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Exploring Access to NAFTA's Environment Commission Complaint Process

Roberto Hernandez, Faculty of Law, "McGill University,
Montreal"

June, 2003

"A thesis submitted to McGill University in partial fulfilment
of the requirements of the degree of LL.M";

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Table of Contents

<i>Table of Contents</i>	2
<i>Table of Figures</i>	4
<i>Abstract</i>	5
<i>Résumé</i>	7
<i>Preface and Acknowledgements</i>	9
<i>Table of Acronyms</i>	13
<i>Introduction</i>	14
<i>Section I. Backgrounder on the Articles 14 & 15 Review Process</i>	21
The Place of NAAEC and Articles 14 & 15	21
Institutional Structure	22
Review Process and Procedural Stages	24
Review Process Overview	24
Complaints Big or Small	26
Procedural Stages for Analytical Purposes	29
Procedural Purposes	31
The “Participatory” or “Fire-alarm” Purpose	32
The “Investigatory” or “Recurrence Prevention” Purpose	35
<i>Section II. Literature Review</i>	37

Rule-Based Analyses of the Review Process	38
Empirical Analyses of the Review Process	43
Theoretical Literature on Review Process	49
Other Relevant Theoretical Literature	53
<i>Section III. Proposed Method to Evaluate Accessibility</i>	55
<i>Section IV. Findings and Discussion</i>	62
I. Number of Submissions	62
II. Processing Times	70
III. Distribution of Processing Times for Advantaged and Disadvantaged Submissions	73
IV. Submitter Success	75
<i>Section V. Conclusions</i>	80
<i>References</i>	89

Table of Figures

Figure 1: Location of the Articles 14 & 15 Submissions Process within other NAFTA institutions. 21

Figure 2: Summary of the Articles 14 & 15 Review Process 31

Figure 3: Our Access Indicators and Their Possible Meaning 56

Figure 4: Submissions received per year 63

Figure 5: Evolution of the Number of Submissions 63

Figure 6: The Evolution of EU Environmental Complaints with Regard to All EU Complaints 69

Figure 7: JPAC Proposed Time Limits for the Processing of Articles 14 & 15 Complaints 70

Figure 8: Median days to disposition per stage 72

Figure 9: Mean and Median Days for Mexican Submissions vis-à-vis Canadian and US 73

Figure 10: Mean and Median Days for Advantaged and Disadvantaged Cases 74

Abstract

This paper raises questions about the accessibility of the Articles 14 & 15 submissions mechanism, a public complaint process that attempts to use the eyes of ordinary persons in Canada, Mexico and the US to monitor an important environmental treaty obligation: NAFTA signatories' commitment to effectively enforce their environmental laws.

In order to consider whether the Articles 14 & 15 review tool is accessible, we assemble a set of indicators that nourish four hypotheses, which may reveal if the review tool is sufficiently well installed to attain its long term objectives in a significant measure. The hypotheses are: 1) that the CEC receives an insufficient amount of submissions; 2) that it takes considerable or random times to process them; 3) that it consistently takes longer, or has more troubles, to process Mexican and disadvantaged-group cases; 4) that few complainants harvest any benefits from complaining, being more likely that they do if they are rich environmental NGOs than if they are ordinary individuals. The information we present is based on primary research and statistical information on the processing of NAAEC Articles 14 and 15 submissions.

Our chief objective is not to conclusively prove or disprove these hypotheses, but to provide a framework to respond these questions. By consistently focusing their efforts on evaluating the attainment of the ultimate objectives of this review tool, all authors who have

critiqued the Articles 14 & 15 submissions process have failed to consider whether the complaint mechanism is effectively positioned to capture environmental law enforcement information from all of its target population. Instead, this paper explores the implementation of Articles 14 & 15 by generating information on the attainment of its mid-course objectives.

This paper may be of interest to persons working on issues concerning the implementation and further elaboration of NAAEC Articles 14 and 15 and to those pondering whether and how the proposed FTAA and the Canada-Chile Free Trade Accord should be structured to deal with the environmental consequences of further economic integration.

Résumé

Ce document examine les questions d'égalité d'accès au processus prévu à l'Article 14 de l'ANACDE. Ce processus constitue un outil d'examen environnemental faisant appel aux simples citoyens du Canada, du Mexique et des États-Unis pour veiller au respect des engagements importants pris dans le cadre d'un accord environnemental. Aux termes de l'ANACDE, les pays signataires de l'ALÉNA sont tenus d'appliquer efficacement leur législation de l'environnement, mais plus important encore, l'ANACDE permet à des Nord-Américains de prendre des mesures en leur propre nom pour que les obligations qu'il prévoit soient respectées.

À partir de recherches de base sur les questions d'égalité d'accès au processus prévu aux Articles 14 et 15 de l'ANACDE, ce document met en lumière une des principales limites de l'Article 14, à savoir sa capacité d'offrir une égalité d'accès aux personnes vivant dans des régions marginales et rurales et qui, souvent, obtiennent le moins d'appui de la part des pouvoirs publics pour atténuer les risques environnementaux.

Les conclusions de ce document peuvent présenter un intérêt pour les personnes qui s'occupent des enjeux entourant la mise en œuvre et le développement des Articles 14 et 15 de l'ANACDE et pour celles qui se demandent comment, le cas échéant, la ZLEA proposée et l'Accord de libre-échange Canada-Chili devraient être structurés de façon à

tenir compte des incidences environnementales d'une intégration économique toujours plus grande.

Preface and Acknowledgements

This thesis would never have existed without the igniting sparks that Marie-Claire Segger and Marjan Radjavi wielded on me. Through intelligent argument and moral coercion, Marjan and Marie-Claire nourished my interest on trade and environment issues, human rights and many other obscure causes. Thanks to them I discovered that I could stop worrying about surviving and yet work on some of the things that interest me, for our modern supply of societal problems is vast.

Without professors, learning would be so much slower. From McGill University, I am indebted to many persons. I am grateful with professors who dwell at two different spiritual spaces of the same campus.

From the Anthropology department, I am grateful to Kristin Norget and John Galaty. Kristin specializes on the broadest range of issues in Mexico's Oaxaca, ranging from human rights of the Loxicha to death rituals and ceremonies of rural population. During my studies, she continuously challenged me to know more of my own country. For his part, John Galaty introduced me to inelegant research, through rich discussions on the work of James Scott and Emery Roe, two authors whose ideas are disturbingly insightful, and that I shall remain unable to fully exploit in this project.

From the Faculty of Law, I am grateful to Jaye Ellis for critiquing all my thesis drafts and her patience to my slow learning. I thank Dalia Piccione, who works at the Institute of Comparative Law as a secretary. I treasure Dalia's capacity to encourage graduate students to soldier on with our thesis writing, and to occasionally pamper us; former dean Peter Leuprecht for his kindness and sensibility. Peter has the ever more rare quality of always being able to listen to students. I also wish to thank Steven Smith for allowing me to take a graduate seminar at the Anthropology Department. He emphatically warned me about the

difficulties of undertaking interdisciplinary research. Had I listened to Steven, my graduate education would have been pointless. Finally, I thank Daniel Jutras, for liberating and, at the same time, challenging all graduate students when, during a seminar, he asserted that “nobody” (other than our teachers) would read our theses. Since then, I have kept hoping that my thesis will prove him wrong.

Without mentors, learning would be a chimera. For their mentorship and support, I am grateful to persons at four institutions:

From the Commission for Environmental Cooperation, I am grateful to the staff at the SEM Unit, who administers the Articles 14 & 15 process. In particular, I am indebted to Geoffrey Garver, director of the SEM Unit and Carla Sbert, the legal officer who is in charge of the Mexican submissions. Thanks to Carla and Geoff, I consulted for the CEC on issues concerning the administering of the Articles 14 & 15 process during two years. The SEM Unit’s continuing pains working on the Mexican submissions led me to explore whether the Articles 14 & 15 review tool should consider the varied degrees of evolution of NGOs and civil society in the NAFTA countries. Finally, I am grateful to Victor Blanco, founder of the law program at Mexico’s ITAM and former teacher of mine. Victor performs as Special Legal Advisor of the CEC on Articles 14 & 15 issues, and has a firm belief that the law can help create rational solutions to social conflicts. Victor always sent encouraging words for me to continue with this project.

From the National Center for State Courts, I am grateful to Katie Fahnestock and Michael Runner, who run NCSC’s project in Mexico. NCSC is a peculiar NGO that specializes on providing technical assistance to *state* courts in the United States and internationally. I joined NCSC’s staff in Mexico on March 2002. The National Center is the first organization to conduct empirical research on, and lend technical assistance to, state courts in Mexico. Because of its focus on the implementation side of human rights protection, I do not think there is any other institution in Mexico with a comparable potential to have an impact on this country’s respect for human dignity and rights. Katie and Michael

trained me and gave me invaluable opportunities to generate the first empirical indicators on the performance of civil and criminal courts under Mexico City's *Tribunal Superior de Justicia*. The Tribunal is surely the single court system attending the largest portion of the world population. I hope to have correctly applied my learning with NCSC to portions of this work.

Lastly, I am thankful to Ana Magaloni, Marcelo Bergman and particularly, to Layda Negrete from CIDE's Law Department. CIDE's *Division de Estudios Juridicos* is quickly becoming a leading legal research centre in Mexico City. In addition, CIDE's PRENDE project hopes to transform legal education in Mexico (traditionally, legal education in this country was based on memorizing statutes and rule-interpretation in the vacuum). CIDE's alternative is training lawyers to understand the social and policy impacts of legal decisions. Ana Magaloni invested me with an associate researcher position and a blank check for me to pursue my research interests as I deem best, in the hope that one day I will become a real researcher. I hope to not let CIDE down. I also thank various members of the CIDE faculty who read, and commented, drafts of this paper. In particular, I am grateful to Layda, who praised my writing even when it was a mass of chaos. Without Layda's encouragement and her perspicacious advice, my thoughts about the Articles 14 & 15 process would have never materialized in a thesis. And because I would not have completed this as fast without the news of the arrival of our daughter, I must thank our baby too. Although she is not here yet, we have already begun to learn from her.

Lastly, from Universidad Diego Portales, in Chili, I am grateful to Javier Couso, who does research on the nexus between law and society. Although with limited time, Javier made a great effort to critique and comment on the latest version of this work.

Without editors, the writing of those who must use their second or (even worse), their third languages, would not make sense to you. So I thank Raymonde Lanthier, the French editor at the CEC, who translated the thesis abstracts in a way that made them sounder and clearer than the English original; Aimee Comrie, an anthropologist and law student at

McGill who read and helped me organize preliminary drafts; Heather Cantwell, a former travel-guide writer and law student at Stanford University, who can do magic with words and helped me rethink the structure of this paper; finally, Carol Smith and Yolanda Clegg, who edited portions of various early versions of this piece. All of them encouraged me to continue honing my ideas.

Without friends writing is not a rewarding task, and I particularly wish to thank all the persons who made a home and a family for me while I was in Quebec. These include many of the names already mentioned, and also Rosa Blandon, Dominique Clement, Rodolphe Gagnon, Rose-Anne Nadeau, Roberto Melfy, Linda Michaud, Michell, Krystoff and Thomas Hellman; Fernando, Joanne and Luca Palladino; Karie and Jodie Little, and many others. On occasions, they rescued me from some of the unlikely places where one may end up during the long Montreal winters. Their kindness demonstrates to me that, while the weather in Quebec may be cold, its people are not.

Finally, I wish to thank all the legal researchers and practitioners who have dwelled in the problems of the NAAEC Articles 14 & 15 process. I apologize to them if I misunderstood or unfairly diminished the meaning of their work.

Surely the process of thanking and acknowledging contributions to one's learning process is one of doing justice to persons from whom we have learned. But there are always some from whom we have learnt something more, or something else. I have been fortunate to have a teacher in life that dedicated much of her precious time and energies to me. With her I learned more about myself, and the beautiful human possibilities in each of us, than I ever would have in this life. She is an inspiring and courageous person, and I believe I do justice by dedicating this small step of my learning process to her, Lucia Riedemann.

Table of Acronyms

CEC	Commission for Environmental Cooperation
EU	European Union
FTAA	Free Trade Area of the Americas
JPAC	Joint Public Advisory Committee
NAAEC	North American Agreement on Environmental Cooperation
NAFTA	North American Free Trade Agreement
PCA	Party Complained Against under the Article 14 submissions process
SEM	Submission on Enforcement Matters
NGO	Non-governmental Organization
ENGO	Environmental Non-governmental Organization

Introduction

Breaking with an obsolete situation in international law, where the subjects of states could not take steps in their own name to monitor compliance with treaty obligations, an environmental complaint mechanism in one of NAFTA's side agreements allows virtually any person to ring a "fire-alarm" when NAFTA members seem to fail to effectively enforce their environmental laws. Or so we hope.

This paper proposes a framework to evaluate accessibility to the NAAEC Articles 14 & 15 citizen submissions' investigatory mechanism. We use this framework to test four hypothesis which attempt to measure the extent to which implementation to date is significantly consistent with the ultimate purposes of this review tool. Among these ultimate objectives, two central ones are strengthening the enforcement of environmental laws, and raising levels of environmental protection, in the NAFTA region.²

The attainment of ultimate objectives by institutions is normally somewhat connected to the attainment of mid-course objectives, and we present four hypothesis which, at this point in the evolution of the Articles 14 & 15 mechanism, may shed light on whether these mid-course objectives—which we designate 'procedural purposes'—are being significantly attained. The hypothesis are 1) the that the Commission for Environmental Cooperation (CEC) receives very few cases; 2) that it takes considerably long to process them; 3) that it

takes even more to treat cases when these proceed from disadvantaged areas; and 4) that it is unlikely for submitters to use the complaint tool in profitable ways, and more so when these proceed from disadvantaged areas.

Effective implementation of the Articles 14 & 15 submission's process depends on the realization of two straightforward procedural purposes. First, the process offered to provide wide and effective access to virtually any person who wished to complain that a NAFTA member was failing to effectively enforce its environmental law. Second, it promised a valuable remedy: the process would have no sanctions or punitive consequences but the CEC would initiate an investigation and produce a factual record, publicly reporting its findings, thus allowing NAFTA members sufficient latitude—and providing fresh information—to improve enforcement performance.

We believe that the information we present under the indicators above may reflect the extent to which it is costly for submitters to use the Articles 14 & 15 complaint tool in meaningful ways or whether it is technically challenging to make a successful submission. These indicators may also reflect if the CEC needs to create access policies that significantly affect the demand for this review tool; insert case management tools that guarantee a better use of time in the processing of submissions; or place submitters on a more equal footing with PCAs by effectively reducing evidentiary burdens.

In the recent history of the submissions process, treaty commentators and observers have critiqued two internal institutions of the CEC: the Council, which governs the CEC, for its

partiality; and the CEC Secretariat, which administers the Articles 14 & 15 review process, for failing to create a better power balance between parties to this process. According to its critics, the CEC Council demonstrates partiality in at least two ways.³ First, the Council has often significantly delayed the making of fundamental decisions that, if made in a timely way, would greatly expedite the process. Second, Council has, beyond its authority, attempted to create evidentiary burdens for submitters far higher than those recommended by the CEC Secretariat. The above stand as pending issues in the implementation of the Articles 14 & 15 process that may discourage submissions from persons who do not possess strong skills on how to organize evidence in an effective manner; express their claims in a clear and concise language; decipher treaty technicalities; or are not in a position to lend much time to the patient workings of diplomacy.

Thus, the effective implementation of the two procedural purposes summarily introduced above may be more costly, and more challenging, culturally and politically, than it was foreseen: On one hand, North America includes large and diverse populations, where civil society shows quite varied degrees of evolution and power, and where the legal formulation of environmental demands responds to different political pressures and cultural constraints. On the other, to help prevent recurrence, compliance investigations need to be formulated and conducted in ways that promote cooperation between government policy experts, and with the CEC, on different issue areas. Considering the current evolution of, and resources we see invested in, the Articles 14 & 15 process, we question that the tool is adequately positioned to meet these two procedural purposes.

Our review of this process follows the tracks of two very suggestive works on Articles 14 & 15, which propose that those who design tools to review compliance with treaty obligations make important choices about information costs. ⁴ That is, the NAAEC negotiating parties chose to create a “fire-alarm” review model so that ordinary persons, rather than more centralised institutions or “police patrols,” which can be more costly, would monitor compliance with NAAEC members obligation to effectively enforce their environmental laws.⁵ We believe that, by legally enabling all residents in the NAFTA region to charge member states with failures “to effectively enforce... environmental laws”⁶ under Articles 14 & 15, treaty designers hoped to reduce the costs of obtaining information concerning the effective enforcement of environmental laws in the NAFTA region (thus transferring the costs of presenting alarm-ringing compliance information to virtually any person). Taking these costs considerations to their ultimate consequences, and contemplating the culturally diverse realities within and between the NAFTA countries, we believe that when citizens are burdened with the monitoring treaty objectives, two economic principles should operate. First, it should be inexpensive and relatively easy for ordinary persons to complain. Second, those to whom it is less costly to do so, for example, the legal technicians who implement and administer treaties, should bear the burden of selecting the most relevant complaints, bring them under the intent of the review tool and provide meaningful attention and follow-up to the most relevant problems these show. Our data on the implementation of the procedural purposes embedded in the NAAEC Articles 14 & 15 review tool may help evaluate whether implementation trends follow these economic considerations.

Even though the Articles 14 & 15 mechanism, whose origins have been amply discussed elsewhere,⁷ directly responds to trade and environment discussions surrounding NAFTA, it might be useful to clarify that this paper does not deal with any trade and environment propositions.⁸ For example, we do not analyse the plausibility of environmental concerns in view of international trade liberalization, the merits of the justifications for the NAAEC obligation to “effectively enforce” environmental laws, or take a position on the adduced environmental consequences of the absence of a well-implemented tool to review this treaty obligation. Nevertheless, we owe to those debates our interest on Articles 14 & 15. We are mindful that the US environmental NGOs’ conditioned their congressional support for NAFTA on the inclusion of environmental obligations and that NAAEC directly spoke to environmental concerns raised under NAFTA negotiations.⁹ Through NAAEC, we recognize, NAFTA signatories for the first time legally shaped a political promise to remedy the admittedly potentially adverse environmental effects of NAFTA and thus granted a legal status to a longstanding (and controversial) demand of environmental groups that international trade regulations should include environmental considerations.

If any, a humble contribution of ours to the broader constellation of trade and environment discussions is a recommendation to, in such debates, flee from too much sophistication and focus more on implementation. Through the example of Articles 14 & 15, we may again be painfully reminded how all ideas, however brilliant these may be in paper, sacrifice a lot in their way to a barely decent *mis-en-scene*.¹⁰ Even the simplest prescriptions of normative economic theory go through great troubles to find their way down to reality. For example,

the relation to the NAAEC members' obligation "to effectively enforce environmental laws" with classic debates can be underscored in light of classic Ricardian trade theory, which, basically put, encourages nations to trade the surplus of goods where they experience 'natural' competitive advantages, and thus, preaches that countries should strive to eliminate all 'artificial' barriers to trade, including subsidies." Accordingly, at least in theory, a lax enforcement of environmental laws can be construed as an informal subsidy to economic activity, because it might contribute to 'artificially' place some industries in advantageous price positions at international markets. Thus, the "effectively enforce" obligation is strongly connected to a wider constellation of issues. Lamentably, however, the rickety Articles 14 & 15 process is the only operational tool to review compliance with NAFTA members' obligation to "effectively enforce" their environmental legislation. Absent the implementation of other relevant review tools, the Articles 14 & 15 process is the only legal mechanism that may be used to promote a limited international oversight on the potentially trade-distorting effects of a lax enforcement of environmental laws.¹²

This paper has five sections. Section I is a backgrounder on Articles 14 and 15. For those who are already familiar with NAFTA institutions, the most relevant part of this section is our summary of the review process, which is essential to understand portions of the subsequent analyses. Section II is a literature review, which classifies and analyses the existing literature on Articles 14 & 15, and underscores the importance, for this paper, of certain theoretical literature in the area of complaint processes. Section III proposes a method and a set of indicators to detect accessibility problems. Section IV reports our

findings, tracking the indicators and accessibility theories anticipated in Section III. A salient feature of Section IV is that it contains primary research on Articles 14 & 15, and it is based on the treatment of all submissions the CEC received for the 1995-2003 period, which includes the totality of submissions thus far treated by the CEC. Finally, Section V concludes by emphasizing some of the most important accessibility problems; and placing the meaning of our contributions within two contexts: that of having proposed the building blocks of institutional self-evaluation of the implementation of Articles 14 & 15, and a broader one about the evolution of international legal discourse.

Section I. Backgrounder on the Articles 14 & 15 Review Process

The Place of NAAEC and Articles 14 & 15

The compound of NAFTA treaties includes many environmentally relevant commitments.¹³ Among these, NAFTA members committed to “effectively enforce their environmental laws.” Articles 14 & 15 permit any non-governmental organization¹⁴ (“NGO”) or person residing in the NAFTA region to identify a breach of the “effectively enforce” commitment by making an official submission. The chart below graphically positions the Articles 14& 15 review tool within the NAFTA treaty structure.

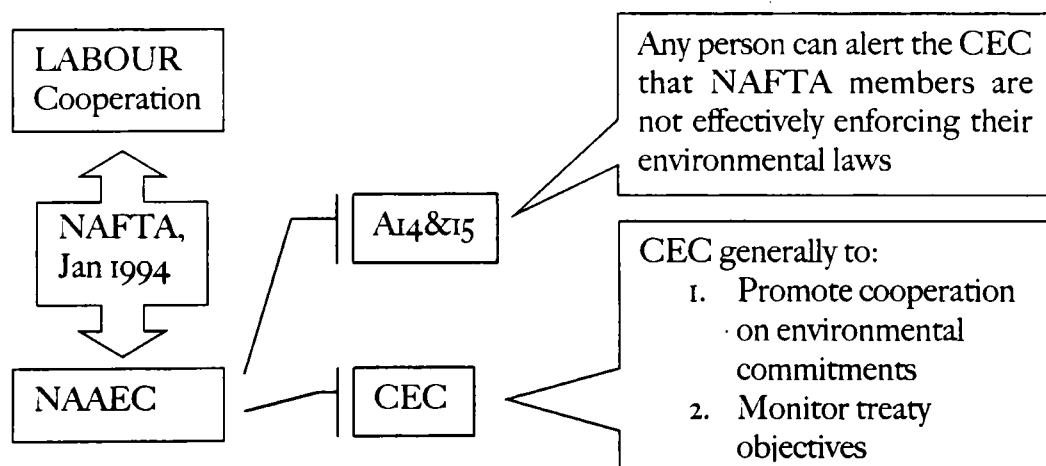


Figure 1: Location of the Articles 14 & 15 Submissions Process within other NAFTA institutions.

