for promoting cooperation and action among developing and developed countries has been established.

### **North American Agreement on Environmental Cooperation**

Differences in national environmental policies are raising concerns about competitive distortions in global markets. One Canadian trade expert observed that "the potential for conflict arising out of different priorities, values and techniques in environmental protection and transmitted as a result of much greater global economic integration is intense." Industry, as well as other stakeholders, has called upon governments to ensure that the environmental measures they adopt become increasingly international in outlook. While environmental and other groups have called upon governments to ensure that environmental protection is included in trade agreements. Canada, the United States and Mexico are responding to this challenge. The North American Free Trade Agreement provides a prominence to environmental concerns that is not duplicated in other international trade agreements.

Canada, the United States and Mexico have an opportunity to make pollution prevention a fundamental tenet of a free trade system through NAFTA and NAAEC. Each party to NAAEC is committed to enforcing its environmental legislation, while undertaking to maintain high levels of environmental protection and striving to continually improve legislation to that effect. At the same time, NAAEC recognizes the right of each party to establish its own levels of domestic protection and development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations.

The North American Agreement on Environmental Cooperation is intended to foster greater transparency and cooperation on environmental matters among the three countries. To this end, a Commission for Environmental Cooperation was established comprising a governing Council, a Secretariat and a Joint Public Advisory Committee. The Council, consisting of one cabinet-level representative from each of the signatories, is responsible for future environmental cooperation among the three countries. The Secretariat supports the work of the Council and will consider submissions by any person or non-governmental organization alleging a party's failure to enforce its environmental laws effectively. The Joint

Public Advisory Committee, made up of five members of the public from each country, advises the Council and provides relevant information to the Secretariat.

Also, the agreement provides for a dispute resolution mechanism, including the establishment of an arbitral panel, to deal with trade-related environmental disputes between governments. The disputes must relate to the production of goods or services traded between the parties.

In one particular innovation, NAAEC provides for the ongoing consideration of the environmental effects of NAFTA. In July 1994, the Council approved a three-phase program to acquire the information and methodologies required to identify, measure and mitigate the environmental impacts caused by NAFTA. Comprehensive studies of sectors potentially affected by NAFTA will be commissioned in phase three of the program.

In another innovation, if a measure in one NAFTA country aimed at protecting the environment or human, animal or plant life or health is challenged by another NAFTA country in a dispute that arises under both the General Agreement on Tariffs and Trade (GATT) and NAFTA, and if that dispute raises factual issues concerning the environment, health, safety or conservation, the country complained against can choose to have the matter settled under NAFTA's dispute settlement rules rather than through GATT.

### **National Accountability**

As Canadians, we often focus on our differences, rather than on what we have in common. However, in increasing numbers we are recognizing that what we have in common is the challenge to steward the environment we share for the sustained benefit of present and future generations. Canada's large ecosystems know no jurisdictional boundaries. A shared recognition of our common environmental problems and opportunities has the potential to be a unifying theme nationally. The unique capacity of the federal government to catalyze shared frameworks through its science capacity has the potential to build this sense of Canada as an environmental union, and to enhance the health and wealth of Canadians.

The federal government has developed or participated in the development of *Canada's Green Plan*, *Agenda 21* and *Inventing Our Future: An Action Plan for Canada's Prosperity*. More recently, the Government set out its policy agenda in *Creating Opportunity*. In each of these action plans, a healthy environment and a prosperous economy are presented as mutually compatible goals. *Canada's Green Plan* addressed responsible decision-making in the context of sustainable development; *Agenda 21* addressed global sustainable development; *Inventing our Future* identified the importance of innovation and investing in people in fostering a prosperous economy; and *Creating Opportunity* underscored the importance of the economic framework - especially, preventive environmental care - and investment in people in fostering sustainable development.

A society of reciprocal obligation is more likely to achieve its sustainability objectives at the international level when it speaks and negotiates with one voice on the basis of a strong national consensus. An understanding of Canadian values, priorities and approaches to sustainability must be inherent in this national consensus. With the content of international environmental negotiations and cooperative agreements reaching deeper into national economic life, Canada needs to be effectively organized at both the federal and the national (federal-provincial-territorial) levels to address issues in the national interest.