Institutional Structure

The Commission for Environmental Cooperation is the main institutional structure¹⁵ created to, among its other objectives, administer and further the implementation of the review tools of the “effectively enforce” commitment. CEC is, in fact, an umbrella name for various geographically scattered institutions.¹⁶ Except for the Secretariat, which is physically installed in Montreal, Canada, many CEC, or CEC-related, institutions are located in different parts of North America. The following lists and briefly discusses the role of CEC institutions related to the Articles 14 & 15 submission process. Note that this list does not exhaust all the NAFTA environmentally relevant institutions:

- The Secretariat
- The Council
- The Party Complained Against, represented by the highest-ranking environmental officials of the member governments (PCA)
- The Joint Public Advisory Committee (JPAC)
- Submitters

The Secretariat, leaded by an executive director,¹⁷ has explicit and implied powers¹⁸ to administer the Articles 14 & 15 submissions process. The Secretariat receives the submissions and keeps a public record on them.¹⁹ It also decides if submissions claiming that a PCA is failing to enforce its “environmental laws,” are in fact compatible with the NAAEC definition of environmental laws.²⁰ It has the exclusive right to decide whether

submissions include “sufficient information”²¹ to support an assertion that a PCA is failing to effectively enforce its environmental laws. When submissions present legal questions that require a deeper analysis of the treaty language, the Secretariat has full authority to, independently and autonomously,²² interpret the agreement to decide the matter.

The Council is the governing body of the CEC. It is composed of the “cabinet-level or equivalent representatives of the Parties, or their designees.”²³ The three highest environmental officials of each NAFTA country occupy Council positions. Currently, occupants of Council seats are Victor Lichtinger (SEMARNAT, Mexico), David Anderson (Ministry of the Environment, Canada), and Christine Whitman (Environmental Protection Agency, United States). Thus, in each Articles 14 & 15 review, one Council member is also a party complained against (PCA).²⁴

The Joint Public Advisory Committee (JPAC), one of the advisory bodies contemplated by NAAEC, plays a significant role in ensuring that the implementation of the NAAEC, including the Articles 14 & 15 process, receives input from the public across North America. However, it plays a minimal role in the normal operation of the submissions process.²⁵ JPAC is composed of fifteen advisors, which may be increased by Council directive. Each NAAEC member appoints an equal number of JPAC advisors.²⁶ JPAC has achieved some degree of success in gathering public information to further the implementation of the Articles 14 & 15 review process.

Finally, under NAAEC Article 14, submitters can be any persons or NGOs (under the

treaty language, the term also includes businesses²⁷⁾ that reside or are established in the territory of the signatories; submitters need not be citizens of a member state.²⁸⁾ It is important to observe that submitters potentially can include any person from the diversity of populations across North America. Therefore, one of the central challenges for the submissions process under NAAEC Articles 14 & 15 is to provide equal access to quite diverse populations and their demands—possibly even before the demands materialize.²⁹⁾

Review Process and Procedural Stages

Review Process Overview

Complainants must claim in writing that a PCA is failing to effectively enforce its environmental law, attach and explain supporting information and send this to the CEC Secretariat in Montreal. When the Secretariat receives a submission, it must expeditiously³⁰⁾ decide whether the submission meets the legal requirements set out in Article 14, in particular the ones set out in its opening sentence, and verify that it meets certain evidentiary requirements, that the Secretariat intends to be low.³¹⁾ If a submission satisfies these, then the Secretariat may request a response from the relevant member state or PCA, who in each case will be represented by the environmental minister of Canada, the USA or Mexico. Upon consideration of the PCA's response, the Secretariat must decide whether to recommend an investigation that would further elucidate any breach of the treaty commitment. Moreover, Article 14(3) provides that after a period of 30 days, with or

without a state-member response, the Secretariat may decide whether to recommend such an investigation.³²

In either situation, the Secretariat submits a written recommendation to the CEC Council and this recommendation is made public via the CEC website (as are all other decisions in this review process³³). Principally, this recommendation identifies a set of enforcement questions that remain either unanswered or controversial in the PCA response—that is, those questions where the Secretariat was not satisfied that there was compliance with the “effectively enforce” treaty obligation. The Council makes a final decision on the Secretariat recommendation by a majority vote. If the Council instructs the Secretariat to proceed with an investigation, the Secretariat must then prepare a factual record where it shall consider any information furnished by NAAEC signatories and any relevant technical, scientific or other information, or present information developed by the Secretariat or independent experts.³⁴ The Secretariat then registers these factual findings in a brief, known as a “factual record.” The full legal process under Articles 14 & 15 culminates with the publication of this fact-reporting document, a not binding result.

In conclusion, the Articles 14 & 15 review process does not contemplate coercing PCAs to take a recommended set of actions. So how do we get PCAs to change for the better? In the case of Articles 14 & 15, the approach is to generate better information on how agencies enforce environmental laws; making this information publicly available and using the investigation process to create momentum to introduce policy changes. Perhaps for this characteristic, some have critiqued the Articles 14 & 15 process for “having no teeth.”

In other words, it would seem that some NAAEC critics would hope for normative results.³⁵

Complaints Big or Small

Of all the issues that could limit access to a complaint process, surely the cost of obtaining sufficient evidence is one of the most relevant. Without evidence, even the most legitimate claim will be disregarded. In an ordinary life situation, it may not be difficult to support our claims with evidence: “the windows are dirty, they need washing,” and to admit or reject such claim we would only need look. But, as is known widely, when we wish to *legally* complain about something, our evidence is usually subject to unforgiving scrutiny. In such situation, to demonstrate that a window is ‘dirty’ may quickly take us into discussions of unknown depths about the meaning of dirtiness. The complexity, and thus, the costs, of providing evidence for a legal claim that a NAFTA member is “failing to effectively enforce its environmental laws” cannot be underrated either. However, a consistently attractive feature of the Articles 14 & 15 process, historically, has been that it intends to place low evidentiary burdens for complainants. Perhaps nowhere this is more visible than with regard to the issue of the admissibility of persistent pattern allegations.

According to all legal determinations that the Secretariat has issued on submissions it has received,³⁶ the Secretariat has discretion to determine what information is sufficient as supporting information to a submission. Such conclusion is firmly supported by the treaty text.³⁷ The Secretariat has consistently decided that submitters need not provide

overwhelming amounts of evidence for their complaints to be admissible.³⁸ However, submitters have a choice as to whether they wish to complain about single facility failures to enforce environmental laws, or whether they wish to complain about broader problems that stem from policy level decisions.

The significance of the permissibility of “persistent pattern” allegations, from an evidentiary standpoint, is that submitters are legally able to charge a PCA with a systematic or persistent failure to effectively enforce its environmental law, based on a reasonable number of examples.³⁹ Perhaps returning to the example of the dirty window may help clarify this point. Let us suppose that when we sign our lease, we agreed that every end of the month, our landlord is supposed to send someone wash our windows. Six months go by and the landlord never sends anyone to wash our windows. Therefore, we reason, ‘the landlord never sends anyone to wash our windows.’ This conclusion can take a broader or narrower scope depending on the context. Suppose that you are signing a standard lease that includes this provision as obligatory for all landlords. We might therefore wish to conclude that our landlord not only does not send anyone to wash our windows, but that he does do it for any of his tenants. Or it might have been winter for the last six months, and the weather is too cold. We might then wish to conclude that, when the weather is consistently cold, our landlord will not abide by this provision of the lease. In each of these situations, the conclusion is tentative and subject to contrary evidence. In logic and statistics this form of reasoning is called “inductive reasoning,” and it stands in opposition to deductive reasoning.⁴⁰

In the case of claims under Articles 14 & 15, allowing submitters to claim that a NAFTA signatory is 'persistently' or 'systematically' failing to effectively enforce its environmental laws, from an evidentiary standpoint the situation is similar in that it carries the implication that submitters will be allowed to not provide full evidence for all possible examples substantiating the charge (not that anyone could). Thus, only some evidence will be required, and this 'some' is a matter of discretion. Of among CEC institutions, according to Article 14(1) the Secretariat is in charge of deciding if evidence provided reasonably indicates that an entire sector of government enforcement policy merits an Articles 14 & 15 review. The advantage of the Articles 14 & 15 process is that this 'some,' as per a policy consistently maintained in all official decisions on these types of complaints, is offered to be in the low end. We verified this by reviewing the legal decisions of the CEC Secretariat admitting the persistent pattern allegations of the Migratory Birds⁴¹, BC Logging, ⁴² BC Mining,⁴³ and Ontario Logging ⁴⁴ submissions. For example, the Secretariat's decision on Migratory Birds, recommending a factual record investigation, reports: "the Submitters identif[ied] [a limited number of] specific situations in which they allege the Act was violated and no enforcement action was taken. Specifically, the Submitters identify two recent instances in which the Party did not initiate an enforcement action against logging operations that allegedly violated the MBTA by killing covered birds and destroying nests. The Submitters assert that the failure to respond to these alleged violations constitutes a failure to effectively enforce the MBTA."⁴⁵

Apart from its logical meaning, the term "persistent pattern" has special significance under

NAAEC. This is defined under Article 45 as a “sustained or recurring course of action” (by a PCA), and it is used in a procedure under NAAEC Part V, which has remained idle since NAAEC’s inception. This procedure would permit NAAEC countries to charge one another with a persistent failure to enforce environmental laws, and eventually obtain trade sanctions of considerable amount.

In administering Article 14, the Secretariat has provided plausible reasoning as to why submitters may charge PCAs with “persistent pattern” allegations, even though under the Articles 14 & 15 procedure, the significance is obviously different, and no monetary or legal consequences would or could be attached. The Secretariat’s reasoning is based chiefly on an assessment that submitters have scarce financial and human resources to monitor compliance with environmental laws, among other considerations.⁴⁶ Even though the Secretariat has decided to examine persistent pattern allegations, the legal consequences of the review remain to be a non-binding report, which can include no legal findings: only findings of fact. However, as we shall observe further below, Council members may be against the admissibility of this sort of allegations under Articles 14 & 15.⁴⁷

Procedural Stages for Analytical Purposes

To facilitate our analysis, we shall examine procedural performance by grouping the various steps in the processing of submissions under the stages below, defined by us:⁴⁸

Stage One: The Secretariat screens each submission it receives to determine whether or not

it questions the effectiveness of environmental law enforcement practices and policies of a NAFTA signatory. This screening determines whether the Secretariat requests a response from the PCA or terminates the process.

Stage Two: If the Secretariat, based on the PCA response to the submission, has reason to believe that the PCA is not performing pursuant to the “effectively enforce” obligation, the Secretariat decides whether to recommend an investigation of the issue. The Council votes this Secretariat recommendation by majority. This recommendation identifies the outstanding issues that would need to be developed in the factual record investigation.

Stage Three: If the recommendation is approved, the Secretariat proceeds to investigate the issue and, again subject to a majority vote by Council, may publish its findings as a “factual record.” Depending on how well the CEC Secretariat conducts this investigation, the public may learn whether the PCA’s enforcement practices are effective. To that effect, information beyond that provided by the PCA and the submitter at the earlier procedural stages is obtained or developed, either from these parties or any interested person.

The Secretariat’s decisions that terminate a process do not preclude the same or other submitters to present a future submission on the same issue, either modifying their allegations or improving their evidence.⁴⁹ This three-stage summary of the Article 14 process simplifies various other procedural alternatives that occur within the three stages; however, it provides an amenable procedural map to assess effective access in the processing of submissions. The chart below details the CEC actions as we group them

under these three key stages.

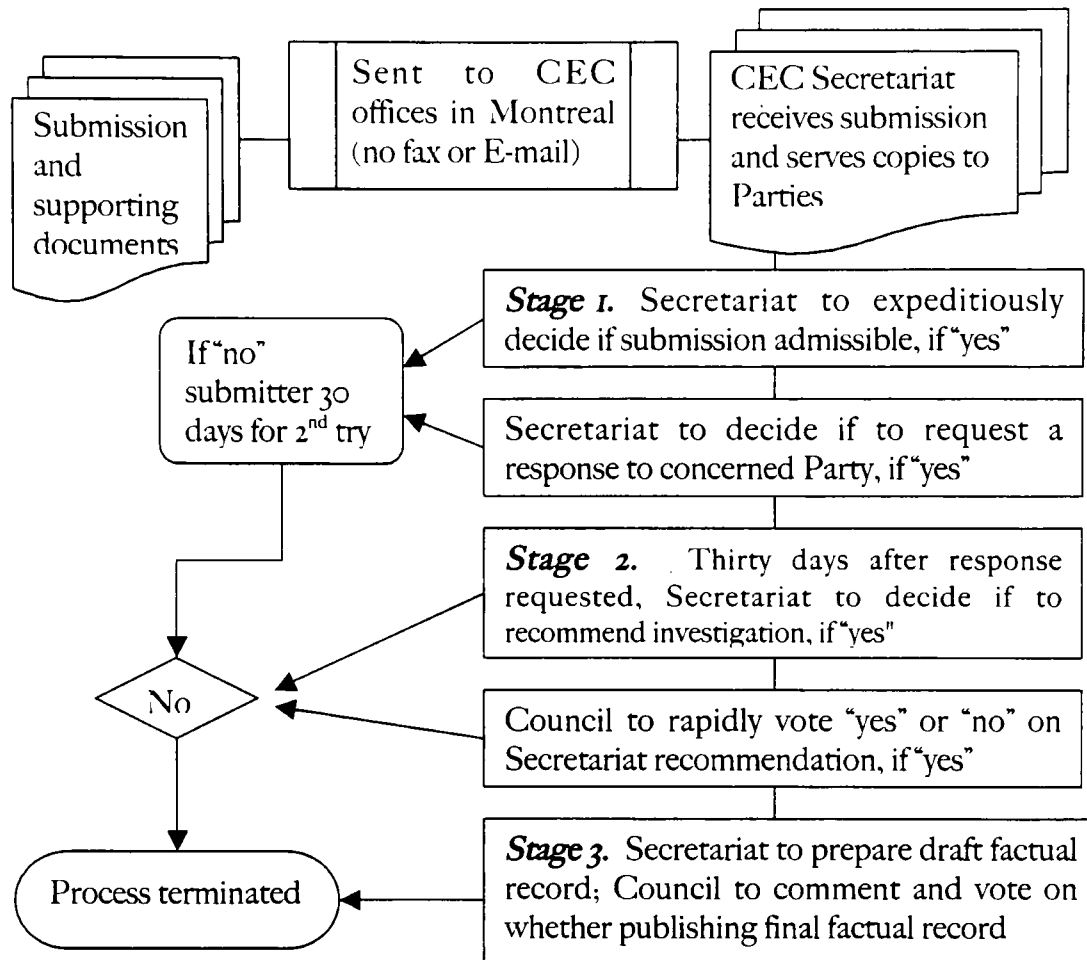


Figure 2: Summary of the Articles 14 & 15 Review Process

Procedural Purposes

Galligan commences his book on *Due Process and Fair Procedures* by noting that “without procedures, law and legal institutions would fail their purposes...in their simplest form—Galligan continues—procedures are steps leading to a decision... or other results. In

a modern legal system, the range of decisions is considerable, but one common feature is that each tries to advance certain ends and goals. Legal decisions are in that sense purposive, and so the main point of procedures is to serve those purposes...⁵⁰

From Galligan's work, we drew the idea that we could evaluate the Articles 14 & 15 submissions process based on an empirical verification of its mid-course, or "procedural" objectives. Based on our review, we determined that two are the main procedural purposes embedded in the Articles 14 & 15 review tool: a "participatory" or "fire-alarm" purpose, and a "soft recurrence prevention" purpose.⁵¹ Our evaluation of accessibility attempts to ponder effective access to these two promises, which we explain immediately.

The "Participatory" or "Fire-alarm" Purpose

The officials who negotiated NAAEC wished to create opportunities for the public's involvement in the enforcement of environmental laws. The importance of this objective would be half understood without considering that, in the past, an important portion of the discursive and argumentative tradition in international law had a tendency to obscure the existence of individuals and other private parties, for example by not giving them any role in legal international oversight. It is this participatory purpose—that is, the possibility that private parties can play a formal role in the monitoring of NAFTA members obligation to effectively enforce their domestic environmental laws—what most analysts have praised about the NAAEC Articles 14 & 15.⁵²

A work by Martti Koskenniemi may help to set the context for the Articles 14 & 15 review

tool.⁵³ According to Koskenniemi, international legal discourse has traditionally been obsessed with telling who the “true” actors in international law are, but often the answers are simply “devices to muffle or ignore the voices of individuals, in preference of states, that remained in place as the central actors in international law.”⁵⁴ Koskenniemi detects how, later, it became a conventional commonplace to stress the fictitious character of the state, which nonetheless left unattended an important underlying concept: an ideal of community. Without such ideal, a critique of the structure of international legal argument would have no direction or would be cynical. For this reason, Koskenniemi proposes that international law should become committed to a “conversant culture,” that is, one that respects the inherently conflictual character of social life. Under the conditions of this conversant culture, international legal actors should be 1) accountable for choices made 2) exercise their discretionary powers and 3) be responsive to claims of others.⁵⁵

We believe that the creation of complaint mechanisms for private actors in international law represents a slight departure from the previous argumentative tradition which was entirely based on statehood. This departure is particularly valuable in areas where international law attempts to deal with problems of collective action— the case of international environmental law. Having given individuals some formal monitoring role concerning compliance with international standards, the Articles 14 & 15 review process represents a shift towards this ideal.

According to Raustiala, for example, the Articles 14 & 15 review process is meant to operate as a “fire-alarm” review mechanism, as opposed to a “police patrol” review

mechanism.⁵⁶ Under the fire-alarm analytical metaphor, the salient feature is that the most important portion of the monitoring of the “effectively enforce” treaty commitment is trusted in ordinary persons: civilians from each of the NAFTA countries. Through the act of complaining, ordinary persons must raise a sufficiently documented suspicion about the effectiveness of enforcement policies in a given instance, so that later the CEC can verify it. Therefore, broadly speaking, the Articles 14 & 15 complaint tool does not fall within the traditional sort of legal processes in international law, which typically rely on statehood.

However, a mere decision, expressed in a treaty such as NAAEC, to allow a right of complaint to these long-silenced actors may not suffice for the voices of private parties to effectively become audible. In fact, the effective involvement of the public in complaint processes, within the areas of environmental and human rights, may be particularly sensitive to accessibility issues.

Further, in the case of countries that are only beginning to develop democratic and legal structures, who may require the cooperative oversight of the international community in greater measure in order to adapt their institutions and perfect their democratic processes, accessibility is yet more important than in other contexts. For example, of the NAFTA countries, Mexico has been famous for its deficiencies in law enforcement at the local and national levels. Graubart narrates how every Mexican submission contains claims that the Mexican government is feeble in the area of rule of law;⁵⁷ a paper by Szekely amply elaborates on the societal and cultural issues that might stand as obstacles for the effective enforcement of environmental laws in Mexico.⁵⁸ In the Mexican cultural context, a mechanism such

as the Articles 14 & 15 process would be a valued alternative to bypass the deficient or the allegedly “corrupt” complaint mechanisms available at the local level (this is how Szekely, perhaps harshly, qualifies these).⁵⁹

The Articles 14 & 15 process has the potential to enable the public to promote the scrutiny of the international community on governmental environmental law enforcement performance and, according to Markell, such should be the role of the “citizen spotlight process”.⁶⁰ If this potential is actualised, this should help mitigate some of the problems of legal institutions, particularly in a country like Mexico. But of course, unless the Articles 14 & 15 review tool is adequately structured, promoted and implemented, it is unlikely that citizen involvement will occur in a significant measure. For this reason, it makes sense to ponder the extent to which the Articles 14 & 15 review tool has served the purposes of involving the public.

The “Investigatory” or “Recurrence Prevention” Purpose

The NAAEC submissions process is an investigatory procedure.⁶¹ This means that the end purpose of the process is to clarify facts. The facts generated during the process should specifically clarify whether a Party Complained Against (PCA) is effectively enforcing its environmental laws in a set of matters proposed by a given submission. According to Galligan—whose analysis of due process in investigatory processes in the context of administrative procedures retain its pertinence to the issues at hand—all investigatory processes should guard against recurrence of the incidents that generated a complaint.⁶²

Among the various kinds of investigative bodies, Galligan maintains that “a standard case can be identified with the following characteristics: it inquires into the facts of an event or issue; it analyses the material; it then makes recommendations about what should be done in the future. Authorities coming within the standard case are hybrid in that they offer advice as well as investigate, and in that sense they are linked to the policy process...”³

The Articles 14 & 15 process is an investigatory procedure because it presents some of the characteristics that Galligan introduces. Although it would be difficult to raise consensus about the factual records produced under NAAEC Articles 14 & 15 process having a recommendations component, it is safe to conclude that one of the chief objectives of the review is to prevent recurrence, yet without coercion. In this regard, even if the short-term approach is to generate better information, the long-term objective of a review remains to be the prevention of recurrence. Thus, the information contained in factual records should at least be structured to serve recurrence prevention purposes.

For our purposes, having analysed the above purposes, we consider that this second purpose (factual records and recurrence prevention) is partially contingent on the realization of the first. That is, an absence of complaints would produce no factual records that would foster prevention of incidents of lax enforcement of environmental laws. It is evident that other conditions will need to be met for factual records to serve their recurrence prevention ends but, at any rate, to test the participatory objective seems to be the natural first step to evaluate Article 14 & 15 review tool.