### **Legal Mandate**

Environment Canada was created in June of 1971 following proclamation of the *Government Organization Act* in 1970.

The basic legal mandate of the Minister of the Environment is contained in the *Department of the Environment Act*. The Minister's mandate covers preservation and enhancement of the quality of the natural environment, renewable resources (including migratory birds and other non-domestic flora and fauna), water and meteorology, enforcement of the rules of the Canada-U.S. International Joint Commission, and coordination of federal environmental policies and programs.

The *Department of the Environment Act* also recognizes that preserving and enhancing the environment is not solely the responsibility of the Minister of the Environment. It gives the Minister broad advocacy responsibilities to promote and encourage practices that lead to environmental enhancement, and to cooperate with others having similar objectives.

For a variety of ecological, economic, practical and constitutional reasons, the federal government is best situated to act in the following areas:

- providing clear federal leadership for international and other constitutional reasons;
- providing national standards and other national legal and policy frameworks;
- mobilizing Canadians for sustainable development;
- providing leadership in science and services for reasons of economy of scale and competitiveness; and
- partnering in areas where there is a clear need for joint federal-provincial collaboration and action.

### **Interdependence**

A reality of the information society is that the lifespan of particular instruments of governance is limited. Thus, there is a need to become more effective at developing new ways of governing appropriate to new circumstances. The biggest potential for governance rests with finding "information-based ways of organizing."

National processes constituting "information-based ways of organizing" have been established by the federal government in recognition of the interdependence of domestic and international policy-making. For example, national processes were established to support Canada's participation in UNCED as well as in the negotiation and follow-up to both the Framework Convention on Climate Change and the Biological Diversity Convention. As part of the follow-up to UNCED, the National Round Table on the Environment and the Economy, together with five other sponsoring institutions, has initiated a multi-stakeholder, collaborative partnership, the "Projet de Société," to meet Canada's commitment to develop a National Sustainable Development Strategy.

In the initial stages, both the processes and the subject matter of these initiatives are complex and convoluted, as the federal government works out its partnerships with all sectors of society, and the learning capacity of organizations is put to the test. However, consensus emerges as processes mature, national goals are established and decisions are taken as to how we can best work together to achieve the stated goals. Barriers to action are identified and new approaches and mechanisms are tried. Essentially, "shared responsibility" becomes emblematic of the initiatives.

For example, three ministerial councils - Parks, Wildlife and Environment ministers - met in 1992 to initiate Canadian follow-up to the Biological Diversity Convention. Similarly, Energy and Environment ministers accepted joint national responsibility for air issues management to promote better policy integration in support of decision-making. Industry and Environment ministers will hold a forum to discuss the implementation of Canada's Environmental Industries Strategy and to begin the process of harmonizing relevant programs. And, the Canadian Council of Ministers of the Environment (CCME) has undertaken to notify the Committee on Internal Trade of its activities related to the Environmental Protection chapter in the Agreement on Internal Trade.

The federal and provincial governments work cooperatively on environmental policy matters through the CCME structure. To date, efforts to promote the interdependence of domestic and international policy-making has occurred through CCME. However, to support Canada's participation in NAAEC, an intergovernmental agreement has been readied for signature that provides for a governmental committee at the ministerial level, a senior officials committee and a national advisory committee. Under the intergovernmental agreement, signatories will strive to reach consensus on the development and management of Canada's involvement in NAAEC. The governmental committee will be co-chaired by the federal Minister of the Environment and a minister from one of the signatory provinces. Its meetings will coincide with those of CCME.

Currently, NAAEC is only binding on the federal government and federal laws. Where a matter is under provincial jurisdiction, Canada may only request a special session of the NAAEC Council, the establishment of an arbitral panel or join as a complaining party once provinces accounting for 55 percent of Canada's gross domestic product have signed the intergovernmental agreement and are

subsequently identified in a declaration pursuant to Annex 41 of NAAEC. Once a province signs the intergovernmental agreement, it agrees to be bound by the provisions in NAAEC for its environmental laws. The intergovernmental agreement will come into force once the first province has signed it.