Section II. Literature Review

The Articles 14 & 15 mechanism has received much scholarly attention, and most authors seek to, in one way or another, critique the Articles 14 & 15 process anticipating its potential, or lack thereof, to strengthen the enforcement of environmental laws in the NAFTA region. Nevertheless, this literature does not necessarily have direct relevance to the issues we explore in this paper, or does not address these issues quite in the same way we explore them.

For the purpose of illustrating the limitations and strengths of the dominant methods in the field, we classify the literature on NAAEC Articles 14 & 15 under three categories: “rule-based analyses”, “empirical analyses”, and “theoretical explorations,” defined below. Our first category is densely populated, and a large portion of it is very outdated; but the other two are not. That is, most authors concentrate strongly on analysing the history of the NAAEC submissions process, its rules, or proposing how these should be interpreted. However, there are few empirical discussions about the impact or outcomes of the Articles 14 & 15 process. And there are even less theoretical discussions, none of which are directly oriented to the issues we explore.

We intend our proposed classifications to operate as typological approximations on research methods, perhaps similarly to Popper’s classic portraits of historicism.⁶⁴ The readers of Karl Popper may recall that no single author that Popper critiqued fit

exactly within the ideology he targeted, yet each one contributed to powerfully illustrate the orientation of his critique. Our attempt is similar in that we intend our three-pronged classification to illustrate general aspects about the dominant methods in the field, and their limitations, but by no means an exact account of the existing writing. We expect that this will sufficiently illuminate the extent to which the method used in the subsequent sections draws from each of the dominant methods; and the limitations of using exclusively only one of the methods we categorize.

In addition to the three classifications above, we include a brief theoretical section acknowledging the contribution of certain theorists to our approach, even though the authors we mention there do not write about Articles 14 & 15. We refer to such authors more extensively at the points where we draw from specific contributions.

Rule-Based Analyses of the Review Process

This portion of the literature on NAAEC analyses how NAAEC and the Articles 14 & 15 mechanism were formed, and studies rules and rulings. It emphasizes the novelty of the Articles 14 & 15 within traditional dispute settlement mechanisms in international law, or praises it as a tool to achieve compliance in international environmental law. In general, these are informative works that discuss NAAEC based on an exegetic analysis of norms, speculate on the possible directions of future treaty interpretation or attempt to calculate the possible benefits and shortcomings of Articles 14 & 15 based on treaty-rule analysis.⁶⁵

For example, based on compliance theory in international law (which studies the

efficiency of mechanisms through which international law ensures compliance), a work by John Knox examines Articles 14 & 15 based on a distinction between the "adjudication compliance model" and the "managerial compliance model."⁶⁶ According to this classification, the adjudication model relies on binding rulings by an international tribunal. The managerial model adopts a softer approach to compliance, based on generating information and capacity building. According to Knox, however, the NAAEC Articles 14 & 15 process contains characteristics of both models.

Knox indicates that "outside the European Community, the only example of complaint-based monitoring in international environmental law is the submissions procedure of the North American Commission for Environmental Cooperation (NACEC)."⁶⁷ According to Knox, this procedure is obviously not supranational adjudication in the strict sense, but it has key elements of supranational adjudication: it allows private parties to claim that state parties to an international environmental agreement have failed to comply with an obligation under the agreement and to have their claim reviewed by independent experts. At the same time, it is an integral part of the managerial approach to compliance established by the NAAEC, which relies on cooperation among the state parties, capacity-building, and monitoring, rather than on coercion and enforcement, to achieve its goals."⁶⁸

Knox concludes that "the... submissions procedure is far too young for final conclusions about its effectiveness, but the terms of the NAAEC and the early decisions of the Secretariat indicate that the procedure has the potential to be effective both as a quasi-supranational tribunal and as part of a managerial regime. A checklist of factors

relevant to effective supranational adjudication developed by Laurence Helfer and Anne-Marie Slaughter indicates that the ... submissions procedure has the potential to be effective in ways characteristic of a supranational tribunal. At the same time, an examination of the way in which the submissions procedure may interact with other managerial mechanisms in the NAAEC indicates that it can be successful in managerial terms as well.⁶⁹

As Knox himself acknowledges, his work is a very preliminary analysis, and such is the case with most of the literature in this portion of the field. Knox sought to ponder the effectiveness of the submission's process in general, by applying compliance theory in international law to the NAAEC Articles 14 & 15 process. But this analysis offers no guarantees. Knox's findings about "potential effectiveness" assume that virtually anyone can complain under Articles 14 & 15.

That research finding is the starting point of our analysis. That is, if Knox reports that virtually anyone can complain under Articles 14 & 15, his work does not contain an analysis of the implementation of this mere normative possibility. In our view, the realization of the objective of the NAAEC rule (or set of rules) to allow virtually anyone to complain depends on effective implementation. The implementation of such accessibility objective is what we analyse. We do not assume that just because a complaint process is formally open to any person, it means that it is accessible. Evidently, the normative possibility of access to all is only a logical prerequisite of an accessibility analysis. Therefore, it is insufficient to read or interpret rules to determine whether a complaint process is, in fact, accessible.

Appendix I contains a critique and brief summary of other authors writing in this section of the field. However, because most of the literature in this area was produced early in the creation of the process, when the CEC had received very few complaints which disallowed profound empirical verifications (a situation which to date may remain relevant in a different sense), this literature has a tendency to be speculative or oriented to the analysis of no other data different from treaty rules, legal decisions, preambular treaty language and treaty interpretation or history. The content of these speculations generally predicts three possible outcomes. First, that the Articles 14 & 15 mechanism has the potential to be effective;⁷⁰ second, that the Articles 14 & 15 mechanism may actually operate against maintaining high environmental standards in the NAFTA region;⁷¹ We do not contend that these speculations has been borne out in practice. However, we propose an alternative method to evaluate the submissions process. The discussion of another important author in this section, David Markell, who, methodologically, probably has one foot firmly rooted on rule-based analysis and the other lightly positioned on empirical analysis, may help illustrate the objectives of our project.

To conclude what is perhaps the more accurate and brief review of the procedural steps routinely involved in the processing of Articles 14 & 15 submissions, Markell, the former director of the Submissions on Enforcement Matters at the CEC, proposes ten lines of research on the Articles 14 & 15 submissions mechanism.⁷² His first proposal consists on analysing three purposes of Articles 14 & 15. These would be: A) to enhance domestic environmental enforcement by the three NAFTA Parties; B) to enhance environmental

protection: "In other words, enhancement of domestic enforcement is a means to an end, and the end is to promote compliance and thereby enhance environmental protection;"⁷³ and C) "to promote the emergence of "civil society" in North America through creation of a new mechanism that facilitates citizens' interactions with their governments and others on the continent."⁷⁴

All the purposes cited by Markell may be located quite far in the spectrum of possible purposes of the Articles 14 & 15 review tool. Indeed, probably too far to permit any empirical verifications in the end, for these are the *ultimate* objectives of the submissions process. Establishing causation between the existence of Articles 14 & 15 and the emergence of civil society; the improvement of levels of environmental protection, or, a more limited one, the enhancement of domestic enforcement, may be all too challenging. Perhaps only in a distant future will someone be able to undertake a project that would successfully track back such results, and then again with a limited degree of certainty. But by then such verification would only serve the purposes of writing a history of the submissions process or, of course, rejecting or strengthening some of the tenets of compliance theory. In any event, such information would no longer have been available in time to usefully serve the current processes of implementation of the Articles 14 & 15.

Thus, our proposed line of research focuses on the implementation of *instrumental* or *mid-course* objectives of the Articles 14 & 15 review process. In our method section, we shall explain these instrumental objectives or procedural purposes in detail. For now, we critique the works in these area of the field because none include evaluating

accessibility to the Articles 14 & 15 submissions process, such as its cultural viability in light of the diverse population of complainants that it targets. We hope that proposing some of the determinants of accessibility, and methods to evaluate them, has the advantage of generating valuable information and methods for the CEC to continue implementing the Articles 14 & 15 process.

However, in this area of the literature, very few authors felt that they were in a position to question operational aspects of the submissions process, but they were correct in that they were not in a position to evaluate its effectiveness with respect to ultimate objectives. Unfortunately, when legal processes are evaluated without enough empirical data, the analyses become thin, and while many authors in this area wished to raise evaluative questions, for the reasons above, most of the responses they reached did not satisfy us.

Empirical Analyses of the Review Process

Later developments in the submissions' process from the years since its creation have allowed the production of more empirically oriented studies, which are more similar to the type of review we undertake.⁷⁵ We observe that most of this literature is composed of inferential attempts to evaluate the entire submissions process. We say that these are inferential attempts because even if they only focus on generating and evaluating data on portions or instances of application of the review process, they hope that it is possible to generalize from these smaller sets of data.

Perhaps the most succinct and comprehensive critique of the Articles 14 &

15 review process in this area of the field is a recent work by Jonathan Graubart.⁷⁶ As part of a wider project to evaluate private actors' use of soft-law mechanisms in international law, Graubart explores how NGO and private actors have used the Articles 14 & 15 review tool to press certain environmental issue into the public agenda. Graubart gathers empirical data on the use by social activists of the Articles 14 & 15 submissions process to place added political pressure on their home governments and thereby boost ongoing political and legal campaigns at home.⁷⁷ That is, rather than focusing on presenting information on formal rulings, Graubart adopts a "law-in-action" approach, which he considers to be especially appropriate for soft law agreements, given that they are not designed to produce immediate, judicial-mandated changes in behaviour. The author relies on a process-tracing of all submissions, official documents available at the CEC web-site, participants' written impressions, media coverage and interviews with submitters and Secretariat staff.⁷⁸

Additionally, Graubart analyses three cases in depth, two of which represent the most successful submissions in terms of advancing activist's broader political agenda. "Each of these submissions was filed by sophisticated petitioners and illuminates the rich strategies that submitters have employed."⁷⁹ The paper also examines an ambitious but unsuccessful submission, filed too by sophisticated submitters.

Graubart's methodology is most interesting for our purposes, for it managed, or gave us ideas, to generate, albeit indirectly, valuable information about the users (and not only the uses) of the citizen submissions mechanism, even though generating information on users did not appear to be its primary intent. When we want to measure accessibility, we

are also interested on detecting to what extent may the Article s 14 & 15 tool be hostile to certain types of submitters. A very important chart contained in Graubart's paper (titled Table 2, Results of Submissions) contains information on Article 14 & 15 submissions which no previous work in the field had presented. The data set includes: whether submitters addressed a widespread problem, whether the complaint was precise; whether submitters were able to promote the case; the stage reached by the case; and whether submitters had success or not in advancing their objectives. We found that having this type of information could be quite relevant to orient certain aspects of our review, such as the extent to which complaints manage to harvest benefits from this review process.

Unfortunately, Graubart makes no attempts to determine whether some of these submitters were in a disadvantaged position or not, which would have been relevant to evaluate if the complaint tool generated equal results in these conditions. Additionally, the criteria to establish the information contained in this table is not fully discussed in the paper, and some of it is not precise or incomplete: Specifically, we do not agree with part of the data on whether submissions addressed widespread problems; and the data about the success of complainants lacks information for more than half of the submissions⁸⁰ Finally, Graubart made no attempts to make calculations about the flow of cases through the CEC. A final critique that we can direct to Graubart is that he made no attempts to use the data set to advance or prove hypothesis about the difficulties of complainants in using the articles 14 & 15 , or to otherwise detect implementation difficulties. We acknowledge that this was not the case he was trying to make, however, Graubart's only conclusion is that

complainants under Articles 14 & 15 will be persons “who attempt to assist ongoing political and legal campaigns at home,” and we find that this conclusion does not appear to be fully supported by the data, because the users of this mechanism have often included businesses,⁸¹ and because in many of the submitted cases, particularly the Mexican ones, there is no clear indication in his paper that such campaigns are “ongoing” or altogether exist with such continuity that these could be called campaigns, or with such precision that these could be deemed to contain policy proposals. In particular, Graubart’s conclusion that in “semi-authoritarian countries like Mexico... well focused, sustained soft law mobilization can succeed” is in our view unsupported by Graubart’s data, which shows that only two complaints are rated high on impact, and only one of these, Cozumel, proceeds from Mexico.

Additionally, the standards Graubart uses to rate the impact of cases are unclear. For example, the Cozumel case is rated high on impact even though the opinions of the authors of this complaint, as per interviews after the case, are divided; even though the project that the Cozumel submission denounced (the construction of a port in the middle of coral reefs), was carried out during and after the Articles 14 & 15 review;⁸² and finally, even though it is public information that some time ago the port in question was shut down because a Norwegian ship got stuck amidst the reefs. These limitations notwithstanding, we accept the validity of part of Graubart’s information, and above all his insight to gather this information. With some reservations which we shall make explicit at the appropriate sections, we incorporated part of Graubart’s data set, revised, to ours. Our data set is

attached to this paper as Appendix V-III.

We include in this area two more papers. First, an evaluation prepared by Beatriz Bugada,⁸³ who explores the two dispute-settlement mechanisms contained in NAAEC and attempts to evaluate the Articles 14 & 15 process. However, most of the empirical information it uses, and its evaluative conclusions, are based on the Cozumel case—a sophisticated case on all accounts, thus not adequate grounds for generalizations. Second, a work by Coatney,⁸⁴ which critiques the structure of the Articles 14 & 15 review process, in particular the NAAEC Article 15 definition of environmental law, by contrasting it with NAAEC objectives. These two papers contain a review of certain submissions, and both suggest that the processing of submission's is overly formalistic.

We gather from this that a suggestive line of inquiry to follow is whether the Articles 14 & 15 review process is unnecessarily complex. This is a project which we do not undertake because our objective is to provide materials for an institutional self-evaluation. Normally, implementation is confined to taking the normative structure of processes as is, so we are assuming that change is not a possibility. However, if we were to conduct an evaluation of procedural complexity, we would propose adopting some of Scott's ideas on legibility and simplification.⁸⁵ We would thus evaluate whether the Articles 14 & 15 is complex examining the extent to which the procedural steps and requirements in Articles 14 & 15 promote institutional focus on issues that are relevant to the scrutiny of the CEC, as opposed to creating unnecessary procedural requirements.⁸⁶

In sum, this portion of the literature is probably best positioned methodologically to explore implementation issues because it attempts to base its conclusions on empirical data. However, a critique that, generally speaking, we can direct to this literature, refers to the selection of the data that forms the basis of inductive conclusions. Consistently, this is a problematic area. Most authors (including certain portions of Graubart's analysis, albeit not all of his work), have a tendency to focus on the processing of what we could call "salient" or "sophisticated" cases—a terminology which Graubart himself uses. So these works attempt to generalize from situations where sophisticated submitters invested large amounts of resources to perfect and submit their complaints.

However, there is no indication (or conclusive theoretical analysis thus far) indicating that routine workload under the NAAEC Articles 14 & 15 review process should in the future remain to be composed of sophisticated or, so to speak, rich ENGO cases. In our view, it is clear that measures of institutional performance are best taken by evaluating the treatment of routine cases.⁸⁷ We therefore propose that future lines of research should include further theoretical analyses evaluating whether cases that average persons could submit should become the mainly targeted clients of the Articles 14 & 15 complaint process.

In conclusion, in general (except for a portion of Graubart's work) this literature provides anecdotic or good general ideas about the bounties or limitations of the submission's process; however, it does not generate materials for stronger generalizations of institutional performance, or for setting appropriate baselines, in areas such as accessibility. We are aware that being that the workload at the CEC is scarce, it is yet difficult to

empirically ascertain what “routine” cases should look like. Nevertheless, we are not convinced that access policies (that may derive from perhaps habitual but not reflected decisions about the nature of this review tool) should exclusively focus on Environmental NGOs (ENGOS), possibly *de facto* reducing the possibilities of other potential clients, such as non-environmental NGOs, businesses, ordinary individuals, or culturally disadvantaged persons. Ideally, the CEC institutions in charge of the implementation and further elaboration of the submission’s process are the ones who should shape this review process according to public perceptions and expectations, and advise the CEC Secretariat in these matters. Otherwise, this complaint mechanism will remain detached from the real lives, actual resource struggles and concrete problems that people in North America face today to have environmental laws enforced.

Theoretical Literature on Review Process

The two prior categories, in general, tend to take for granted the nature of the review tool, but certain works by Kal Raustiala do not.⁸⁸ We place his works under this section. We borrow from Raustiala the insightful classification of complaint processes under “fire-alarm” and “police-patrol” categories, to which he has devoted two papers.⁸⁹ These papers draw essential differences between treaty review models based on the decentralized flow of information, and those where the monitoring of treaty objectives is more centrally controlled.

In these papers, Raustiala aims to develop the building blocks of a positive theory of treaty

review.⁹⁰ He argues that we can usefully distinguish two fundamental models of treaty review. The police patrol-fire alarm metaphor is drawn from McCubbin's study of Congressional oversight of administrative agencies.⁹¹ For their part, police patrols refer to review efforts by centralized authorities--such as treaty secretariats or specialized international bodies--in which those authorities search for violations or actively "inspect" government performance. According to Raustiala, rather than rely solely on such investigative police patrols, some international agreements create "fire alarms": mechanisms that permit private actors to trigger review of government performance. ⁹² Finally, "the police patrol-fire alarm dichotomy, while basic, highlights a central issue: the role of information. The distinction between the two is fundamentally about the source of treaty-relevant information, not about what happens after that information is gathered (such as the choice to impose sanctions or provide assistance)."⁹³

As anticipated, the orientation of Raustiala's work is not at all directed to the issue we explore. For example, Raustiala indicates that the dichotomy between police patrols and fire alarms raises two core questions. First, why, and under what conditions, do states choose to rely on fire alarms, police patrols, or some combination when designing treaty review institutions? Second, what outcomes flow from this choice? However, when Raustiala discusses these "outcomes," this in fact turn out to be theoretical proposals or lines of inquiry that require empirical verification as we shall see below. Nevertheless, his work is relevant to us because he explores all these questions through the example of the NAAEC "citizen submissions procedure."

Among the conclusions he draws, Raustiala maintains that the fire alarm has, in comparison to police-patrols, the benefits of being more cost-effective, efficient and participatory, which include more open access to private environmental information; the decentralization of monitoring and other participatory benefits. It is important to underscore, however, that Raustiala's conclusions about the benefits of the mechanism in all these areas are actually contingent on that the Articles 14 & 15 process is accessible—a mid-course objective. That is, all of these benefits should in any event be considered as insightful indicators—but not as “benefits”—at least until we have empirical data that tells us with certitude that we have them in our stock. For example, Raustiala does not include a fuller discussion about the incentives of persons to submit, or about the costs these persons should face.⁹⁴ In this regard, Raustiala simply concludes that the impacts of the process remain unclear and that from a domestic and administrative law perspective, the lack of a meaningful remedy and a low number of submissions (which he calculates to be of a rate of four to five a year), might suggest that the significance of the process is yet minimal.

It is clear that Raustiala's chief purposes are not to evaluate the submissions' process, but rather, to explain the rationalities behind state choices for different types of review tools, moving within the spectrum delimited by the two analytical metaphors he uses (fire-alarms/police patrols). His rich discussions nevertheless provide very suggestive evaluative components for future empirical research. Even though our research questions are about the accessibility of the tool, not about the possible impacts of the process, our evaluative questions are, to some extent, connected to issues of effectiveness and impact: The issues

with which we deal condition any evaluations in those areas, because we will empirically attempt to ascertain the attainment of mid-course objectives of the Articles 14 & 15 review process. We believe that at this point in the history of the submissions process, a discussion empirically and theoretically centred on the nature and degree of accessibility of this review tool, and on the factors that might explain inadequate accessibility patterns, would be very fruitful.

In conclusion, based on our review of this portion of the literature, we believe that the CEC submission's process needs more theoretical exploration about its nature and proper focus, while the existing literature is quite suggestive. This young mechanism, so to speak, is still in the process of searching its own identity. In particular, there are many issues about the Articles 14 & 15 process that it is critical to establish in order to conduct implementation of this review tool into fruitful directions. Such issues are not resolved in the treaty text and normally should not be resolved there. Some of these issues are: Should certain sectors of the population be targeted as priority complainants? How much should it cost to complain, and how to keep these costs effectively low? When and how should a factual record be prepared? What information should a factual record include so that the process may guard against recurrence? These, it is true, are legal questions, but within the boundaries set by treaty interpretation, there are vast zones of freedom that need further ascertainment in order to structure implementation accordingly.

Other Relevant Theoretical Literature

Other theoretical literature, without being directly focused on the Articles 14 & 15 submissions process, has partially shaped the views with which we consider the CEC process in this paper. We may divide this literature in two areas. One is oriented to the analysis of the law and legal processes. In this area, the legal theory produced by D.J. Galligan⁸ has nourished part of our analysis. Various sections of Galligan's work on investigatory procedures are particularly relevant to understand the nature of the Articles 14 & 15 factual record process and are an important supplement to the two studies commissioned by the CEC on the submission's process.

For the purposes of theoretical discussion, Galligan's process classifications may nourish discussions by international scholars on the bounties of certain types of "soft-law" compliance models. In particular, we borrow from Galligan's process classifications the notion of "processes based on investigation and inquiry." We believe that the Articles 14 and 15 process fits within that category, which according to Galligan, has the purpose of, first and foremost, to find out what happened, and secondly, to report on the matter to some other authority (often with a recommendation that certain action should be taken). According to Galligan, these types of processes should remove public concern and, most importantly, guard against recurrence in the future. We shall return to Galligan's process classifications in our method section.

In addition to the legal literature in the area, a very insightful work by environmental

anthropologist and political scientist, James Scott, and specifically his ideas on legibility and simplification,⁹⁶ induced portions of our accessibility review. The success of complaint processes greatly depends on how legal processes are administered. Thanks to the input of authors such as Galligan, Scott, Raustiala and other theorists, we believe that the creation and maintenance of successful complaint processes is a complex art that requires much investment and self-evaluation by the institutions that administer them. Based on these authors, we have begun to understand that legal rules that create complaint processes, and the cultural inclinations and practices of their operators, inadvertently can become quite narrow perceptual fields with which the persons who run these institutions must select the issues to which they will devote their time. So the refined legal and cultural sophistication of complaint processes unavoidably ends up becoming increasingly complex to deal with for outsiders. For this reason, we believe that the public's interest in, and information about, complaint processes needs to be amorously cultivated by administering institutions, and through a wide range of methods. These provisions are especially important where a review process ultimately deals with the quality of our environment, a good that affects or benefits us all so indiscriminately that usually few decide to engage in legal actions to promote its care.