In addition to CCME and the proposed governmental committee, strategic partnerships have been established in specific geographical areas where the understanding and strengthening of community/environment interrelationships is critical to the attainment of sustainable development. Strategic partnerships have been established to restore and enhance ecosystems (e.g., the Great Lakes, the St. Lawrence and the Fraser River), as well as to generate baseline data for large ecosystems as the Northern Rivers Study in northern Alberta and the Northwest Territories is doing.

Several other initiatives are equally important, including:

- the development of strategic partnerships in scientific and technological projects to promote technology development and the commercial application of research and development;
- the establishment of a National Task Force to identify barriers and disincentives to sound environmental practices and to find effective ways in which to use economic instruments to protect the environment; and
- the establishment of a voluntary process to reduce or eliminate emissions of selected substances on a voluntary basis (the Accelerated Reduction/Elimination of Toxics initiative).

### **Work Programs**

Canada has a significant opportunity to protect its own economic and environmental interests while enhancing its leadership in international environmental security, trade and standards development. Canada can succeed by ensuring that environmental issues are properly defined and prioritized; by assessing its interests from a global, regional and local perspective; and by encouraging and assisting major trading partners to strategically adopt pollution prevention and other sound environmental practices, including the use of universally accepted environmental management standards.

Currently, Environment Ministers are working through CCME to reinvent Canada's "Environmental Management Framework." One of the purposes of this initiative is to clarify federal, provincial and federal-provincial-territorial roles and responsibilities for environmental protection. Roles and responsibilities will be negotiated for 11 functions:

- monitoring;
- research and development;
- guideline development;
- legislation/regulations/policy;
- environmental impact assessment, licensing and approvals;
- enforcement;

- communications/education;
- state of the environment reporting;
- international agreements;
- pollution prevention; and
- emergency response.

Negotiations are now under way for enforcement, monitoring, international agreements and environmental impact assessment, licensing and approvals.

In addition, CCME has agreed, as of July 1, 1995, under the Agreement on Internal Trade:

- to facilitate a process by which the federal government and/or the provincial and territorial governments harmonize their environmental measures;
- to provide a forum for the federal, provincial and territorial governments to consult on issues relating to environmental measures, including the provision of technical advice and the development of recommendations;
- to administer the dispute resolution processes (environmental);
- to notify the federal, provincial and territorial governments of environmental measures proposed by any domestic government that could materially affect the operation of the Agreement; and
- to monitor matters addressed in the Environmental Protection chapter in the Agreement on Internal Trade.

One of the matters to be monitored by CCME is the obligations of the federal, provincial and territorial governments, in matters concerning trade, to take into account the need to restore, maintain and enhance the environment.

The work programs of the NAAEC Council and the OECD Committees on Trade and Environment underscore the importance of recognizing the interdependence of domestic and international policy-making. The Council's initial priorities for cooperative actions include:

- conservation and ecosystem protection;
- NAFTA effects and consultation;
- enforcement;
- pollution prevention;
- environmental policy instruments, including economic instruments;
- technology cooperation and capacity building; and
- transboundary environmental effects.

The work program of the OECD Committees on Trade and Environment is addressing 10 "trade-environment" issues to identify new approaches in the following areas:

- methodologies for conducting examinations, reviews, and follow-up of trade and environmental policies and agreements;
- the effects of trade liberalization on the environment;

- processes and production methods;
- the use of trade for environmental purposes;
- the concept of life-cycle management;
- the harmonization of environmental standards;
- trade and environmental principles and concepts;
- economic instruments, environmental subsidies and trade;
- environmental policies, investment and trade; and
- dispute settlement.

### **Harmonization**

The harmonization issue will gain momentum in Canada as the NAAEC Council and the proposed domestic governmental committee begin their work, and as CCME begins to facilitate a process by which the provinces and the federal government harmonize their environmental measures. Specific provisions calling for the upward harmonization of environmental measures have been included in both NAAEC and the Agreement on Internal Trade. Upward harmonization is required where a measure has the potential to directly affect trade. Out of necessity, the interdependence of international and domestic policy-making will become more prevalent in national processes.

The harmonization of standards has been on the domestic and the international agenda for some time. In CCME's *Statement of Interjurisdictional Cooperation on Environmental Matters*, federal and provincial ministers of the environment agreed "to continue to collaborate in the development of nationally consistent environmental objectives and standards to achieve a high level of environmental quality." Through the CCME structure, efforts are being made to build harmonization into federal-provincial-territorial processes at the outset of environmental policy-making.

The NAAEC Council will strengthen cooperation on the development and continuing improvement of environmental laws and regulations by:

- promoting the exchange of information on criteria and methodologies used in establishing domestic environmental standards; and
- establishing a process for developing recommendations on greater compatibility of environmental technical regulations, standards and conformity assessment procedures in a manner consistent with NAFTA.

To facilitate the Council's work, a comparative environmental legal database is to be developed.

### **Environmental Performance Reporting**

In Canada, national state of the environment reports are produced every five years. Two such reports were released in 1986 and 1991, with the next one expected to be published in 1996. For an integrated ecosystems management approach to work, accountability - to partners as well as clients - becomes absolutely critical. Experience gained through the Plan d'Action St. Laurent has



demonstrated that the regular reporting of accomplishments against pre-announced targets is effective in building public participation and support for large scale integrated ecosystems management.

Governments, businesses, communities and individuals are mastering information and building relationships to secure a high quality of life as knowledge becomes the main factor of production in the global economy. Countries are more receptive than ever to being held publicly accountable for implementing their international commitments, including, in the case of NAAEC, a unique commitment to enforce domestic environmental laws and regulations. Canada, for example, has committed to submitting national reports to report on progress in implementing *Agenda 21* to the Commission on Sustainable Development as well as to submitting reports to the NAAEC Council.

In another development, the OECD has initiated "country studies" to report on national environmental performance in policy-making and implementation. These country studies are a "verification" exercise. Studies for Germany, Portugal, Iceland, Norway and Japan have been completed, while Canada, the United Kingdom and Italy are the subjects of current studies.

Also, countries are continuing to develop complementary, information-based instruments to secure the natural resource asset base upon which trade and development are ultimately dependent. The preparation of environmental accounts for incorporation within systems of national accounts and national pollutant release inventories are but two examples. Within Canada, environmental accounts will provide data on the physical quantities and monetary values of Canada's natural resource stocks; on the depletion and uses of these resources; on waste emissions to the environment; and on environmental protection expenditures. Also, work on ecosystem health and sustainability indicators is under way in recognition of global environmental interdependence; this work has potential applications for the information networks and highways.

In the realm of voluntary initiatives, the International Organization of Standardization is developing a "standard" for environmental management systems that may be implemented by organizations in the private, public and social sectors. Earlier in 1994, the Canadian Standards Association (CSA) issued a discussion draft on a "Voluntary Guideline for Environmental Management Systems." The discussion draft prepared by the CSA promoted "communication with stakeholders of the organization's environmental policy, objectives, targets and performance." It also promoted "environmental management system audits to provide assurance of environmental system implementation and its adequacy as a system in achieving environmental objectives." These audits "may be carried out by organization personnel, or by external parties. In either case, the auditor should be independent of the part being audited and properly trained to carry out audits objectively and effectively." The Canadian Institute of Chartered Accountants is contributing to Canadian progress by undertaking a complementary project on full-cost pricing.

## 2. CEPA AND THE GLOBALIZATION OF ENVIRONMENTAL PROTECTION

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The *Canadian Environmental Protection Act* is one piece of the sustainability fabric in Canada. It is a means by which the federal government may foster sustainable development and national accountability by recognizing the interdependence of domestic and international policy-making. To do this, CEPA needs to be administered in a manner that recognizes the mutual compatibility of a number of legitimate government objectives. Moreover, its authorities must be flexible while enabling the federal government to deliver upon its responsibilities and to meet its obligations.