Section III. Proposed Method to Evaluate Accessibility

Our main contention is that the Articles 14 & 15 mechanism is not sufficiently accessible. However, accessibility is not a black and white issue. Instead, it is composed of many factors, which cannot be considered in isolation. In order to evaluate a complaint mechanism we need to put together a broad amount of information under different categories. Even so, the information would not necessarily be conclusive.

We have selected four indicators to measure accessibility to NAAEC's complaint process. As a means to operationalise access, these indicators attempt to assess how difficult it is for petitioners to submit a complaint that will exhaust the procedures successfully. We do this by analysing number of complaints and processing times. In addition to these items, and inspired by Gaubart's methodology, we have included petitioner's success measures in the belief that real access exists in processes that offer both attainable and tangible benefits to its users.⁹⁷ Finally, we incorporate notions of fairness to the analysis by inspecting whether the costs and benefits are being equally distributed among a group of petitioners.

Data that nourished our analysis comes from information that is public at the CEC website on all submissions filed up to June 2003, and the review of 62 documents determining the legal situation of all of 35 CEC submissions filed up to October 2002.⁹⁸ We systematically gathered dates and performed qualitative analysis regarding these petitions. Our data set was supplemented with data reported by Graubart.⁹⁹ Finally, the use of

computer and statistical software facilitated the tasks associated to our descriptive and inferential statistical analysis. We used Excel and SPSS in order to make these computations. The table below lists our four indicators and anticipates our hypothesis as well as how the findings may be interpreted in light of the indicator.

Indicator	Interpretation and Hypothesis
Number of received submissions	A low amount of submissions would be interpreted as signalling low accessibility. We hypothesise a negligible amount of submissions.
Processing time distribution	Long processing times is interpreted as an obstacle to access. In addition, great variations in time processing signals low accessibility. We hypothesise significant delays and variations in case processing.
Processing time distribution between advantaged and disadvantaged submitters	Differentials in processing times across group of petitioners are interpreted as access denial for the disadvantaged population. We hypothesise that submissions from disadvantaged submitters experience significant additional delays.
Distribution of success cases among advantaged and disadvantaged submitters	Petitioner's success is interpreted as a positive measure of access. In addition chances of succeeding would have to be equal across submitter groups in order to guarantee equal access. Our working hypothesis is that success is limited and yet disadvantaged submitters have less chances of reaping benefits from the process.

Figure 3 Our Access Indicators and Their Possible Meaning

Number of submissions.- The amount of submissions was measured on a yearly basis and considering all historical filings. We find this indicator useful to measure access assuming that a thin pool of submissions may indicate that the review tool is not well known, has little credibility or that it is costly for users to exploit it.¹⁰⁰ If either situation occurs, the

review tool would lack pertinence to the objectives it is meant to serve. The questions to be addressed in the findings section are: How many submissions has the CEC received since the implementation of Articles 14 & 15? Are there parameters against which to compare this caseload? What are the obstacles for this comparison?

Processing times.- Processing times are computed for both pending and closed cases and across the three procedural stages. Following the aphorism “justice delayed is justice denied” we assume that long processing times impose costs to parties that hinder access. We can anticipate that these lengthy processing times might reduce the recurrence-prevention impact even in cases that survived all procedural hurdles. On extreme cases, if the CEC takes too long to process submissions it receives, the results of a review, whatever they are, may lose their pertinence. Among the questions we will be addressing are the following: How much time does the CEC invest to process each case? Is this time reasonable? Approximately how much time the CEC invests at each access stage in the review of each submission? How do these times vary from stage to stage? Are these variations reasonable?

In addition to time alone, we analyse reasonableness of processing time variations. In this regard, if the CEC does not take even amounts of time to process submissions at each stage, for example taking weeks to make a certain type of decision, and in a different case taking years to make the same type of decision, users would not know what to expect from the process. Uncertainty, in this sense, may be regarded as an obstacle to access.

Processing time distribution between advantaged and disadvantaged submitters.-

Within the processing time analysis we inquired about equal treatment across a group of submitters. We assume that if the CEC takes longer time to process cases from an identifiable disadvantaged group, this could indicate a degree of “hostility.” Hostility need not be understood as an active contempt, but rather, as a cultural, and thus, unwilling, disregard to certain types of complainants. To the extent that this occurs, the tool would lack pertinence to a portion of potential complainants.

We use two criteria to identify a disadvantaged group of submitters. The first criterion classifies petitions as per the country whose government motivated the petition. Along this criteria Mexican petitions are assumed as belonging to the disadvantaged group. We admit that certain Mexican submitters are not necessarily disadvantaged. For this reason, we have a second criteria, which resulted from categorizing submitters through a qualitative analysis of the 39 cases as according to a seminal work by Marc Galanter, which classifies the users of legal systems as “one shotters” and “repeat players.”¹⁰¹ Our classification of submitters between advantaged and disadvantaged echos Galanters insight. We define a disadvantaged submitter as one who has is likely to be a one-shotter in cases where we detected submitting individuals that were not backed by an organization.¹⁰² We define advantaged submitters as those NGOs positioned to be “repeat players.” We assume—for we did not compile financial information on submitting NGOs, that these organizations are adequately funded. A future evaluation in this regard should attempt to consistently compile information and additional indicators on whether a submitting NGO is issue-specific, specialises on litigation or is a business. This should be similarly done with respect

to submitting individuals. Our classification is based on information about submitters made public at the CEC web-site which reveals, except where submitters claimed confidentiality, whether submitters are NGOs or individuals.¹⁰³

Distribution of success cases among advantaged and disadvantaged submitters.- The questions we address within this topic include: what are generally the outcomes of the process? Where do cases fall out more often? What is the observed or likely policy impact resulting from the process? Are outcomes evenly distributed across petitioner groups?

We conceptualise success in two ways. The first one—procedural success—derives from the possibility to advance petitions through stages in the process. The second one—impact success—is given by the policy outcomes achieved through the review process. An idea underlying both of these approaches is that true accessibility in legal mechanisms partly depends upon its potential to offer attainable and tangible benefits to users. Even though these may be conceptualised as being enjoyed by the population as a whole, usually NGO's that place an issue into the public agenda depend, for their survival, of being recognized by the public for having done so. Finally, we do not generate information on impact success, instead, we rely on data generated by Graubart.¹⁰⁴

According to Graubart's empirical research, although favourable determination at initial phases of the process may harvest some benefits to petitioners, most submissions that generated momentum that caused significant in changes of, or improvement to, enforcement policies, reached the factual record stage. ¹⁰⁵ In attention to these findings we

assume that benefits for petitioners accrue in tandem with the evolution of the review. In this sense, success would keep a direct relationship with the advancement into procedural stages. Thus, we have constructed this success measure according to the stage reached by the petition following the three phases of the process we proposed under Section II.

Although procedural success is associated with the idea of impact, we decided to include a specific indicator based on the achievements or policy impacts attained through the process. We have taken Graubart's construction and his data for this purpose. The author achieved this indicator by pondering the policy impact of 31 submissions out of his qualitative analysis.¹⁰⁶ Graubart only specifies that this indicator reflects whether there has been some policy level improvements in the enforcement of environmental laws as a consequence of the complaint process, regardless of whether these changes were the ones proposed by submitters. For example, two cases are coded as "high" because they pushed the PCA to institute concrete programs addressing the environmental problems under dispute. However, Graubart acknowledges that neither came close to resolving fully the concerns of the submitters. Further, seven submissions fall in the middle category because they did not elicit any concrete policy. Finally, there is no information on the remaining cases.

As part of our methodology regarding success we analysed whether favourable outcomes were distributed evenly across advantaged and disadvantaged groups. For this purpose we searched for significant correlations between the success variables and the type of submitters. The criteria for type of submitter are the same as those used in our

time processing analysis. Finally, we asked whether distribution of successes could be alternatively explained through other group categories rather than through our advantaged/disadvantaged classification. Here we again used Graubart's propositions to identify submitter groups by "degree of precision" (which refers to whether the submission was well drafted) and "promotion" (which attends the media and policy makers' response to the petition).¹⁰⁷ We ranked high the quality or degree of precision of the submission if the submission identified a specific set of legal provisions or legislative objectives that were being affected by a deficient enforcement policy. We ranked submissions "low" where there are several provisions cited in a way that makes the complain appear unfocused, and no policy problem is identified. Regarding promotion, again we relied on the data generated by Graubart, according to which submissions were ranked high if submitters were able to conduct activities to draw the attention of the media and governmental authorities through their complaint.¹⁰⁸

Section IV. Findings and Discussion

In the previous section, we anticipated the hypothesis on accessibility that we would examine, as well as the indicators we propose to measure access. This section contains our findings.

I. Number of Submissions

Up to June 2003, the CEC had received 39 submissions. We hypothesised that this is a low number of complaints. However it is not as easy as it might seem at first glance to determine that this number is low, or for that matter, what would make a good number.

The table and graph below shows the evolution of submissions received by the CEC during 9 years. As depicted by the table, the CEC has received a range of petitions between two and seven in its lower and peak years, respectively, without showing a pattern of significant increase over time.

Submissions received per year		
Year received	Submissions	Percent (of total)
1995	2	5.1%
1996	4	10.3%
1997	7	17.9%

1998	7	17.9%
1999	2	5.1%
2000	6	15.4%
2001	3	7.7%
2002	4	12.8%
2003 (June)	3	7.7%
Total	39	100%

Figure 4: Submissions received per year

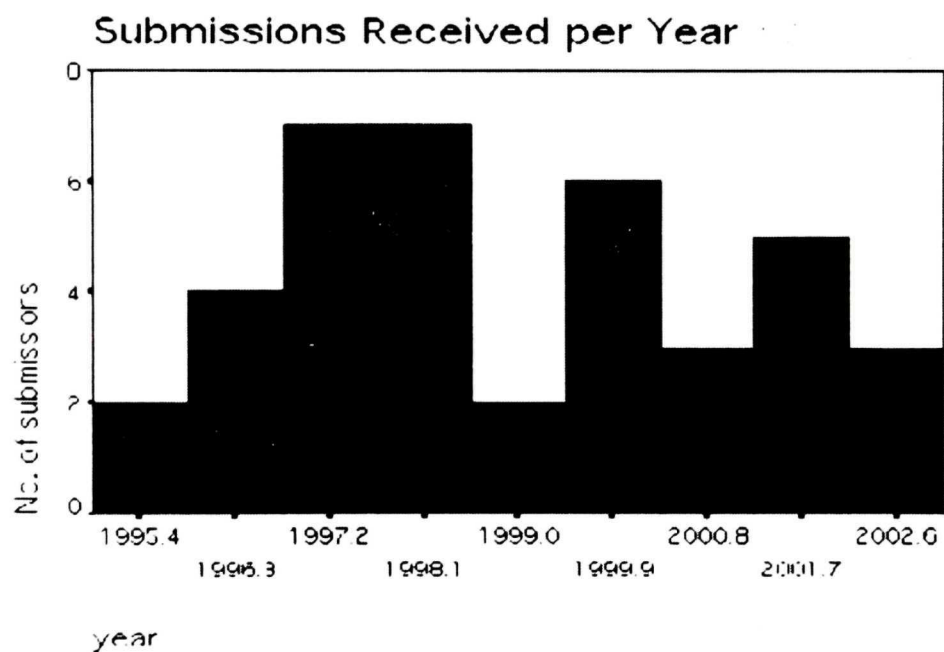


Figure 5 Evolution of the Number of Submissions

A rough calculation by Raustiala attempts to estimate representation rates based on the population existing in the NAFTA region and may shed some light to begin to explore

reasonable amounts of complaints. Roughly, the population in Canada, Mexico and the United States is composed of 410 million persons.¹⁰⁹ While not conclusive, considering the procedural purposes of this review tool, which relied on transferring a burden of monitoring to citizens, it might be appropriate to doubt whether a significant monitoring effectively exists when the CEC receives only 39 complaints throughout a nine-year period. At the very least, this suggests that the societal costs generated by the maintenance of this complaint process may not be justified. If we consider that the CEC has an annual budget of 9 million dollars of which only a 1/20 is destined to complaint processing, the mean cost of submission processing would be near the amount of \$115,000. The conclusion is the same whether the lack of complaints are due to the fact that no environmental problems or if this is due to the fact that no one wants to complain about them.

How to draw solid conclusions as to what number of complaints would justify maintenance costs or indicate effective monitoring? This will remain an open question. While we do not attempt to set a parameter, for the purposes of illustration we shall briefly consider problems in comparing the CEC caseload under Articles 14 & 15 with that of other similar mechanisms. While no mechanism is identical, we argue that comparative methods are a means to evaluate levels of complaint activity.

Raustiala's work mentions four examples of fire alarm or decentralized treaty review tools to exemplify how this type of monitoring of treaty objectives is acquiring relevance in international law. These may be good candidates for a caseload comparison: a) A "freedom of association procedure" under an ILO review institution which applies to all ILO

treaties; b) A complaint tool under the American Convention on Human Rights; c) The "1503 procedure" under the UN Human Rights Commission; and d) The Optional Protocol to the ICCPR. Raustiala also suggests similitude with a procedure under the World Bank Inspection Panel.¹⁰ All these review tools are examples of what Raustiala calls "fire-alarms" and they are similar in that they rely on open monitoring, however, it is unclear that their caseload is comparable to that of the Articles 14 & 15 submissions mechanism.

As announced, we do not run a full comparison with all of these mechanisms, as it falls beyond the scope of this paper. We only propose a few cautions to be followed when considering a caseload comparison of the CEC to that any of these mechanisms to set caseload baselines:

First, these procedures contemplate persons from many different countries, who have different potential to acquire legal standing, thus the numbers of potential submitting populations are not necessarily comparable. Second, similarly, the amount of complaints received under these types of complaint processes is contingent on public interest on the matter; and we note that in none of these other review tools the subject matter of the review is an environmental law enforcement issue or directly related to an experience of regional integration under GATT rules. Third, the age (years of evolution) of fire alarm review tools may have an impact on how much these are known by the public; and the ages of all the above candidates are different, so this could also have an incidence on the number of complaints received under each. Additionally, mechanism age alone may be an inadequate indicator. Actually, the degree of success that complainants have had in the past may

be much more relevant, as this also becomes part of the incentives to use the tool: The rate of success in using review tools obviously has an impact on the credibility of complaint mechanisms and, thus on the future amounts of complaints received. We propose that all these variables, and others, should be considered when attempting to compare the workload of diverse complaint mechanisms.

In addition to the review tools cited by Raustiala, there may be other mechanisms with which the CEC caseload should be compared. Having anticipated, and maintaining, all the above qualifications, we believe that comparing the Articles 14 & 15 review tool with the workload of an environmental complaint mechanism in the European Union, may stand to illustrate whether the CEC caseload is low in a manner that serves to indicate whether the CEC review tool is accessible. Intuitively, the comparison is quite natural, as EU and NAFTA are some of the few examples of such geographical magnitude of regional integration available in the world.¹¹ However, we are aware that the models of integration followed in Europe are substantially different from the ones pursued thus far in North America, as we demonstrate below. Nevertheless, it would be important to compare the NAFTA experience with that of the EU in terms of the amount of public complaints received and the capacity of private parties to harvest public benefits from using complaint mechanisms.

The environmental complaint procedure in the EU has had a particular evolution. According to Kramer, in the context of environmental protection, the EC has gradually abandoned the fixing of common or equivalent control rules.¹² In addition, the

EC has no "police-patrol" inspection mechanisms: laboratories, mobile analysis possibilities or other policing mechanisms to monitor compliance with local, regional or national environmental standards. The environmental complaint mechanism evolved from a complaint procedure created in the late sixties, according to which importers and traders were allowed to complain about any difficulties they had as regards documents, fees, charges or other administrative problems when passing commodities through borders.¹³ The Commission would use these complaints to intervene with national authorities in order to eliminate, whenever possible, differential barriers to trade. When in 1982 forty barrels of toxic waste were lost in their way between Italy and France, the European Parliament set up an inquiry committee which was very critical of member state's compliance with EC law, but also of the EU Commission for not fulfilling its role as guardian of EC treaty with respect to environmental law. In order to respond to this criticism, the Commission decided to systematically apply complaint rules to the environmental sector.¹⁴ At present, a complaint is any written application to the Commission where a situation of non-compliance with EC law is alleged, requesting the intervention of the Commission.¹⁵ The complainant may use the complaint form which the Commission finally published in 1989, but is not obliged to do so.¹⁶

There is some anecdotal evidence that the EU has had better success in creating more accessible and easy-to-use environmental mechanisms. Kramer narrates, for example, that a certain EU environmental complaint that was successful eliciting a number of positive governmental responses, was submitted with a brief set of facts scribbled on a postcard.¹⁷

Specifically, the complaint referred to the quality of bathing water in Blackpool (United Kingdom), and it led to a judgement of the European Court of Justice in 1993. The Commission entirely relied on the facts contained in the postcard. In contrast, such success even with much better documented complaints would be difficult to imagine in the NAFTA context.¹⁸ CEC officials could hardly boast this degree of accessibility. The central issue that may not have been sufficiently understood in the NAFTA region is that the Articles 14 & 15 complaint process intends to reduce information costs. However, in our opinion, it seems that the implementation trends of the NAAEC are more focused on pitting submitters and PCAs as adversaries rather than focusing on that, as we understand according to Raustiala, the objective of an Articles 14 & 15 review is to reduce the costs of obtaining information about the enforcement of environmental laws from residents in the NAFTA region.¹⁹ We believe that, in this limited regard, it is justified to assert that the North America would benefit from an immersion in the European experience.

In addition, the caseload numbers do seem to suggest that the complaint activity is much higher at the EU, so the societal costs—for complaint mechanisms are paid with taxes—of maintaining this complaint mechanism, seem to be better justified. While perhaps the age of this mechanism might in part explain some of the higher activity—the EU mechanism has been in place since 1982—it is clear that the EU has had better success in eliciting complaints even at an early stage. According to figures reported by Kramer, in one of its most active years, 1992, the European Union's governing body received five hundred and eighty-seven environmental complaints. In its least busy year, when the tool was young, the

EU Commission received eight environmental complaints. The table below reproduces our source. The reader must bear in mind that the complaint procedure at the EU does not segregate environmental cases from others, so the table reports two figures, showing the evolution of environmental complaints with respect to all complainants:¹²⁰

Evolution of EU Environmental Complaints			
Year	Complaints	Year	Complaints
1982	10 out of 352	1988	216 out of 1137
1983	8 out of 399	1989	465 out of 1195
1984	9 out of 476	1990	480 out of 1252
1985	37 out of 585	1991	353 out of 1052
1986	165 out of 791	1992	587 out of 1545
1987	50 out of 850	1993	383 out of 1340

Figure 6 The Evolution of EU Environmental Complaints with Regard to All EU Complaints

While the review tool of the EU is structurally different to that of NAFTA, and has a different status under international law, the CEC may wish to explore whether the design, promotion and management of the EU review tool account for the vast differences in the number of petitions filed under both procedures.

II. Processing Times

In May 2001, the Joint Public Advisory Committee published a report on the Articles 14 & 15 submissions process. Other authors have used this report as a framework for evaluation.¹²¹ For practical purposes, we take the time baseline set by the JPAC report as the basis for our evaluation on processing times.¹²² JPAC recommends the adoption of the following deadlines, which according to our stages, propose processing submissions as follows:

Stage at which cases are concluded	Maximum processing time from submissions to conclusion proposed by JPAC
Stage I	120 days
Stage 2	273 days (from date of submissions)
Stage 3	671 days (from date of submission)

Figure 7 JPAC Proposed Time Limits for the Processing of Articles 14 & 15 Complaints

Apparently, the Lessons Learned report set these baselines based on the treatment of the Cozumel submission. While the treatment of these submission was rapid as compared to others that came subsequently, these time limits could nonetheless be subject to further honing. As up to present, 74% of all 39 submissions, regardless of whether they are pending or closed, exceed the criteria set by JPAC.

Considering medians and means as an additional indicator, we found that from 1995, to June 2003, the submissions' median time to disposition was 230 days. This means that fifty

percent of the closed cases consumed longer than 230 days to be “fully” processed. Nevertheless, when we analyse pending cases, the median number of days to process all submissions rises to 782 days, at least 300% more time than the group of closed cases.

Therefore, to obtain a reliable indicator of how much time the CEC spends on the generality of the cases, we need to do the computations based on selections of cases. These selections must consider degrees of success in surviving the three analytical procedural hurdles (as per our review process section). For example, it is not the same for a case to be closed at an initial stage of the proceedings than it is for it to be closed at a near-end stage. And, unless we are cautious, it is not straightforward to compare processing times of pending and closed cases. Selecting cases according to their procedural success accounts for these variations. Obviously, having earlier broken down the processing of submissions in three stages facilitates classifying and selecting the cases (see the review process section above).

Our objective in this section is to obtain as precise as possible indicators values of processing times. In the future, when the yearly caseload is sufficiently large, it would be desirable to ponder performance in this regard based exclusively on closed cases on a yearly basis. For now, we have placed the cases all on the same bag. This is far from ideal. Given that institutions change over the years and usually implement ways to try to improve performance (and so has the CEC¹²³), our time results might thus be somewhat distorted.

In addition, we include pending cases in certain time computations and we specify when we

do so. We note however that to include pending cases would still underestimate real processing times, when our point is that is that processing times are quite lengthy. Having so qualified the following information, we first turn to a brief analysis of the closed cases.