Social and economic change is transforming global and domestic markets as well as organizational relationships. Environmental protection is undergoing a transformation of its own as the process of globalization continues. While this transformation is by no means complete, some of the ongoing shifts may be summarized as follows:

<u>FROM</u>	<u>TO</u>
<ul style="list-style-type: none"><li>• react and cure</li></ul>	<ul style="list-style-type: none"><li>• anticipate and prevent</li></ul>
<ul style="list-style-type: none"><li>• single-medium (air, land, water, oceans)</li></ul>	<ul style="list-style-type: none"><li>• cross-media (ecosystems and transboundary transportation)</li></ul>
<ul style="list-style-type: none"><li>• pollutant-by-pollutant (small number of large polluters)</li></ul>	<ul style="list-style-type: none"><li>• pollution-at-source (large number of small polluters)</li></ul>
<ul style="list-style-type: none"><li>• single policy objective</li></ul>	<ul style="list-style-type: none"><li>• multiple policy objectives</li></ul>
<ul style="list-style-type: none"><li>• inward-looking view (sporadic action)</li></ul>	<ul style="list-style-type: none"><li>• worldly or global view (concerted action)</li></ul>
<ul style="list-style-type: none"><li>• patchwork quilt of measures (local, regional and global levels)</li></ul>	<ul style="list-style-type: none"><li>• level-playing field (local and regional levels)</li></ul>
<ul style="list-style-type: none"><li>• no/minimal environmental performance reporting</li></ul>	<ul style="list-style-type: none"><li>• environmental performance reporting, verification and accountability</li></ul>
<ul style="list-style-type: none"><li>• industry: environmental management for compliance</li></ul>	<ul style="list-style-type: none"><li>• industry: management for sustainable development</li></ul>
<ul style="list-style-type: none"><li>• more regulatory and market-based approaches</li></ul>	<ul style="list-style-type: none"><li>• more market-driven and market-based approaches</li></ul>

- minimal internalization of environmental costs
- minimal consideration of environmental values
- harmonization and upward harmonization of standards
- systems of national accounts that provide economic information
- gaps between domestic and international policy-making
- internalization of environmental costs
- increasing consideration of different environmental values, including: use and non-use values
- rationalization of environmental management systems or regimes
- systems of national accounts that provide both economic and environmental information
- greater consistency in domestic and international policy-making

The *Canadian Environmental Protection Act* must be used to set and to send appropriate signals to governments (including departments of government), businesses and individuals within Canada to protect human health and biodiversity in the pursuit of other legitimate societal objectives. A single set of principles is required to guide policy-makers and decision-makers to correct market and environmental policy failures resulting in unsustainable environmental practices. The International Institute for Sustainable Development proposed for discussion a set of seven principles that may be used to foster sustainable development. The authorities provided within CEPA and their application must be informed by and measured against such principles.

Environmental protection is undergoing a transformation whereby long-term environmental results cannot be achieved by piling short-term results upon short-term results. Harmonization, the macroeconomic impact of environmental measures, the polluter pays principle and the broad issue of internalizing environmental costs are areas to be addressed. Knowledge of ecosystems must be brought to bear on additional sectors of the economy - especially those sectors best levered in a knowledge economy - and on the economic framework. There is a need to assess the environmental effects of trade liberalization. And, in the event of trade-environment disputes, there is a need to ensure that scientific, technical and socio-economic information is ready to support government representatives and Canadian positions.

Preventive environmental care is the fundamental tenet upon which environmental protection must be based. The balance and range of instruments required to effect front-end thinking among enterprises needs to be considered and provided for within CEPA. At the same time, the application of instruments will need to recognize and respect voluntary initiatives and universal standards of (environmental) management, e.g., Total Quality Management and ISO 9000 standards. The authorities in CEPA must provide for fostering awareness of environmental obligations, environmental performance reporting and verification

within a market context. With appropriate signals from government, environmental performance reporting and verification have the potential to become widely adopted practices in the private, public and social sectors in the near future. Environmental industries and green industries must be able to thrive within the context of the legislative and regulatory framework.

Cost-effectiveness evaluation should be used to evaluate the ability of alternative strategies to meet a particular environmental objective. In addition, the gains to be achieved by providing the public with access to information about "environmental values" needs to be explored and developed. By providing people with information about the alternative uses and values of biodiversity, we enable them to make more informed choices to help prevent pollution or to make more sustainable use of the environment. The federal government, together with the provincial governments, has a responsibility to develop a national policy framework that brings this information to the fore. Decision-makers are unlikely to take alternative uses of biodiversity into account in decision-making if information pertaining to alternative uses and values is not available or if it is not communicated in a meaningful language and style.