The CEC spends considerably more time on cases when these go beyond Stage 1, and we would expected that this to be so. The problem is that, as we can appreciate below, a full process consumes almost four years. Below, we computed the median days spent for closed cases at each stage. This gives us a good indicator as to how much more time cases consumed as they moved into the higher stages of the process:

Median days to disposition per stage			
	Stage 1	Stage 2	Stage 3
Median days	124	664	1149

Figure 8: Median days to disposition per stage

We observe above that any cases that the CEC deems legitimate to process take *considerably* longer. That is, roughly, ten times more, or at least four years, than those that are dismissed at initial stages. For its part, fifty percent of the CEC's *pending* workload was nearly three years old and at a mid or near-end stage when we took our measure.

III. Distribution of Processing Times for Advantaged and Disadvantaged Submissions

As defined in our method section, we take a measure of submitter disadvantage based both on the national origin of submitters and the resource constraints that we see to be apparent in the documents submitted to the CEC.

Regarding our national origin category, we found that the CEC Secretariat, generally and consistently, has spent more time processing cases from Mexico than cases from US or Canada. Mexican submissions represent 43% of CEC caseload. The proportion of Mexican cases means that this kind of petitioners file a significant share of complaints but, nevertheless, they experience processing delays as a class. The table below show the mean and median¹⁴ days to make access decisions for Mexican submitters as compared to US and Canadian cases. Our computations include pending and closed cases.

Mean and Median Days for Mexican Submissions vis-à-vis Canadian and US						
	Stage One		Stage Two		Stage Three	
	Mexico	US/ CAN	Mexico	US/ CAN	Mexico	US/ CAN
Mean days	227	144	772	686	1436	1443
Median days	119	126	745	433	1149	1207

Figure 9: Mean and Median Days for Mexican Submissions vis-à-vis Canadian and US

We ask the reader to compare the above figures vertically (this would detect if the mean is skewed to the right due to exceptionally long cases by comparing it to the median as a measure of central tendency that is independent of the distribution shape) and horizontally

(to compare Mexican and US/Canadian processing times). To assist the reader in the interpretation of these results, let us take an example: The median is 126 days in Stage One above for US and Canadian submissions, but the mean is higher, 144 days. The reliable indicator is the median, which shows that fifty percent of US/Canadian cases take 126 days or less to go through this access phase and that the other fifty percent took more. Comparing all the medians, we believe that these differences may illustrate a consistent pattern of processing troubles, particularly at Stages Two.

Now, regarding our advantaged/disadvantaged category, we found a similar pattern. The table below shows the results of computations for “disadvantaged” submitters.

Mean and Median Days for Advantaged and Disadvantaged Submitters						
	Stage One		Stage Two		Stage Three	
	Disad	Adv	Disad	Adv	Disad	Adv
Mean days	251	146	791	702	2267	1348
Median days	96	129	1008	571	2267	1189

Figure 10: Mean and Median Days for Advantaged and Disadvantaged Cases

The data above reinforces the suspicion that processing times are unequally distributed. While the accuracy of these computations as indicators of trends may be questioned (because these include pending and closed cases) they nevertheless suggest that Mexican and marginalised cases take considerably longer to be processed.

In conclusion, this may indicate that the CEC is having consistently more problems with processing Mexican and disadvantaged petitioner's complaints. This may be due to the fact that these kind of submissions are not as well structured as those of their Canadian

and US counterparts. In this regard, alternative explanations to processing delays may wish to consider complexity of complaints. We believe that future research should focus on assessing the quality of Mexican and disadvantaged submissions and analysing the policy options that the CEC could implement to encounter any problems in this area.

For now, we have gathered limited amounts of data in this topic. This data seems to confirm that there are important variations in the quality of legal documents in the NAFTA region. This is consistent with research in the area of legal culture in Mexico, according to which Mexican lawyers have historically owed their professional success more to their personal networks than to their technical skills.¹³⁵ Specifically, Mexican submissions may be consistently less well structured than North American and Canadian submissions, and, while qualitative comparisons are needed, some relevant data in this regard is cited in Section IV of this chapter.

IV. Submitter Success

As we saw in the methodology section, there are two ways in which we measured. First, procedural success, focused on the progress of submissions through procedural hurdles. Second, based on policy impact, focused on the broader effects of submissions on enforcement policies. Our findings related to procedural success are that most submissions have had a low rate of success: Historically, few submissions have exhausted the process. Additionally, only two submissions have had high-impact.

Of the closed submissions analysed, 62% fell out at stage one, 23% fell out at Stage 2 and only 15% reached the final stage. Unfortunately, while by April 2003 the Secretariat had recommended factual record investigations on 13 occasions, Council had voted on 11 of these recommendations, and most of these factual records were in progress. When we finalized this section of our review, only 4 factual record investigations had been completed (June 2003).

Regarding impact success, we mentioned that we would follow Graubart's success perceptions. We recall that Graubart based his analysis on interviews to submitters and analysing formal documents, participants' written impressions, media coverage and interviews with both submitters and Secretariat staff. Graubart rates impact under four categories: high, medium, low and unclear.

Of the 39 submissions analysed, we find that 49% were either not catalogued by Graubart or Graubart could not tell what impact they had. Of the group of submissions that Graubart did evaluate, the distribution of impact was as follows: 55% had low impact, 35% had medium impact, and only 10% (two cases) had high impact.

This procedure has a very low impact as we just saw, in particular considering these figures in light that these percentages are based on only 39 submissions received throughout an nine year period since NAAEC entered in force. We now turn to propose a line of research as to why this mechanism in general has had such low impact. One of the reasons may be that this mechanism has become a hot topic politically. Two indicators on the behaviour

of the governing authorities of the CEC tend to indicate that they wish to curtail this review tool. Council members, who are also responsible for leading national governments strategies to effectively enforce environmental laws, may be attempting to minimize their bad image. We can mention an occasion where Council allowed five factual record recommendations to accrue to vote on them on the same day. On November 16, 2001, the CEC Council voted whether to adopt the CEC Secretariat's recommendation that factual records be prepared for the following submissions: Oldman River II, Aquanova, Migratory Birds, BC Mining, and BC Logging. The CEC Council approved the preparation of factual records for all of these citizen submissions. However, such approval was merely nominal in the case of the Oldman River II, Migratory Birds, BC Mining and BC Logging submissions. In each of these cases, submitters had argued persistent patterns of failures to enforce environmental laws. In each of these cases, the CEC Council used its voting authority to "approve" factual records that were far more limited than had been recommended by the Secretariat. Specifically, Council constrained the Secretariat to review only the components of the allegations that were supported with hard evidence, thereby declining the possibility that submitters make allegations based on reasonable inferences. Thus, Council effectively modified the evidentiary requirement set forth by the Secretariat for these type of allegations, and in fact denied the possibility that the factual record would examine the central assertion of these four submissions.¹²⁶

To finalize, we now turn to report other findings about success based on a computation of correlations prepared with our SPSS database. The data set and the computations are

attached as Appendixes V-I, and V-II. Based on these computations, we find that there is no significant correlation between what we classify as a disadvantaged submitter (based on precision, content of allegation, clarity etc, as set out in our method section) and our measures of impact. However, there is a significant correlation between being Mexican and the content of allegation.¹²⁷ That is, Mexicans seem to tend to complain about single incidents and fail to raise persistent pattern allegations.¹²⁸ As Section I of this document explains, persistent pattern allegations are deemed to have a high potential to advance treaty objectives. We believe that persistent patterns are a type of sophisticated allegation that requires a great degree of focus and preparation, and at the same time, one having a great potential for policy impact. Therefore, Canadian and US submitters seem to have a greater capacity to prepare high-impact complaints.

Along the same lines, another meaningful correlation is that the submitters classified as non-disadvantaged tend also to be more precise and have better media coverage for their complaints. This at least confirms that, after our qualitative analysis of each and everyone of the complaints, we classified submitters under advantaged and disadvantaged categories in a way that is consonant with Graubart's classification of precision and clarity.

Nevertheless, none of the categories that we defined as vulnerable groups (Mexicans or disadvantaged) is significantly correlated to any of the two measures of impact that we proposed. That is, there is no sufficient evidence indicating that procedural success is unevenly distributed, or that policy impact is unevenly distributed, among petitioners.

Finally, we report that there is a significant correlation between procedural success and policy impact success. This at least indicates that success is well conceptualised because we had mentioned that the more submissions progress through procedural hurdles, they have better chances of having some policy impact. Additionally, we also found out that there is a significant correlation between time and impact. The more submissions survive in time, the more impact they tend to have. This suggests that the worst that can happen to a submitter is to be dismissed at an initial stage.

Section V. Conclusions

This thesis examined the implementation of the mid-course objectives of the Articles 14 & 15 submissions process. In light of Galligan's due process theory of procedural purposes, and Raustiala's analytical metaphors of fire-alarms and police patrols, we selected, and organized a set of hypothesis that illuminate the degree of attainment of what we believe are the most important procedural purposes of the Articles 14 & 15 review tool. The first one, we designate "participatory" or "fire-alarm" purpose. The second, we designate "investigatory" or "recurrence prevention" purpose. We defined accessibility as a set of institutionally cultivated conditions that allow for the realization of these mid-course objectives, and this may require some more explaining.

First, the Articles 14 & 15 process attempts to capture environmental law enforcement information from the entire population residing in the NAFTA region. This geographical area contains immensely different populations, where the evolution and power of civil society varies from one frontier to another. Surely the most culturally distinct area in the NAFTA region, in terms of the degree of evolution of civil society and its capacity to articulate public interest demands, is Mexico.¹²⁹ For this reason, unless the Articles 14 & 15 review tool is structured to evenly capture the input of the diverse groups in the NAFTA region, it is unlikely that it will fulfil its mid-course objectives evenly and equally. No author in the field puts into question that the Articles 14& 15 process was created so that virtually

any person in the NAFTA region could monitor whether NAFTA members' abide by their commitment to effectively enforce their environmental laws. This monitoring device was innovative given that the discursive and argumentative tradition in international law was traditionally based on statehood,¹³⁰ leaving little if any room for private parties to exercise rights of action. However, no author in the field has considered the amount and types of resources that would be required to implement this innovation. This may require far more investment and cultural translations than what has been thus far applied.

Second, NAAEC negotiators were unwilling to commit to a public procedure that could result in trade sanctions or restrictions to their ability to exploit their natural resources¹³¹ and the articles 14 & 15 process was structured to avoid committing these zones. NAAEC's definition of environmental law excludes natural resources legislation, and its preamble reaffirms the sovereign rights of member states over their natural resources. Additionally, the procedure was designed to promote compliance based on an investigatory approach, with no sanctions attached. The Articles 14 & 15 submissions process should include no findings of law, thus allowing a PCA sufficient latitude to modify its enforcement record as it deems best. This does not exclude, however, a central purpose of the review: to strive for recurrence prevention within the limitations set out by the treaty.

In sum, the Articles 14 & 15 made two offers to the public: a possibility for involvement as informants, and the possibility of improvement of governmental enforcement records by generating better information. Our definition of accessibility includes both items, even

though the second purpose, recurrence prevention, is more connected to the results end of the review process.

We presented a set of four hypotheses on the Articles 14 & 15 submissions process. First, that the CEC receives few submissions; second, that the CEC Secretariat takes too long to process them; and that processing times are random. Third, we proposed that certain submissions originating in Mexico consistently take longer to be processed, and that this could indicate a deeper pattern of troubles in dealing with this type of submissions. Fourth, we hypothesized that few complaints succeed procedurally, and that the conditions under which success would occur could demonstrate that rich ENGOs have disproportionately better chances of procedural and impact success.

In the previous sections we have presented data, and methods to assess data, which ranged from the amount of submissions received by the CEC under Articles 14 & 15; to the time to disposition per processing stages, and for different types of complainants. We also presented information on the possibilities of success of different types of complainants.

Number of submissions. From what is possible to ascertain from the available data, the number of submissions appears to be low relative to the number it should receive for the mechanism as a whole to have a significant impact. The CEC has received 39 submissions throughout a 9 year period. Therefore, the flow of information about the enforcement of environmental laws seems to be insignificant. We did not explore, however, the extent to which this may be due to existing competing remedies, but if such remedies indeed account

for this result, it would seem that the Articles 14 & 15 review tool is redundant. In the case of Mexico, based on the background information we presented about law enforcement in this country, it is unlikely that such alternative explanation would hold. In this line of inquiry, future research should gather information about complaint activity on fire-alarm mechanisms in international law. While, as we indicated, certain obstacles stand for a comparison with the existing fire-alarm mechanisms, nevertheless it would be important to learn which mechanisms are located nearer to the extremes of the range of complaint activity. Future research should organize information more systematically about the organizations that administer fire-alarm complaint tools in international law, such as financial data, and data on the promotion strategies, and other tools to make complaint legal information available to complainants, or forms to assist complainants ensure that complaints include all relevant information. Based on our assessment, we concluded that the EU environmental complaint mechanism, which is receiving hundreds of complaints annually, is an interesting point of reference which the CEC should consider. In particular, we believe that it could be relevant that this mechanism seems to be more active and well-established even from its early years.

Processing Times. These are consistently longer than the timeline proposed by the JPAC Lessons Learned report. To this day, 75% of the submissions exceed the criteria set by JPAC. While varying depending on whether cases are pending or disposed, and the processing stages at which they fall out, the processing times are considerable. In particular, the cases that, according to the CEC merit treatment, take considerably longer to be

processed. Future research in this area should attempt to ponder median times to disposition for all stages based on cases closed on a yearly basis. Obviously, such assessment would only be meaningful when the caseload is more significant.

Distribution of Processing Times for Advantaged and Disadvantaged Submissions. The median processing times indicate that submissions from Mexico and disadvantaged submissions take longer to be processed than Canadian/US and advantaged complaints. This could indirectly indicate that the CEC has had consistently more troubles to process submissions from these groups. Obviously, our attempt in this regard is not to denounce some sort of active contempt on behalf of the CEC to certain types of submissions, but rather, to generate an easy-to-apply indicator on whether some submitters consistently experience more troubles. One of the explanations we propose is that disadvantaged and Mexican submitters have more troubles articulating their claims (that is, proposing their information about lax enforcement of environmental laws) in clear and succinct manners). It has been extensively documented that these groups encounter the least support to mitigate environmental risks. If it were the case that these submitters have more troubles, the CEC would possibly need to hone its strategies to obtain information about the enforcement of environmental laws in the case of Mexican and disadvantaged submitters. We did not include a comparative qualitative assessment to support this theory; however, Appendix IV contains an environmental citizen suit attached to a Mexican submission (Tarahumara) which is clearly a marginalised group in the NAFTA region. Based on information about indigenous groups in that country, we believe that document stands as a witness of

systematic problems that stand as obstacles to the empowerment of civil society in Mexico and its role in the enforcement of environmental laws. In addition, future research need not exclusively focus on verifying the problems of the most marginalised groups to articulate their complaints, but perhaps surprisingly, on verifying whether this issue, which has been well documented as one of the problems inherent to the legal profession in Mexico, is manifesting itself significantly in the quality of the Mexican submissions filed at the CEC.

Submitter Success. With respect to submitter success, this is a rare event for submitters. Our conclusion is based on two indicators: procedural progress and impact. The progress in procedural stages is scarce, most submissions being closed before they reach Stage 3. On the other hand, according to Graubart, few submissions have impact in the policy process concerning the effective enforcement of environmental laws. In passing, this fact may explain the low amount of submissions because success affects the decision to complain, and future research may concentrate in this area.¹³² Finally, with respect to the distribution of success amongst the advantaged and disadvantaged groups, our data already reports that success is limited across the entire group of petitioners. Therefore, there is no evidence thus far that could support a hypothesis that success was unevenly distributed among advantaged and disadvantaged submitters. Obviously, these conclusions are based on a fixed picture of the submissions process. As the mechanism evolves, each of these findings would need to be revisited to detect how the mechanism performs in terms of impact, and we hope that it will evolve in a way that it confirms the expectations of the public, academics and government officials who work in this area.

In addition to these two measures of success, we gathered data on the types of complaints submitted to the CEC. According to our presentation of the Articles 14 & 15 review tool, complainants have a choice as to whether they can bring a big or small case; that is, as to whether they can allege single-facility failures to enforce environmental laws, or persistent patterns of failures to enforce environmental laws, thereby challenging entire sectors of enforcement policy. A perhaps interesting finding in this regard, supported by the data, is that Mexicans tend to only complain, or only being able to complain, about single-facility violations. As we underscored, persistent pattern allegations, while requiring sophistication, have a high potential to advance the ultimate objectives of the Articles 14 & 15 review tool. The fact that Mexicans have failed to effectively present persistent pattern cases may be due more to a lack of technical capacity than to their view of the process. While we did not orient our discussion much into this area of inquiry, we are aware of only one Mexican case, Tarahumara, which attempted to raise systematic and recurring issues, albeit not couched in a language or structured in a way such that the CEC was able to notice that this was so.

Finally, one conclusion we can draw from our review of the literature on Articles 14 & 15 is that, while the most suggestive theoretical literature in the field realizes that the objective of this complaint mechanism is to reach a broad audience and to allow PCAs sufficient latitude to prevent recurrence, nevertheless, these realizations have not translated into an operational consensus about the implementation of this review tool. That is, the CEC has not structured the Articles 14 & 15 review process as according to its procedural objectives. Central questions, such as who should be the target population of the articles 14 & 15

submissions process, remain unresolved . Should these be rich ENGOs, ordinary persons, or should the CEC strive to effectively reach persons in marginalised areas? The extent to which current trends of implementation need to be adapted depends on the answers to this question. Otherwise, only randomly will the Articles 14 & 15 review tool obtain usable environmental law enforcement information, from the different participants.

To finalize, deciding what is a desirable amount of submissions; a desirable time to disposition or a what a routine case should look like may be more an art than a science. Establishing whether a complaint is “successful” is short from being a matter of opinion.¹³³ We have nevertheless decided to go ahead and ask uncomfortable questions about the Articles 14 & 15 submissions mechanism, and by doing so, we attempted to lay down the foundations of an institutional self-evaluation of the implementation of the mid-course objectives of the Articles 14 & 15 review tool. Perhaps our most important contribution is not in our findings but in having proposed a method, which may be improved, to evaluate a central aspect of the implementation of this review mechanism: effective access.

The attainment of the ultimate objectives of the NAAEC obligation to effectively enforce environmental laws strictly depends on the attainment of mid-course objectives. According to most authors in the field, the Articles 14 & 15 submissions process has the ‘potential’ to promote the scrutiny of the international community of national governmental environmental law enforcement performance. But potential is never enough. To be of any use, potential needs to be actualised and in order for the potential of this review tool to be actualised, the Articles 14 & 15 review tool must be adequately implemented. Effective

implementation may require any or all of the following: adequate structuring of a basic operational consensus between Council and Secretariat authorities; constant self evaluation and critique based on public input; adopting legitimate promotion strategies, inserting management tools that support a predictable use of time in the processing of submissions, and of course, adequate funds to do all these.

The history of the development of international law demonstrates that, from perhaps as early as the 1890s, members of civil society have contributed to shape the contents international legal standards. Probably recognizing this reality, international legal discourse, traditionally based on statehood, is slowly, but relentlessly, evolving into a discursive model less based on appearances, where states play a less central role, and individuals are no longer the passive recipients of the rational dictates of states. The evolution of this rhetoric, however, provides no guarantees about the effective and even involvement of members of civil society, as our review of the case of the NAAEC Articles 14 & 15 submissions process may have demonstrated.

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- Young, O. R. (1989). The Politics of International Regime Formation: Managing Natural Resources and the Environment. *International Organizations*, 43(349).
- Young, O. R. (1999). *The Effectiveness of International Environmental Regimes : Causal Connections and Behavioral Mechanisms*. Cambridge, Mass.: MIT Press.
- Zaelke, D., & al., e. (1993). *Trade and the Environment: Law, Economics, and Policy*.

¹ We borrow this illustrative metaphor from a work by Raustiala, who borrowed it from a work by McCubbins. See McCubbins, M., & Schwartz, T. (1984). Congressional Oversight Overlooked: Police Patrols versus Fire Alarms. *American Journal of Political Science*, 28(1), 165-179. Raustiala, K. (2002a). *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript, Princeton University & UCLA Law School. Raustiala, K. (2002b). Police Patrols, Fire Alarms and Treaty Design. In J. Knox & D. Markell (Eds.), *The American Commission for Environmental Cooperation: An Assessment*. Stanford University Press.

² NAAEC Article 1 contains a full listing of treaty objectives.

³ The Articles 14 & 15 mechanism has raised extensive debate. However, a work by Kibel summarises the critiques around these two issues. See Kibel, P. S. (2002). Awkward Evolution: Citizen Enforcement at the North American Environmental Commission. *Environmental Law Reporter*.

⁴ Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript, Raustiala. Police Patrols, Fire Alarms and Treaty Design. In.

⁵ Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript, Raustiala. Police Patrols, Fire Alarms and Treaty Design. In.

⁶ See NAAEC Article 14

⁷ Most works in the field include a section discussing the origins of the Articles 14 & 15 mechanism and its relation to trade and environment issues. Perhaps the most complete review is contained in a work by Dimento. See Dimento, J., & Doughman, P. (1998). Soft Teeth in the Back of the Mouth: the NAFTA Environmental Side-Agreement Implemented. *Georgetown International Environmental Law Review*, 10(651).

⁸ For further information on trade and environment issues, the reader may consult: Anderson, T. L. (1993). *NAFTA and the Environment*. San Francisco: Pacific Research Institute for Public Policy, Charnovitz, S. (1993). Environmentalism Confronts GATT Rules: Recent Developments and New Opportunities. *Journal of World Trade*, 37, Esty, D. C. (1994). *Greening the GATT: Trade, Environment, and the Future*. Washington, DC: Institute for International Economics, Fletcher, S. R., Tiemann, M. E., & Library of Congress. Congressional Research Service. (1994). *Trade and environment GATT and NAFTA*. [Washington, D.C.]: Congressional Research Service Library of Congress, Francioni, F. (2001). *Environment, Human Rights and International Trade*. Oxford: Hart, Hogenboom, B. (1998). *Mexico and*

the *NAFTA Environment Debate : the Transnational Politics of Economic Integration*. Utrecht, the Netherlands: International Books, Housman, R., & Zaelke, D. (1992). *The Collision of Environment and Trade: the GATT Tuna-Dolphin Decision*. Environmental Law Institution, Jackson, J. (1992). World Trade Rules and Environmental Policies: Congruence or Conflict? *Washington Law Review*, 49, 1227. Johnson, P.-M., & Beaulieu, A. (1996). *The Environment and NAFTA : Understanding and Implementing the New Continental Law*. Washington, D.C.: Island Press, Markell, D. L., & Knox, J. H. (2003). *Greening NAFTA : the North American Commission for Environmental Cooperation*. Stanford, Calif.: Stanford Law and Politics, Martin, L. (2000). World Trade Organization and Environmental Protection: Reconciling the Conflict. *International Trade Law Journal*, 9(69), Mercury, J., & Schwartz, B. (2001). Linking Labour, the Environment and Human Rights to the FTAA. *Asper Review of International Business and Trade Law*, 1(37), Mugwanya, G. (1999). Global Free Trade Vis-a-Vis Environmental Regulation and Sustainable Development: Reinvigorating Efforts Towards a More Integrated Approach. *University of Oregon Journal of Environmental Law and Litigation*, 14(401), Petersman, E.-U. (1993). International Trade Law and International Environmental Law: Prevention and Settlement of International Environmental Disputes in GATT. *Journal of World Trade*, 43, Rubin, S. J., & Alexander, D. C. (1996). *NAFTA and the Environment*. The Hague : Boston: Kluwer Law International, UNEP, & IISD. (2000). *Trade and Environment. A Handbook*. Winnipeg: IISD/UNEP, Yorty, K. (1998). Trade and Environment: The Free Trade Area of the Americas. *Colorado Journal of International Environmental Law and Policy*, 56, Zaelke, D., & al., e. (1993). *Trade and the Environment: Law, Economics, and Policy*.

⁹ Baer, M. D., & Weintraub, S. (1994). *The NAFTA debate : Grappling with Unconventional Trade Issues*. Boulder, Colo.: Lynne Rienner Publishers.

¹⁰ If in social sciences there are pieces of knowledge that can be subject to unequivocal demonstration, like theorems, then a central theorem exhaustively demonstrated by Scott is precisely that no social plan or idea can be fully put in practice; that is, that, inevitably, certain pieces, and sometimes fundamental pieces, of the plan are always sacrificed in their way towards implementation. See Scott, J. (1998). *Seeing Like a State. How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press.

¹¹ For a brief introduction to Ricardian and related theories, which are of far greater complexity than space would allow us to reflect here see the introductory section of Trebilcock, M., & Howse, R. (1999). *The Regulation of International Trade*. New York: Routledge.

¹² The NAAEC includes another tool to review the obligation to effectively enforce environmental laws: NAAEC Part V, a mechanism well identified by most authors, enabling NAAEC members to charge each

other with failures to effectively enforce their environmental laws. See Johnson, & Beaulieu. *The Environment and NAFTA : Understanding and Implementing the New Continental Law*. In addition, apart from Articles 14 & 15, the NAAEC contains another public complaint tool which no authors have discussed, and which has been thus far not implemented, through environmental subsidy issues, among other issues, could be discussed. NAAEC Article 10(6) directs Council to cooperate with the NAFTA Free Trade Commission to achieve the environmental goals and objectives of NAFTA by "acting as a point of inquiry and receipt for comments from non-governmental organizations and persons concerning those goals and objectives."

¹³ For a general analysis of the environmental commitments included in NAFTA, beyond the NAAEC, see Ibid, Mann, H. (2000). NAFTA and the Environment: Lessons for the Future. *Tulane Environmental Law Journal*, 13(387), Saunders, O. (1994). NAFTA and the North American Agreement on Environmental Cooperation: A New Model for International Collaboration on Trade and the Environment. *Colorado Journal of International Environmental Law and Policy*, 5(273), Scovazzi, T. (2001). *The Protection of the Environment in a Context of Regional Economic Integration: the Case of the European Community, the Mercosur and the Nafta*. Milano: Giuffrè.

¹⁴ NAAEC Article 45 definitions, define an NGO as a "scientific, professional, business, non-profit or public interest organization or association which is neither affiliated with nor under the direction of a government"

¹⁵ For a comprehensive discussion and review of NAAEC see generally Johnson, & Beaulieu. *The Environment and NAFTA : Understanding and Implementing the New Continental Law*, Mann. NAFTA and the Environment: Lessons for the Future, Saunders. NAFTA and the North American Agreement on Environmental Cooperation: A New Model for International Collaboration on Trade and the Environment, Scovazzi. *The Protection of the Environment in a Context of Regional Economic Integration: the Case of the European Community, the Mercosur and the Nafta*.

¹⁶ The extent and aspects in which this physical distribution, including the geographic location of the CEC, affect institutional coordination and effectiveness should be explored and we do not do this here. Neither do we explore the effects of segregation of functions between NAFTA institutions. For a comparative study of NAFTA and EU proposals, see, Gal-Or, N. (1998). Private Party Direct Access: A Comparison of the NAFTA and the EU Disciplines. *Boston College International and Comparative Law Review*, 11(21), Scovazzi. *The Protection of the Environment in a Context of Regional Economic Integration: the Case of the European Community, the Mercosur and the Nafta*.

¹⁷ On the last Council session in June 2002, Janine Ferretti, executive director at the CEC, was fired and the appointment of the new person was yet pending when we completed our review. Since then (almost a year) Mr. Victor Shantora from Canada has served as interim executive director.

¹⁸ See McRae and Slaughter legal opinions about implied powers and other issues concerning Secretariat functions in administering the submissions process. McRae, D. (2000). *Information Developed by Independent Experts and the Autonomy of the Secretariat of the Commission for Environmental Cooperation (CEC)*; CEC. Slaughter, A.-M. (2000). *The Scope of the Secretariat's Power Regarding the Submissions Procedure of the North American Agreement on Environmental Cooperation under General Principles of international Law*; CEC.

¹⁹ The Secretariat has prepared an excellent web-site resource for submissions, which contains a detailed processing history and explanations about the NAAEC Article 14 process, at <<http://www.cec.org/home/index.cfm?varlan=english>>.

²⁰ See NAAEC Article 45 definitions. The NAAEC's definition of environmental law attempts to limit the Secretariat's review power to environmental, as opposed to natural resources legislation.

²¹ See NAAEC Article 14(1) requirements, requiring complainants to make allegations that concern current government failures to effectively enforce environmental laws and to provide sufficient evidence for the CEC Secretariat to review the complaints.

²² On autonomy and independence of the Secretariat, see NAAEC Article 11(4), providing that: "In the performance of their duties, the Executive Director and the [CEC] staff shall not seek or receive instructions from any government or any other authority external to the Council. Each Party shall respect the international character of the responsibilities of the Executive Director and the staff and shall not seek to influence them in the discharge of their responsibilities." See also McRae, *Information Developed by Independent Experts and the Autonomy of the Secretariat of the Commission for Environmental Cooperation (CEC)*, Slaughter, *The Scope of the Secretariat's Power Regarding the Submissions Procedure of the North American Agreement on Environmental Cooperation under General Principles of international Law*.

²³ See NAAEC Article 9(1).

²⁴ The extent to which the fact that PCAs are Council members may risk the impartiality of the entire review process has not been sufficiently discussed. It is arguable that this could constitute a violation of due process, because the persons deciding a case should not bear a direct interest in the outcome. Clearly, Council

members bear a direct interest in the outcome of this process for they are ultimately responsible that the agencies they lead “effectively enforce” environmental legislation.

²⁵ JPAC’s only role in the normal operation of the Article 14 process is providing information for the factual record under parameters set out under NAAEC Article 16 (5), which reads: “The Joint Public Advisory Committee may provide relevant technical, scientific or other information to the Secretariat, including for purposes of developing a factual record under Article 15...”

²⁶ It is interesting to mention that until 2001, the advisory committee from Mexico included no representatives from indigenous, marginalized or rural populations, while industries had more representation. However, JPAC’s composition was altered and the newly appointed Mexican representatives appear to respond to this deficiency. The list of JPAC members is public at the CEC web-site below:

< http://www.cec.org/who_we_are/jpac/member_bio/index.cfm?varlan=english >

²⁷ See NAAEC Article 45 and treaty annexes.

²⁸ Nevertheless, the publicity created by the CEC might misrepresent this issue by treating the Articles 14 & 15 as the “citizen submissions” process, which might lead underaged, resident immigrants or temporary visitors residing in a NAFTA country, to believe that they are legally precluded from making a submission. They are not.

²⁹ In the due process literature, the typically studied dimensions of procedural equal treatment consider the needs of actual, as opposed to potential, parties to a legal procedure. See for example Galligan, D. J. (1996). *Due Process and Fair procedures : a Study of Administrative Procedures*. Oxford: Oxford University Press. Instead, this paper proposes that the needs of potential submitters need to be particularly borne in mind in the case of public complaint tools.

³⁰ See Council Resolution 01-06 committing the CEC to make faster Article 14 & 15 decisions. This resolution creates a principle binding to the CEC Council and the Secretariat that submissions under Article 14 and 15 “should be processed in a timely and efficient manner in order to meet the public expectations regarding the process.” http://www.cec.org/files/PDF/COUNCIL/Res-06r4_EN.pdf. The creation of this principle evidences, as we shall further confirm below, that an Articles 13 & 15 review can be quite lengthy.

³¹ The Secretariat has strived to keep evidentiary burdens low, even though in fact the costs of evidence, and evidentiary burdens can be higher than desired, as our subsequent discussion will illustrate.

³² The Secretariat has never enforced this 30-day time limit and has waited, on occasions several years, to receive a full PCA response before submitting a factual record recommendation. The procedural history of

the Rio Magdalena submission (Mexico) is a case in point. In addition, the chart attached as Appendix II, based on a chart made public at the 2001 Council Session, illustrates the waiting periods for PCA responses (among others). Most of these periods exceed the 30-day term.

³³ Legal decisions under the Articles 14 & 15 review process have special names. Decisions by the Secretariat are called "Determinations." There are various types of determinations depending on the issue discussed: The Secretariat emits "determinations" under NAAEC Articles 14(1), 14(2), 14(3) and 15(1). Factual record "recommendations" are issued under Article 15(1). The decisions by the Council in the submissions process are expressed through two-third majority votes and registered in documents called "Resolutions." These categories have not been made explicit anywhere but they are observable in the practice of the CEC.

³⁴ NAAEC Article 15(4), provides that "In preparing a factual record, the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested non-governmental organizations or persons; (c) submitted by the Joint Public Advisory Committee; or (d) developed by the Secretariat or by independent experts."

³⁵ See for example Bugeđa, B. (1999). Is NAFTA up to its Green Expectations? Effective Law Enforcement under the North American Agreement on Environmental Cooperation. *University of Richmond Law Review*, 32(1591). Dimento, & Doughman. Soft Teeth in the Back of the Mouth: the NAFTA Environmental Side-Agreement Implemented. However, our position in this regard is defined by our methodological approach, not by a metaphorical categorisation. That is, we do not see a problem in that the end result of the procedure is a factual record if, from the implementation information available, we can conclude that the process serves the purposes of recurrence prevention. Our method section explains in full detail our position in this regard under the discussion about procedural purposes.

³⁶ See the opinion of a former director of the CEC SEM Unit staff Markell, D. (2000). The Commission For Environmental Cooperation's Citizen Submission Process. *Georgetown International Environmental Law Review*, 12(545).

³⁷ This conclusion can be directly extracted from the text of Article 14(1). The text of Article 14 reads: "The Secretariat may consider a submission asserting that a Party is failing to effectively enforce its environmental law, if it finds that the submission... provides sufficient information to allow the Secretariat to review the submission."

³⁸ All the official determinations we reviewed are consistent with this principle. See Appendix III listing all these documents.

³⁹ See the 11 May 2001 Recommendation to Council on SEM98-004 (BC Mining), signed by G. Garver (original English). In addition, one of the most detailed discussions on this point is contained in the 15 December 2000 Recommendation to Council on SEM99-002 (Migratory Birds), signed by D. Markell (original English) at page 9, stating that "Given the Submitters' broad focus on an asserted nationwide failure to effectively enforce, the Secretariat now considers whether the citizen submission process is intended for assertions of this sort. One possible view is that the citizen submission process is reserved for assertions of particularized failures to effectively enforce. Under this view a factual record would be warranted, only when a submitter asserts that a Party is failing to effectively enforce with respect to one or more particular facilities or projects. This view of the Article 14 process, in short, reads the opening sentence of Article 14(1) to confine the citizen submission process to asserted failures to effectively enforce with respect to particular facilities or projects. Under this view, assertions of a wide-ranging failure to effectively enforce that do not focus on individual facilities or projects would not be subject to review under the citizen submission process... The text of Article 14 does not appear to support limiting the scope of the citizen submission process in this way... Assertions that there is a failure to enforce with respect to a single incident or project may raise matters whose further study would advance these goals. Indeed, the Secretariat has concluded that such assertions merit developing a factual record in several instances and the Council has concurred. But also, assertions that the failure to enforce extends beyond a single facility or project portend, at least potentially, a more extensive or broad-based issue concerning the effectiveness of a Party's efforts to enforce its environmental laws and regulations."

⁴⁰ Stout, W., Marden, J., & Travers, K. (2000). *Statistics: Making Sense of Data* (Third ed.). Rantoul: Möbius.

⁴¹ The Migratory Birds submission alleges that "the United States Government is [systematically] failing to effectively enforce Section 703 of the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§703-712, which prohibits the killing of migratory birds without a permit." See submission summary at <www.ccc.org>

⁴² The BC Logging submission argues that the Fisheries Act is "routinely and systematically violated by logging activities undertaken by British Columbia. The submitters claim that the Government of Canada has the responsibility to protect fish and fish habitat under the Canadian Constitution Act of 1867. They allege that "[t]he federal government is failing to enforce the Fisheries Act against logging on private land in British Columbia, even though private lands are not subject to any effective provincial logging regulation." In addition, the Submitters claim that "[they] have been denied the right to bring private prosecutions against

violators of the Fisheries Act, even though the Fisheries Act encourages citizen enforcement" See submission summary at <<http://www.cec.org>>.

⁴³ The [BCMining] Submission identifies the systemic failure of the Government of Canada to enforce section 36(3) of the Fisheries Act to protect fish and fish habitat from the destructive environmental impacts of the mining industry in British Columbia. Sections 36(3) and 40(2) of the Fisheries Act make it an offence to deposit a toxic substance in water that is frequented by fish." [...] "Although this Submission will focus on the Tulsequah Chief, Mount Washington and Britannia mines, there are at least twenty other acid-generating mines in B.C. where violations of s. 36(3) of the Fisheries Act either may have occurred or may be occurring without any enforcement action being taken." See submission summary at <<http://www.cec.org>>.

⁴⁴ The Ontario Logging submission asserts that "Canada is failing to effectively enforce section 6(a) of the Migratory Bird Regulations (MBR) adopted under the Migratory Birds Convention Act, 1994 (MBCA) against the logging industry in Ontario. Section 6(a) of the MBR makes it an offence to disturb, destroy or take a nest or egg of a migratory bird without a permit. The Submitters claim that their research, based on statistical data, estimates that in the year 2001 clear-cutting activity destroyed over 85,000 migratory bird nests in areas of Central and Northern Ontario. They allege that Environment Canada, through its Canadian Wildlife Service, is primarily responsible for enforcing the MBCA and that virtually no action has been taken to enforce section 6(a) of the MBR against logging companies, logging contractors and independent contractors." See submission summary at <<http://www.cec.org>>.

⁴⁵ Recommendation to Council on SEM99-002 (Migratory Birds), signed by D. Markell (original English).

⁴⁶ Our conclusion is based on the review of all official CEC documents listed in Appendix III.

⁴⁷ See Section IV in our findings chapter.

⁴⁸ These stages generally coincide with the procedural "hurdles" identified by Graubart. See Graubart, J. (2001). Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement. *UCLA Journal of International Law and Foreign Affairs*, 6(425). For a reliable and full review of all the steps involved in the processing of submissions see Markell. The Commission For Environmental Cooperation's Citizen Submission Process.

⁴⁹ In fact, the Secretariat has tacitly invited submitters to resubmit. See the Molymex I and the Cytrar I decisions terminating the process. These submitters decided to re-submit, creating the Molymex II and Cytrar II submissions. See also the Lake Chapala 15(1) determination terminating the process. However, it is interesting to observe that while these submitters had a very strong case, they chose not to resubmit.

⁵⁰ Galligan. *Due Process and Fair procedures : a Study of Administrative Procedures*.

⁵¹ Ibid.

⁵² Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript.
Raustiala. Police Patrols, Fire Alarms and Treaty Design. In.

⁵³ Koskenniemi, M. (1989). *From Apology to Utopia: The Structure of International Legal Argument*.
Helsinki: Lakimiesliiton Kustannus.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript.
Raustiala. Police Patrols, Fire Alarms and Treaty Design. In.

⁵⁷ Graubart. Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement.

⁵⁸ Szekely, A. (1999). Democracy, Judicial Reform, the Rule of Law and Environmental Justice in Mexico.
Houston Journal of International Law, 21(3).

⁵⁹ Ibid.

⁶⁰ Markell. The Commission For Environmental Cooperation's Citizen Submission Process.

⁶¹ We use the classification of processes developed by Galligan, according to which processes are: "processes based on voting procedures; processes based on managerial fiat; processes based on pure procedures with emphasis on participation; processes based on applying standards and exercising discretion, and processes based on investigation and inquiry." On the lattermost, Galligan asserts that "The true realization of public good consists in fulfilling the objects of an investigation or inquiry while at the same time treating fairly those subject to it." See Galligan. *Due Process and Fair procedures : a Study of Administrative Procedures*.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Popper, K. R. (1966). *The Open Society and its Enemies* (5th ed.). London.: Routledge & K. Paul.

⁶⁵ We classify the following authors under this category Baron, D. (1995). NAFTA and the Environment: Making the Side Agreement Work. *Arizona Journal of International and Comparative Law*, 12(603), Block,

G. (1997). Proceedings of the Canada-United States Law Institute Conference: NAFTA revisited: NAFTA's environmental provisions: Are they working as intended? Are they adequate?—A view from Canada. *Canada-United States Law Journal*, 23(409). De Mestral, A. (1998). The Significance of the NAFTA Side Agreements on Environmental and Labour Cooperation. *Arizona Journal of International and Comparative Law*, 15(169). Dove, C. (2002). Can Voluntary Compliance Protect the Environment?: the North American Agreement on Environmental Cooperation. *Kansas Law Review*, 50(867). Gal-Or. Private Party Direct Access: A Comparison of the NAFTA and the EU Disciplines, Kelly, M. (1996). Bringing a Complaint Under the NAFTA Environmental Side Accord: Difficult Steps Under a Procedural Paper Tiger, but Movement in the Right Direction. *Pepperdine University Law Review*, 24(71). Kibel, P. S. (2001). The Paper Tiger Awakens: North American Environmental Law After the Cozumel Reef Case. *Columbia Journal of Transnational Law*, 39(395). Kim, J., & Cargas, J. (1993). *The Environmental Side Agreement to the North American Free Trade Agreement: Background and Analysis* (No. 23): Environmental Law Institution, Knox, J. (2001). A New Approach to Compliance with International Environmental Law: the Submissions Procedure of the NAFTA Environmental Commission. *Ecology Law Quarterly*, 28(1). Lord, J. (1997). Article 14(2) of the North American Agreement on Environmental Cooperation: How High is the Hurdle? *Great Plains Natural Resources Journal*, 2(43). Markell. The Commission For Environmental Cooperation's Citizen Submission Process, Markell, D. (2001). NAFTA's Citizen Spotlight Process. *The Environmental Forum*, 18. Organ, L. (1994). NAFTA and the Environment: the Greening of Mexico. *Duke Environmental Law and Policy Forum*, 4(62). Raustiala, K. (1996). International "Enforcement of Enforcement" under the North American Agreement on Environmental Cooperation. *Virginia Journal of International Law*, 36(721).

⁶⁶ Knox. A New Approach to Compliance with International Environmental Law: the Submissions Procedure of the NAFTA Environmental Commission.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ For example, Ibid.

⁷¹ For example, Seligman. (2001). The Treaty Itself Undermines Environmental Protection. *The Environmental Forum*, 18.

⁷² Markell. The Commission For Environmental Cooperation's Citizen Submission Process.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Bugeda. Is NAFTA up to its Green Expectations? Effective Law Enforcement under the North American Agreement on Environmental Cooperation, Coatney, J. (1996-1997). The Council on Environmental Cooperation: Redaction of "Effective Enforcement" within the North American Agreement on Environmental Cooperation. *Tulsa Law Journal*, 32(823), Graubart. Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement.

⁷⁶ Graubart. Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ We shall discuss these issues in full in the fourth part of our findings section.

⁸¹ See for example the Neste, Methanex, and Dermet submissions.

⁸² Bugeda. Is NAFTA up to its Green Expectations? Effective Law Enforcement under the North American Agreement on Environmental Cooperation, Kibel. The Paper Tiger Awakens: North American Environmental Law After the Cozumel Reef Case.

⁸³ Bugeda. Is NAFTA up to its Green Expectations? Effective Law Enforcement under the North American Agreement on Environmental Cooperation.

⁸⁴ Coatney. The Council on Environmental Cooperation: Redaction of "Effective Enforcement" within the North American Agreement on Environmental Cooperation.