### **3. POSSIBLE ADJUSTMENTS TO CEPA**

Recent international efforts to integrate environmental, development and trade policies suggest ways in which CEPA may be amended to better support and effect national accountability in environmental protection. Amendments could be considered in five broad areas:

- a revised Declaration statement that places people at the centre of concerns for sustainable development, while stating that preventive environmental care is essential to the well-being of the planet and Canada;
- a revised Preamble, based on several of the principles identified in the Rio Declaration, that will situate preventive environmental care in the context of sustainable development;
- the publication of a set of principles against which Canada's progress toward domestic and global sustainable development may be measured;
- the provision of a balanced "tool-box" that enables the federal government to adopt universal standards, harness market forces and develop regulations through a mix of environmental measures that minimizes the cost to Canadian society of local, regional and global environmental protection while enhancing the level of environmental protection in Canada (the principle of subsidiarity should be engrained in national endeavours); and
- the strengthening of publishing and reporting requirements in support of national accountability and in recognition of the interdependence of domestic and international policy-making.

## **Possible adjustments**

### **Declaration**

- It is hereby declared that people are at the centre of concerns for sustainable development and that preventive environmental care is essential in Canada to manage economic development and human growth without destroying the life-support systems of the planet.

### **Preamble**

- Whereas Canada should cooperate with other states to strengthen national capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies;
- Whereas national authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment;
- Whereas Canadians shall 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 national decision-making processes;
- Whereas Canada shall provide prior and timely notification and relevant information to potentially affected states on activities that may have a significant adverse transboundary environmental effect and shall consult with those states at an early stage and in good faith;
- Whereas Canada should effectively cooperate with other states to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or that are found to be harmful to human health; and
- Whereas activities within Canada's jurisdiction or control should not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

### **Administrative Duties**

- ensure that the Government of Canada takes into account the necessity of fostering the sustainable use of the environment in making social and economic decisions; and, conversely, takes into account the necessity of considering social and economic objectives in fostering sustainable use of the environment.

## **Environmental Objectives**

- Identify legitimate environmental objectives on a national and/or an ecosystem basis in a list pursuant to CEPA, recognizing that both the North American Agreement on Environmental Cooperation and Canada's Agreement on Internal Trade make note of the differences in the natural endowments, climatic and geographical conditions, and economic, technological and infrastructural capabilities of the signatories.

## **Balanced Tool-Kit**

- Develop and publish a set of principles with definitions to serve as the basis upon which all sectors of Canadian society may promote and foster the sustainable use of the environment and against which national progress toward sustainable development may be measured.
- Publish a list of existing environmental principles with definitions that must be considered in social and economic policy-making. Provide for updating the list as appropriate.
- To protect ecosystem health and biodiversity within Canada, provide for the development and implementation of a balanced tool-kit that includes the use of trade measures (as internationally agreed upon) and the institutionalization of a market-driven approach (based on an awareness of environmental obligations, full-cost accounting, environmental performance reporting and independent verification) to the sustainable use of the environment and preventive environmental care.
- Broaden the scope of CEPA to authorize the implementation of regionally or globally-based environmental measures that respect the interdependence of domestic and international policy-making and for which national processes are established and have run their course.

## **Reporting**

- Publish and update annually a list of committees established pursuant to CEPA.
- Publish annually the linkages and expected results of national (e.g., CCME) and international (e.g., OECD, NAAEC) environmental protection work programs that recognize the interdependence of and attempt to integrate national and international policy-making.
- Report progress in fostering the interdependence of domestic and international policy-making.
- Report national progress toward sustainable development against the sustainable development principles in a fashion that is consistent with meeting Canada's international reporting obligations.

## **International Obligations**

- Restate the International Air Issues provisions to cover transboundary pollution.