⁸⁵ Scott. *Seeing Like a State. How Certain Schemes to Improve the Human Condition Have Failed*. According to Scott, the law, like other social plans, can be interpreted as creating a perceptual field to interpret human actions. Inspired by Scott's wide ranging work, we propose that legal propositions that define the boundaries of a reviewing power, like the one the CEC has under Article 14 with respect to the "effectively enforce" commitment, are designed (we hope) to achieve legibility of, or focus on, a portion of a complex phenomenon. These matrices are the perceptual fields of reviewing institutions. In a sense, this

perceptual sensibility is achieved by creating a device allowing for "tunnel vision," permitting the beholder—in this case, the CEC—to exclude from focus any ancillary objects so as to concentrate its attention on the phenomena of interest. The CEC, for example, is not to see all aspects of environmental law enforcement in general, but only those relevant to learn whether enforcement of such laws is effective. In short, institutional perception is enhanced through a simplification of reality. However, a perceptual tool is adequate to the extent that it does not bracket from vision objects that are not ancillary, but central to understand the phenomena of interest. To the extent that a perceptual tool impedes seeing such objects, or directly affects the reality under observation, it trivializes, rather than simplify, the reality it wishes to render observable. The more specific or sophisticated the phenomena of interest, the more sophisticated and inherently complex the perceptual tool that will be required to observe it. The enforcement of any laws, but particularly of environmental laws, places complex demands on the capacities of monitoring institutions. Therefore, evaluating and fully verbalizing the dimensions of effectiveness of enforcement is, by reflection, also an inherently complex task, one that only highly trained professionals can undertake. Thus, in complaining, private parties should not be required to do anything other than to propose broad and tentative definitions of a problem so that they are allowed to concentrate on ringing the fire alarm. This suggests that the articles 14 & 15 complaint process would need to reduce procedural complexity to a minimum, and this is what we suggest should be measured. For these reasons, we proposed at the outset that the technological costs of operating with this type of complexity should be borne by legal technicians, not by ordinary persons. If we want to ensure that we have an institution well specialized on understanding whether PCA enforcement is effective, the access matrix to only begin to consider the complaints that arrive (alarms) should not be too complex. Otherwise we may never be able to arrive to the stage where we generate information indicating whether enforcement is effective. Such would be an undesired result caused by an overtly complex, in design or implementation, perceptual tool. Thus, this type of evaluation would hunt for an overtly complex access framework, one that would be doing more than just creating necessary institutional focus.

⁸⁷ We draw this observation from a report by an NGO named Rural Justice Center. The objective of this report is identifying desirable case disposition times, and devising the methods rural courts in the United States can use to establish and achieve these times. The report constantly highlights the importance of setting time baselines based on routine cases Fahnestock, K., & Geiger, M. (1990). *Time to Justice: Caseflow in Rural General Jurisdiction Courts*. Vermont: Rural Justice Center.

⁸⁸ Raustiala, K. (1997). The "Participatory Revolution" in International Environmental Law. *Harvard Environmental Law Review*, 21(537). Raustiala, K. (2000). Compliance & Effectiveness in International

Regulatory Cooperation. *Case Western Reserve Journal of International Law*, 32(387), Raustiala. Police Patrols, Fire Alarms and Treaty Design. In.

⁸⁹ Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript, Raustiala. Police Patrols, Fire Alarms and Treaty Design. In.

⁹⁰ Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript, Raustiala. Police Patrols, Fire Alarms and Treaty Design. In.

⁹¹ McCubbins, & Schwartz. Congressional Oversight Overlooked: Police Patrols versus Fire Alarms.

⁹² Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript.

⁹³ Ibid.

⁹⁴ The most insightful analysis of submitter incentives thus far, with the qualifications already made on certain questions of method, is the work prepared by Graubart . See Graubart. Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement.

⁹⁵ Galligan. *Due Process and Fair procedures : a Study of Administrative Procedures*.

⁹⁶ Scott. *Seeing Like a State. How Certain Schemes to Improve the Human Condition Have Failed*.

⁹⁷ Graubart. Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement.

⁹⁸ See table attached as Appendix III for an exact listing.

⁹⁹ Graubart. Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement.

¹⁰⁰ A suggestive work by Worrall , which retains its pertinence in this context, explains that a low amount of complaints may indicate that a complaint mechanism is not sufficiently known or that it is hostile, or more costly, to certain complainants. Worrall, J. (2002). If You Build It, They Will Come: Consequences of Improved Citizen Complaint Review Procedures. *Crime and Delinquency*, 48(3), 355-379.

¹⁰¹ Galanter, M. (1995). Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change. In R. Abel (Ed.), *The Law & Society Reader*. New York: NYU Press.

¹⁰² Because disadvantaged persons are the least likely to complain for environmental harm, it is clearly necessary and pertinent to study the access possibilities of these persons. These submitters are important

because enforcement is likely to be more lax, and thus, requiring more scrutiny, in marginalized areas. In addition, the literature on environmental racism supports this point. See for example: Bullard, R. D. (1993). *Confronting environmental racism : voices from the grassroots* (1st ed.). Boston, Mass.: South End Press, Nordquist, J. (1995). *Environmental Racism and the Environmental Justice Movement : a Bibliography*. Santa Cruz, CA: Reference and Research Services, Westra, L., & Lawson, B. E. (2001). *Faces of Environmental Racism : Confronting Issues of Global Justice* (2nd ed.). Lanham, Md.: Rowman & Littlefield Publishers. See also Appendix IV containing a sample of a portion of a Mexican complaint submitted to the CEC (Tarahumara), which was submitted to the CEC on behalf of indigenous groups in Chihuahua. While we shall not discuss this issue in detail, the complaint might alone effectively illustrate that some potential submitters in Mexico face important resource and cultural constraints to effectively complain against lax enforcement of environmental laws at the local level. In Mexico, the discussion as to how respond to the demands of indigenous groups has been a matter of discussion for nearly as long as the country has existed. See Beaucage, P. (1997). *Dinámica de los movimientos indígenas en México, Estados Unidos y Canadá*. Unpublished manuscript, Montreal. Bonfil Batalla, G. (1991). Las culturas indias como proyecto civilizatorio. In A. Warman (Ed.). *Nuevos enfoques para el estudio de las etnias indígenas en México* (pp. 142). Mexico: Miguel Angel Porrúa, Cobo, M. (1987). *Informe sobre la situación de las poblaciones indígenas en América*. Ginebra: OIT, Colin MacLachlan, J. R. O. (1980). *The forging of the cosmic race: a reinterpretation of Colonial Mexico* (Expanded edition ed.). Berkeley: University of California Press, Escalante, Y. y. G. S., Sandra. (1994). *Etnografías Jurídicas de Rarámuris y Tepehuanos del Sur* (Vol. 9). México: INI, Knight, A. (1988). Racism, Revolution and Indigenismo: Mexico, 1910-1940. In R. Graham (Ed.), *The idea of Race in Latin America*, Norget, K. (2000). *The Quest for Indigenous Rights and Human Rights in Southern Mexico*. Unpublished manuscript, Montreal, Pimentel, F. (1864). *Memoria sobre las causas que han originado la situación actual de la raza indígena en México y de los modos de remediarla*. Mexico: Andrade y Escalante, Riding, A. (1984). *Distant Neighbors. A portrait of the Mexicans*. New York: Vintage Books, Rouland, N., Pierré-Caps, S., & Poumarède, J. (1999). *Derecho de minorías y de pueblos autóctonos*, Valdivia Dounce, T. (Ed.). (1994). *Usos y costumbres de la población indígena de México. Fuentes para el estudio de la normatividad (Antología)*. Mexico: Instituto Nacional Indigenista, Warman, N., Valencia, Bonfil, Olivera. (1970). *De eso que llaman antropología mexicana*: Comité de publicaciones de los alumnos de la E.N.A.H.

¹⁰³ See <www.ccc.org>

¹³⁴ See Graubart's Table 2 titled "Results of Submissions" Graubart. Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Graubart. Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement.

¹³⁸ Ibid.

¹³⁹ Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript.

¹⁴⁰ Ibid.

¹⁴¹ A work by Noemi Gal-Or, which develops a comparison of the EU and NAFTA regimes with respect to private party's direct access to complaint mechanisms, would seem to support this point. Gal-Or. Private Party Direct Access: A Comparison of the NAFTA and the EU Disciplines.

¹⁴² Kramer, L. (1995). Rights of Complaint and Access to Information at the Commission of the EC. In S. Deimann & B. Dyssli (Eds.), *Environmental Rights : Law, Litigation and Access to Justice* (pp. 343). London: Cameron May.

¹⁴³ Ibid. In.

¹⁴⁴ Ibid. In.

¹⁴⁵ Ibid. In.

¹⁴⁶ Ibid. In.

¹⁴⁷ Ibid. In.

¹⁴⁸ In fact, we suggest that many of the successful submissions at the CEC seem to be based on research of such depth as required by doctoral dissertations in geography. See for example the BC Hydro, BC Logging, BC Mining, Ontario Logging and Oldman River II submissions and supporting information.

¹⁴⁹ Raustiala. *Police Patrols, Fire Alarms & the Review of Treaty Commitments*. Unpublished manuscript, Raustiala. Police Patrols, Fire Alarms and Treaty Design. In.

¹⁵⁰ Kramer. Rights of Complaint and Access to Information at the Commission of the EC. In.

¹²¹ Kibel. *Awkward Evolution: Citizen Enforcement at the North American Environmental Commission*.

¹²² JPAC. (2001). *Lessons Learned*. Montreal: Commission for Environmental Cooperation.

¹²³ The CEC created a SEM Unit to become specialised in dealing with Articles 14 & 15 submissions on July 2000. The effects of the creation of this office have not been the matter of scholarly work.

¹²⁴ For information on how to interpret means, medians and other statistical data, see generally: Stout, Marden, & Travers. *Statistics: Making Sense of Data*.

¹²⁵ Adler, L. (2002). Cultural Elements of the Practice of Law in Mexico. In B. G. Garth & Y. Dezalay (Eds.), *Global Prescriptions : the Production, Exportation, and Importation of a New Legal Orthodoxy*. Ann Harbor: University of Michigan Press.

¹²⁶ See our Background section above, specifically the Complaints Big or Small portion. For a summary of these cases, and further information on the impact of this decisions see Garver, G., SEM Unit Director. (2002). Memorandum to JPAC. In J. P. A. Committee (Ed.). Montreal: CEC, Kibel. *Awkward Evolution: Citizen Enforcement at the North American Environmental Commission*.

¹²⁷ All correlations reported are significant at the .05 level.

¹²⁸ We are aware of one Mexican submitter who, through the Tarahumara submission, attempted to raise a persistent pattern allegation, but apparently the CEC Secretariat was not satisfied that this was the core allegation of the submission.

¹²⁹ Szekely. *Democracy, Judicial Reform, the Rule of Law and Environmental Justice in Mexico*.

¹³⁰ Koskenniemi. *From Apology to Utopia: The Structure of International Legal Argument*.

¹³¹ Johnson, & Beaulieu. *The Environment and NAFTA : Understanding and Implementing the New Continental Law*.

¹³² Worrall. *If You Build It, They Will Come: Consequences of Improved Citizen Complaint Review Procedures*.

¹³³ See for example Kibel's paper on the Cozumel submission. Kibel interviewed two of the litigants from CEMDA that authored the Cozumel submission, after the case was over. According to Kibel, while Alanis argued that the complaint was successful, Uribe maintained that the CEC was "just another bureaucracy with no power." Kibel. *The Paper Tiger Awakens: North American Environmental Law After the Cozumel Reef Case*.

Appendix I

Rule Based Analyses of the Articles 14 & 15 review process

Author: Kim, John; Cargas, James

Year: 1993

Title: The Environmental Side Agreement to the North American Free Trade Agreement: Background and Analysis

Abstract: This paper analyses the history of the submissions process and analyses its rules.

Author: Organ, Lawrence

Year: 1994

Title: NAFTA and the Environment: the Greening of Mexico

Abstract: A portion of this Article evaluates the NAAEC treaty. The paper concludes that "economic stimulation under NAFTA, coupled with the environmental safeguards in the side-agreement, will improve the environment of Mexico and the border region." However, the author offers no empirical basis for this conclusion.

Author: Baron, David

Year: 1995

Title: NAFTA and the Environment: Making the Side Agreement Work

Abstract: "Given its strong environmental protection goals, the Side Agreement should be construed in a manner designed to achieve those goals. This article explores key issues of interpretation under the Agreement that can and should be resolved in favour of NAAEC's pro-environment purposes"

Author: Kelly, Michael

Year: 1996

Title: Bringing a Complaint Under the NAFTA Environmental Side Accord: Difficult Steps Under a Procedural Paper Tiger, but Movement in the Right Direction

Abstract: A portion of this review contains a critique of the procedural complexity of the submissions process, but much of this critique goes wrong in certain aspects because the author did not have a look, and possibly could not have had one, at how the CEC Secretariat has actually administered the submissions process. For example, the author critiques a number of discretionary powers that the Secretariat has in dealing with submissions, as follows: "Note the extensive discretionary authority given the Secretariat. First, the Secretariat has the option simply to not consider a submission without even justifying its decision. n55 Second, if the Secretariat does decide to consider a submission, it may do so only if the submission successfully jumps the hurdles laid out in subsections (a) through (f) of Article 14. n56 Third, the procedural hurdles are riddled with discretionary findings such as the "clearness" of the submitter's identification, the "sufficiency" of the information, the "appearance" of harassment, and the "indicativeness" of communication to the relevant Party. n57." Based on this review, the author concludes that a valid substantive submission could easily fail on any of these procedural grounds.

Nevertheless, only two of these discretionary factors, sufficiency and "indicativeness," have in one case resulted in a submission (Oldman River I) being dismissed. Usually, the Secretariat uses its discretion in favour of considering cases on the merits. However, other aspects of Kelly's critique, for example, the great number of procedural hurdles that submissions must overcome, are right on point. However it does not appear to justify the main claim contained in its title, that is, that procedural complexity is the right way to go.

Author: Raustiala, Kal

Year: 1996

Title: International "Enforcement of Enforcement" under the North American Agreement on Environmental Cooperation

Abstract: "This Article focuses on the two dismissed submissions, both of which involve legislative action by

the U.S. Congress, promulgated through "riders" to appropriations bills that ultimately restricted the enforcement of particular environmental statutes. The NGO submissions had initially asserted that such riders do not constitute new law but rather failures to enforce existing law, a position strongly rebuffed by the Secretariat on the grounds that the Agreement allows for the modification of environmental law. Essentially, this Article focuses on two key issues arising from the CEC consideration of the recent submissions. First, what constitutes "enforcement" as opposed to "modification" within the meaning of the Agreement? Second, can Congress, given the political restraints imposed by the U.S. Constitution, enforce domestic law as required by the NAAEC? The analysis herein supports the Secretariat's responses, arguing that the decisions are sound, both under the terms of the Agreement and under the separation of powers doctrine of the United States. Moreover, as this Article argues, the decisions handed down by the Secretariat are politically [*723] astute; the long-term viability of the CEC depends on its avoidance of questionable and politically volatile disputes."

Author: Block, Greg

Year: 1997

Title: Proceedings of the Canada-United States Law Institute Conference: NAFTA revisited: NAFTA's environmental provisions: Are they working as intended? Are they adequate?- A view from Canada

Abstract: An extremely brief and very outdated review of the CEC, which contains the views of one of the directors of this institution, and includes a short account of submissions under Articles 14 & 15, recognizing the need for future evaluations.

Author: Lord, James

Year: 1997

Title: Article 14(2) of the North American Agreement on Environmental Cooperation: How High is the Hurdle?

Abstract: This paper is narrowly focused on NAAEC Article 14(2), which contains a set of guides for the Secretariat to decide, once it has determined that a submission is admissible under Article 14(1), whether it should request a response from the PCA. However, from our review of the process based on 62 official documents (determinations) issued up to October 2002, we verified that no submissions have ever been dismissed under Article 14(2) grounds. That is, once the Secretariat finds that a submission meets the Article 14(1) criteria, it has always requested a response—only by mistake did the Secretariat on an occasion cite Article 14(2) when it in fact intended to cite Article 14(1) as basis for a dismissal. From this we conclude that the Article 14(2) hurdle is not high, and is probably an unnecessary component of the review. Perhaps this component will be useful when the Secretariat requires to structure its priorities in light of a greatly increased caseload.

Author: De Mestral, Armand

Year: 1998

Title: The Significance of the NAFTA Side Agreements on Environmental and Labour Cooperation

Abstract: This is a very short piece that deals summarily with both side-agreements created under NAFTA. The NAAEC section contains a review of treaty rules and a brief report on certain submissions.

Author: Gal-Or, Noemi

Year: 1998

Title: Private Party Direct Access: A Comparison of the NAFTA and the EU Disciplines

Abstract: This suggestive article studies the topic of legal standing of non-state actors within the dispute resolution regimes established by the EU and NAFTA. It describes NAFTA as "regional integration without institutions." Its section on NAAEC, which for our purposes is the most relevant one, assumes that the Articles 14 & 15 is a form of ADR, and concludes that the Articles 14 & 15 submissions procedure: "must be ranked at the lowest end of the ADR scale for two reasons. First, it results in a report on environmental law violations, which may be made public at the discretion of the NAAEC Council. Second, this report has, at best, the power of sensitizing public opinion and embarrassing the Party violator. While generally presented as part of NAFTA, these agreements are true "side-agreements," marginal both in

importance and impact in comparison to the main trade agreement." However, while these specific conclusions of the paper may be quite suggestive lines of empirical research, these are based on comparisons of rules, and not on observations about the actual implementation of the NAAEC.

Reference Type: Journal Article

Record Number: 147

Author: Markell, David

Year: 2000

Title: The Commission For Environmental Cooperation's Citizen Submission Process

Abstract: The author offers a detailed review of rules and rulings covering all the procedural hurdles of the Articles 14 & 15 process. The paper includes a simple statistical review of actions taken by the CEC Secretariat at each stage. From this review, Markell concludes: "The one point that jumps out from the superficial rendering of numbers, however, is that the Secretariat is clearly not rubber-stamping submissions on their way through the process towards development of a factual record. To paraphrase the Secretariat's relatively early determination in Animal Alliance, the record appears to reflect that [*567] the Secretariat is taking seriously its obligation to require more than a "bare assertion" of a failure to effectively enforce in order to continue the processing of a submission."

To conclude his paper, Markell proposes ten lines of research. His first proposal, based on analysing the "purposes" of the Articles 14 & 15 would appear to coincide, but does not at all coincide with our review based on "procedural purposes." To draw a line between each, we note that our proposed line of research focuses on the implementation of instrumental objectives (fire-alarm, recurrence prevention), while Markell proposes research to focus on the end objectives (e.g. better enforcement policies). However, none of Markell's proposed lines of research quite include evaluating accessibility to the Articles 14 & 15 submissions process, such as its cultural viability in light of the diverse population of complainants that it targets. Finally, Markell's fifth proposed line of research seems to not be coherent with the author's intent, in that it appears to discourage theoretical research: "A fifth issue that relates to the essential character of the citizen submission process has already received considerable attention in the literature. It is clear what the citizen submission process is and what it is not." In our view, however, several issues about the Articles 14 & 15 submissions process, which are crucial for effective implementation, continue to require clarification and we detail these issues in our synthesis and recommendations section.

Author: Kibel, Paul Stanton

Year: 2001

Title: The Paper Tiger Awakens: North American Environmental Law After the Cozumel Reef Case

Abstract: This Article contains a detailed history of environmental law and diplomacy in the hundred years prior to the adoption of NAAEC, from which it concludes that the pre-1993 period of North American environmental law was limited primarily to environmental and natural resource issues that were physically transnational; and that after 1993, it now attempts to deal with issues that are economically and politically transnational. From the historical review, the paper also concludes that the involvement of NGO in the US and Canada has shaped international environmental law in North America from as early as the 1890s. The second part of the paper proceeds to analyse the environmental provisions of NAAEC and the citizen submissions that had been filed since NAAEC went into effect. Then it undertakes an in-depth review of the Cozumel submission (a quite successful, and sophisticated submission, so in all respects, not a routine case). Finally, it compares the enforcement record of NAFTA with that of NAAEC, arguing that the enforcement of North American environmental law needs to be strengthened.