## ANNEX 1

### IISD Trade and Sustainable Development Principles

#### **Efficiency and Cost Internalization**

- Efficiency is a common interest for environmental, development and trade policies. An activity is efficient if it uses the minimum amount of resources to achieve a given output, or alternatively, achieves maximum output from a given amount of resources.
- Internalization of environmental costs is essential to achieve efficiency. Despite the substantial practical difficulties this entails, high priority should be attached to its implementation. As costs are progressively internalized, the contribution of all economic activity to the efficient utilization of resources is enhanced.

#### **Equity**

- Equity relates to the distribution both within and between generations of physical and natural capital, as well as of knowledge and technology. In the transition to sustainability, additional obligations should be assumed by those, primarily in the developed world, who have used resources in the past in a manner that limits the options of current generations, particularly in developing countries.

#### **Environmental Integrity**

- Trade and development should respect and help maintain environmental integrity. This involves recognition of the impact of human activities on ecological systems. It requires respect for limits to the regenerative capacity of ecosystems, actions to avoid irreversible harm to plant and animal populations and species, and protection for valued areas. Many aspects of the environment - for example, species survival or the effective functioning of biological food chains - have values that cannot be adequately captured by methods of cost internalization; this highlights the need for other policy instruments.

#### **Subsidiarity**

- Subsidiarity recognizes that action will occur at different levels of jurisdiction, depending on the nature of issues. It assigns priority to the lowest jurisdictional level of action consistent with effectiveness. International policies should be adopted only when this is more effective than policy action by individual countries or jurisdictions within countries.
- Environmental policies can reflect differences in environmental conditions or development priorities. This may lead to different environmental standards within countries, involving both higher and lower standards than those applied elsewhere. In the absence of agreements voluntarily



accepted by all affected countries and where the environmental consequences remain within domestic jurisdictions, other countries should not use economic sanctions or other coercive measures to try to eliminate differences in standards. Where there are significant transborder environmental impacts, solutions (including international environmental agreements, the formulation of international standards, incentives for voluntary upgrading of standards and the possible use of trade measures) should be sought multilaterally.

### **International Cooperation**

- Sustainable development requires strengthening international systems of cooperation at all levels, encompassing environment, development and trade policies. Where disputes arise, the procedures for handling them must be capable of addressing the interests of the environment, development and the economy together. This may involve changes to existing rules, changes to existing dispute settlement mechanisms, or the creation of new mechanisms.
- The most desirable forms of international cooperation will avoid conflicts, by fostering development and environmental protection and by improving the functioning of the global trading system. When international disputes do arise, they must be resolved internationally. This requires open, effective and impartial dispute settlement procedures that protect the interests of weaker countries against the use of coercive political and economic power by more powerful countries. Unilateral action on transboundary environmental issues - an option generally available only to a few large countries - should be considered only when all possible avenues of cooperative action have been pursued. Trade sanctions are the least desirable policy option, signifying failure by all the parties concerned.

### **Science and Precaution**

- In the development of policies intended to reconcile trade, environment and development interests, science (in particular ecological science and the science of complex systems) can provide the basis for many necessary decisions, including the suitability of health, safety and environmental standards.
- Action to address certain problems, however, will still have to be taken in the face of uncertainty and scientific disagreement, particularly where mistakes may have very serious consequences. It is therefore also essential in certain instances to adopt a precautionary and adaptive approach that (1) seeks the prevention and easing of environmental stress well before conclusive evidence concerning damage exists and (2) adapts policy as new scientific information becomes available.

## Openness

- Greater openness will significantly improve environmental, trade and development policies. Just as access to information is essential for effective participation by producers and consumers in markets, public participation, including open and timely access to information, is essential for the formulation and practical implementation of environmental policies. It is also important in minimizing the risk of "protectionist capture," that is, the manipulation of trade policies to favour inefficient producers at the expense of others.
- While it is widely recognized that openness and accountability should be enshrined in domestic processes, there is much consensus on the need for openness and accountability at the international level. Attitudes and institutional procedures are lagging behind the changing nature of international relationships, characterized by, among other things, the increasing globalization of economic activity and our increasing awareness of serious environmental problems that cannot be adequately addressed at the national level. Since action by individual governments will often have significant international effects, there is a need for internationally agreed criteria and mechanisms of public participation, as well as access to information and accountability at the international level.