Author: Dove, Chris

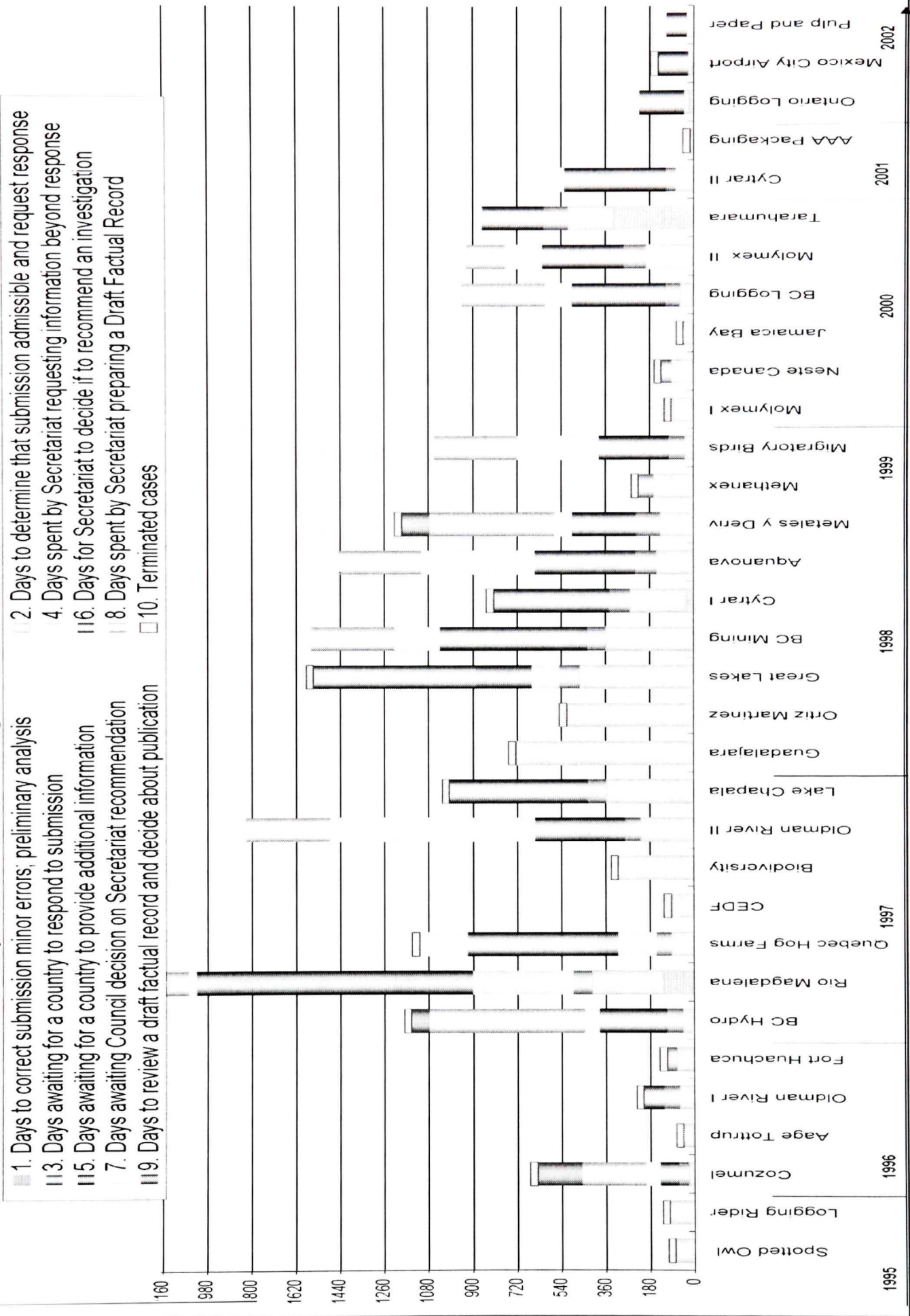
Year: 2002

Title: Can Voluntary Compliance Protect the Environment?: the North American Agreement on Environmental Cooperation

Abstract: This paper wishes to argue that the NAAEC is a potentially valuable treaty to help safeguard the North American environment-despite the treaty's reliance on voluntary compliance. However, it is unclear that its author detects well enough the limitations of the submission's process in order to be able to conduct

Appendix II

Breakdown of Days Invested in the Processing of all the Article 14 Submissions Received up to August 10, 2002



Appendix III

DOC #	DATE ddmmaa	ALTERNATIVE DOC #	Stage	DOC TYPE	SEM #	COMMON NAME	SIGNED BY	LANG
1	19/07/1995	A14/SEM/95-001/03/14(1)	1	Determination	SEM-95-001	Spotted Owl	G. Block	English
2	21/09/1995	A14/SEM/95-001/04/14(2)	1	Determination	SEM 95-001	Spotted Owl	V. Lichtinger	English
3	11/12/1995	A14/SEM/95-001/06/14(2)	1	Determination	SEM 95-001	Spotted Owl	V. Lichtinger	English
4	08/12/1995	A14/SEM/95-002/03/14(1)	1	Determination	SEM 95-002	Logging Rider	V. Lichtinger	English
5	06/02/1996	A14/SEM/96-001/03/14(1)	1	Determinación	SEM 96-001	Cozumel	G. Block	Spanish
6	08/02/1996	A14/SEM/96-001/04/14(2)	1	Determinación	1996-001	Cozumel	G. Block	Spanish
7	07/06/1996	A14/SEM/96-001/07/ADV	2	Notification	1996-001	Cozumel	V. Lichtinger	Spanish
8	17/04/1997	A14/SEM/96-002/03/14(1)	1	Determination	1996-002	Aage Tottrup	G. Block	English
9	28/05/1996	A14/SEM/96-002/04/14(2)	1	Determination	1996-002	Aage Tottrup	V. Lichtinger	English
10	01/10/1996	A14/SEM/96-003/03/14(1)	1	Determination	1996-003	Oldman River	V. Lichtinger	English
11	18/10/1996	A14/SEM/96-003/06/14(1)	1	Determination	1996-003	Oldman River I	G. Block	English
12	08/11/1996	A14/SEM/96-003/08/14(2)	1	Determination	1996-003	Oldman River I	V. Lichtinger	English
13	02/04/1997	A14/SEM/96-003/12/15(1)	2	Determination	1996-003	Oldman River I	V. Lichtinger	English
14	16/12/1996	A14/SEM/96-004/03/14(1)	1	Determination	1996-004	Fort Huachuc a	G. Block	English
15	22/01/1997	A14/SEM/96-004/04/14(2)	1	Determination	1996-004	Fort Huachuc a	V. Lichtinger	English
16	01/05/1997	A14/SEM/97-001/03/14(1)	1	Determination	1997-001	BC Hydro	G. Block	English
17	15/05/1997	A14/SEM/97-001/04/14(2)	1	Determination	1997-001	BC Hydro	V. Lichtinger	English
18	27/04/1998	A14/SEM/97-001/07/ADV	2	Notification	1997-001	BC Hydro	J. Ferretti	English
19	06/10/1997	A14/SEM/97-002/10/14(1)	1	Determination	1997-002	Rio Magdalena	G. Block	Spanish
20	08/05/1998	A14/SEM/97-002/11/14(2)	1	Determination	1997-002	Rio Magdalena	J. Ferretti	Spanish
21	08/05/1997	A14/SEM/97-002/02/14(1)	1	Determination	1997-003	Quebec Hog	G. Block	French only

DOC #	DATE ddmmaa	ALTERNATIVE DOC#	Stage	DOC TYPE	SEM#	COMMON NAME	SIGNED BY	LANG
						Farms		
22	09/07/1997	A14/SEM/97-003/04/14(2)	1	Determination	1997-003	Quebec Hog Farms	G. Block	French only
23	29/10/1999	A14/SEM/97-003/15/ADV	2	Notification	1997-003	Quebec Hog Farms	J. Ferretti	French
24	25/08/1997	A14/SEM/97-004/03/14(1)	1	Determination	1997-004	CEDF	V. Lichtinger	English only
25	26/05/1998	A14/SEM/97-005/09/14(1)	1	Determination	1997-005	Biodiversity	J. Ferretti	Spanish
26	23/01/1998	A14/SEM/97-006/03/14(1)	1	Determination	1997-006	Oldman River II	G. Block	English only
27	08/05/1998	A14/SEM/97-006/04/14(2)	1	Determination	1997-006	Oldman River II	G. Block	English only
28	19/07/1999	A14/SEM/97-006/15/ADV	2	Notification	1997-006	Oldman River II	J. Ferretti	French
29	02/10/1998	A14/SEM/97-007/03/14(1)&(2)	1	Determination	1997-007	Lake Chapala	J. Ferretti	Spanish only
30	14/07/2000	A14/SEM/97-007/12/15(1)	2	Determination	1997-007	Lake Chapala	J. Ferretti	Spanish only
31	13/09/1999	A14/SEM/98-001/03/14(1)	1	Determination	1998-001	Guadalajara	D. Markell	Spanish
32	11/01/2000	A14/SEM/98-001/06/14(1)	1	Determination	1998-001	Guadalajara	D. Markell	Spanish
33	23/06/1998	A14/SEM/98-002/07/14(1)	1	Determination	1998-002	Ortiz Martinez	J. Ferretti	Spanish
34	18/03/1999	A14/SEM/98-002/09/14(1)	1	Determination	1998-002	Ortiz Martinez	D. Markell	Spanish
35	14/12/1998	A14/SEM/98-003/03/14(1)	1	Determination	1998-003	Great Lakes	J. Ferretti	Spanish
36	08/09/1999	A14/SEM/98-003/07/14(1)(2)	1	Determination	1998-003	Great Lakes	J. Ferretti	English
37	05/10/2001	A14/SEM/98-003/24/15(1)	2	Determination	1998-003	Great Lakes	G. Garver	English
38	30/11/1998	A14/SEM/98-004/03/14(1)	1	Determination	1998-004	BC Mining	J. Ferretti	English only
39	25/06/1999	A14/SEM/98-004/04/14(2)	1	Determination	1998-004	BC Mining	J. Ferretti	English
40	11/05/2001	A14/SEM/98-004/10/ADV	2	Notification	1998-004	BC Mining	G. Garver	English
41	09/04/1999	A14/SEM/98-005/07/14(2)	1	Determination	1998-005	Cytrar I	D. Markell	Spanish only
42	26/10/2000	A14/SEM/98-005/27/15(1)	2	Determination	1998-005	Cytrar I	J. Ferretti	Spanish only
43	17/03/1999	A14/SEM/98-006/03/14(1)&(2)	1	Determination	1998-006	Aquanov a	D. Markell	Spanish only
44	04/08/2000	A14/SEM/98-	2	Recomme	1998-006	Aquanov	J. Ferretti	English

DOC #	DATE ddmmaa	ALTERNATIVE DOC#	Stage	DOC TYPE	SEM#	COMMON NAME	SIGNED BY	LANG
		006/07/ADV		ndation		a		
45	05/03/1999	A14/SEM/98-007/03/14(2)	1	Determina tion	1998-007	Metales y Derivado s	D. Markell	Spanish only
46	06/03/2000	A14/SEM/98-007/15/ADV	2	Notificatio n	1998-007	Metales y Derivado s	J. Ferretti	French
47	30/03/2000	A14/SEM/99-001/03/14(1)(2)	1	Determina tion	1999-001	Methane x	D. Markell	English
48	30/06/2000	A14/SEM/99-001/06/14(3)	2	Determina tion	1999-001	Methane x	D. Markell	English
49	23/12/1999	A14/SEM/99-002/03/14(2)	2	Determina tion	1999-002	Migrator y Birds	D. Markell	English only
50	15/12/2000	A14/SEM/99-002/11/ADV	2	Recomme ndation	1999-002	Migrator y Birds	D. Markell	English only
51	25/04/2000	A14/SEM/00-001/03/14(1)	1	Determina tion	2000-001	Molymex I	D. Markell	Spanish only
52	17/04/2000	A14/SEM/00-002/03/14(1)	1	Determina tion	2000-002	Neste	D. Markell	English
53	12/04/2000	A14/SEM/00-003/03/14(1)	1	Determina tion	2000-003	Jamaica Bay	D. Markell	English only
54	08/05/2000	A14/SEM/00-004/04/14(2)	1	Determina tion	2000-004	BC Logging	D. Markell	English only
55	27/07/2001	A14/SEM/00-004/14/ADV	2	Determina tion	2000-004	BC Logging	J. Ferretti	English only
56	13/07/2000	A14/SEM/00-005/03/14(1)	1	Determina ción	2000-005	Molymex II	C. Sbert	Spanish only
57	19/10/2000	A14/SEM/00-005/06/14(1)(2)	1	Determina ción	2000-005	Molymex II	C. Sbert	Spanish only
58	06/11/2001	A14/SEM/00-006/09/14(1)(2)	1	Determina ción	2000-006	Tarahum ara	C. Sbert	Spanish only
59	24/04/2001	A14/SEM/01-001/07/14(1)(2)	1	Determina tion	2001-001	Cytrar II	C. Sbert	Spanish
60	13/06/2001	A14/SEM/01-001/13/14(3)	2	Determina tion	2001-001	Cytrar II	C. Sbert	Spanish
61	24/04/2001	A14/SEM/01-002/07/14(1)	1	Determina tion	2001-002	AAA Packagin g	G. Garver	English
62	19/09/2001	A14/SEM/01-003/05/14(1)	1	Determina tion	2001-003	Dermet	J. Ferretti	Spanish

Appendix IV

A14/SEM-001-006/01/ASUB-25
DISTRIBUCION: General
ORIGINAL: Español

22 de junio del 1999 Anexo 15

nos reunimos

este HoFisio ha decidido delectamente ACOSEAD
QUESON JOSELUIZ MONTE ZAMARRON

Antonio SAGADO ESTRADA MARIA de LA LUZ

QUEGADA DOMINGUEZ

MAIA TERESA GUERRERO OLIVAS

Primera Quehoda los saludamos dcsion de

que se encuentren bien Rosamos la siguiente

le damos A saver que Aqui en mulache

que sigue la misma marca de

madera estan Agendo como un engaño

disiendo de que 7 le vian que dado un

poco de madera de tanto pasado

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de nuevo y les damos A saver A quen

con Responde y Firmamos que nos Apellen

los Autoridades que lo paren que no sigan

marcando mas Madera que lo paren

esta que no se Arregle sin mas Firmos

Andres laera Gonzalez

Agustin laera Gonzalez

Rocendo torres laera

Virgilio torres laera

Emilio Ayala laera

Jose cristino Ayala laera

Rito torres Ayala

Atentamente el comisario de proteccion Pedro

y el preseton de la comunidad Manuel torres Ayala



Appendix V-I

NAME	ID#	YEAR	STAGE	CLOSED	DISADVANT	PERSIST	PRECISION	PROMOTION	DATEFILE
Lake Chapala II	2003-003	2003	1	0	0	0	#iNULO!	#iNULO!	23-May-2003
Ontario Power Generatio	2003-001	2003	1	0	0	1	#iNULO!	#iNULO!	01-May-2003
Ontario Logging	2002-001	2002	2	0	0	1	2	#iNULO!	06-Feb-2002
Pulp and Paper	2002-003	2002	2	0	0	1	2	#iNULO!	08-May-2002
Aquanova	1998-006	1998	3	0	0	0	1	1	20-Oct-1998
Molymex II	2000-005	2000	3	0	0	0	1	1	06-Apr-2000
Oldman River II	1997-006	1997	3	0	0	1	2	2	04-Oct-1997
BC Mining	1998-004	1998	3	0	0	1	2	2	29-Jun-1998
BC Logging	2000-004	2000	3	0	0	1	2	2	15-Mar-2000
Home Port Xcaret	2003-002	2003	1	0	1	0	#iNULO!	#iNULO!	14-May-2003
Tarahumara	2000-006	2000	2	0	1	#iNULO!	0	#iNULO!	09-Jun-2000
El Boludo	2002-004	2002	2	0	1	0	#iNULO!	#iNULO!	23-Aug-2002
Rio Magdalena	1997-002	1997	3	0	1	0	0	0	15-Mar-1997
AAA Packaging	2001-002	2001	1	1	#iNULO!	0	#iNULO!	#iNULO!	12-Apr-2001
Dermet	2001-003	2001	1	1	0	0	#iNULO!	#iNULO!	14-Jun-2001
Spotted Owl	1995-001	1995	1	1	0	#iNULO!	#iNULO!	#iNULO!	05-Jul-1995
Logging Rider	1995-002	1995	1	1	0	#iNULO!	#iNULO!	#iNULO!	30-Aug-1995
Fort Huachuca	1996-004	1996	1	1	0	0	#iNULO!	#iNULO!	14-Nov-1996
CEDF	1997-004	1997	1	1	0	#iNULO!	#iNULO!	#iNULO!	26-May-1997
Biodiversity	1997-005	1997	1	1	0	#iNULO!	#iNULO!	#iNULO!	21-Jul-1997
Methanex	1999-001	1999	1	1	0	0	2	#iNULO!	18-Oct-1999
Neste Canada	2000-002	2000	1	1	0	#iNULO!	2	#iNULO!	21-Jan-2000
Jamaica Bay	2000-003	2000	1	1	0	0	#iNULO!	#iNULO!	03-Mar-2000
Cytrar I	1998-005	1998	2	1	0	0	#iNULO!	#iNULO!	23-Jul-1998
Cytrar II	2001-001	2001	2	1	0	0	#iNULO!	#iNULO!	14-Feb-2001
Oldman River I	1996-003	1996	2	1	0	1	#iNULO!	#iNULO!	09-Sep-1996
Quebec Hog Farms	1997-003	1997	2	1	0	1	2	#iNULO!	09-Apr-1997
Great Lakes	1998-003	1998	2	1	0	#iNULO!	2	#iNULO!	28-May-1998
Cozumel	1996-001	1996	3	1	0	0	2	2	18-Jan-1996
BC Hydro	1997-001	1997	3	1	0	1	2	2	02-Apr-1997
Metales y Derivados	1998-007	1998	3	1	0	0	2	2	23-Oct-1998
Migratory Birds	1999-002	1999	3	1	0	1	2	2	19-Nov-1999
Guadalajara	1998-001	1998	1	1	1	0	#iNULO!	#iNULO!	09-Jan-1998
Ortiz Martinez	1998-002	1998	1	1	1	0	#iNULO!	#iNULO!	14-Oct-1997
Molymex I	2000-001	2000	1	1	1	0	#iNULO!	#iNULO!	27-Jan-2000
Mexico City Airport	2002-002	2002	1	1	1	0	#iNULO!	#iNULO!	07-Feb-2002
Alca-Iztapalapa	2002-005	2002	1	1	1	0	#iNULO!	#iNULO!	25-Nov-2002
Aage Tottrup	1996-002	1996	1	1	1	#iNULO!	#iNULO!	#iNULO!	20-Mar-1996
Lake Chapala I	1997-007	1997	2	1	1	0	0	#iNULO!	10-Oct-1997

DATE2	IMPACT	DAYS	MEX	JPAC	FILTER	\$
30-May-2003	#iNULO!	7	1	1		0
30-May-2003	#iNULO!	29	0	1		0
30-May-2003	#iNULO!	478	0	0		0
30-May-2003	#iNULO!	387	0	0		0
30-May-2003	#iNULO!	1683	1	0		0
30-May-2003	#iNULO!	1149	1	0		0
30-May-2003	#iNULO!	2064	0	0		0
30-May-2003	1	1796	0	0		0
30-May-2003	#iNULO!	1171	0	0		0
30-May-2003	#iNULO!	16	1	1		0
30-May-2003	#iNULO!	1085	1	0		0
30-May-2003	#iNULO!	280	1	0		0
30-May-2003	1	2267	1	0		0
24-May-2001	0	42	0	1		1
19-Oct-2001	#iNULO!	127	1	0		1
11-Dec-1995	0	159	0	0		1
07-Jan-1996	0	130	0	0		1
06-Jun-1997	1	204	0	0		1
24-Sep-1997	0	121	0	0		1
25-Jun-1998	0	339	0	0		1
30-Jun-2000	0	256	0	0		1
30-Jun-2000	#iNULO!	161	0	0		1
12-May-2000	0	70	0	1		1
26-Oct-2000	#iNULO!	826	1	0		1
10-Dec-2002	#iNULO!	664	1	0		1
02-Apr-1997	1	205	0	1		1
16-May-2000	#iNULO!	1133	0	0		1
05-Oct-2001	1	1226	0	0		1
24-Oct-1997	2	645	1	1		1
11-Jun-2000	2	1166	0	0		1
11-Feb-2002	1	1207	0	0		1
24-Apr-2003	1	1252	0	0		1
11-Jan-2000	0	732	1	0		1
18-Mar-1999	0	520	1	0		1
25-May-2000	0	119	1	1		1
25-Sep-2002	#iNULO!	230	1	0		1
31-Jan-2003	#iNULO!	67	1	1		1
01-Jun-1996	0	73	0	1		1
14-Jul-2000	#iNULO!	1008	1	0		1

Appendix V-1

6/16/03 12:29

Correlations

		stage reached	closed 1, pending 0	disadvantaged 1 yes 0 no	persistent pattern 1 single 0	Precision of submission	promotion by ONG or person	Impact	Processing times	Mexican cases	jpac compliance
stage reached	Pearson Correlation	1.000	-.393(*)	-.257	.401(*)	-.047	.(a)	.855(* *)	.846(**)	-.005	-.332(*)
	Sig. (2-tailed)		.013	.119	.026	.852		.000	.000	.977	.039
	N	39	39	38	31	18	10	20	39	39	39
closed 1, pending 0	Pearson Correlation	-.393(*)	1.000	-.029	-.302	.292	.492	-.224	-.360(*)	-.146	.042
	Sig. (2-tailed)	.013		.863	.099	.240	.148	.342	.025	.374	.802
	N	39	39	38	31	18	10	20	39	39	39
disadvantaged 1 yes 0 no	Pearson Correlation	-.257	-.029	1.000	-.463(**)	-.913(**)	-.804(**)	-.336	-.081	.593(**)	.190
	Sig. (2-tailed)	.119	.863		.010	.000	.005	.160	.629	.000	.252
	N	38	38	38	30	18	10	19	38	38	38
persistent pattern 1 single 0	Pearson Correlation	.401(*)	-.302	-.463(**)	1.000	.601(*)	.603	.484	.287	-.713(* *)	-.137
	Sig. (2-tailed)	.026	.099	.010		.018	.065	.079	.117	.000	.461
	N	31	31	30	31	15	10	14	31	31	31
Precision of submission	Pearson Correlation	-.047	.292	-.913(**)	.601(*)	1.000	1.000(**)	.079	-.332	-.825(* *)	.142
	Sig. (2-tailed)	.852	.240	.000	.018		.000	.853	.178	.000	.575
	N	18	18	18	15	18	10	8	18	18	18
promotion by ONG or person	Pearson Correlation	.(a)	.492	-.804(**)	.603	1.000(**)	1.000	.316	-.515	-.739(*)	.201
	Sig. (2-tailed)		.148	.005	.065	.000		.541	.128	.015	.578
	N	10	10	10	10	10	10	6	10	10	10
Impact	Pearson Correlation	.855(**)	-.224	-.336	.484	.079	.316	1.000	.579(**)	.043	-.049
	Sig. (2-tailed)	.000	.342	.160	.079	.853	.541		.008	.857	.838
	N	20	20	19	14	8	6	20	20	20	20
Processing times	Pearson Correlation	.846(**)	-.360(*)	-.081	.287	-.332	-.515	.579(* *)	1.000	.041	-.495(**)
	Sig. (2-tailed)	.000	.025	.629	.117	.178	.128	.008		.804	.001
	N	39	39	38	31	18	10	20	39	39	39
Mexican cases	Pearson Correlation	-.005	-.146	.593(**)	-.713(**)	-.825(**)	-.739(*)	.043	.041	1.000	.076
	Sig. (2-tailed)	.977	.374	.000	.000	.000	.015	.857	.804		.646
	N	39	39	38	31	18	10	20	39	39	39
jpac		Pearson Correlation	-.332(*)	.042	.190	-.137	.142	.201	-.049	-.495(**)	.076
											1.000

compliance	Sig. (2-tailed)	.039	.802	.252	.461	.575	.578	.838	.001	.646	.
	N	39	39	38	31	18	10	20	39	39	39
* Correlation is significant at the 0.05 level (2-tailed).											
** Correlation is significant at the 0.01 level (2-tailed).											
a Cannot be computed because at least one of the variables is constant.											