# Introduction

## *NAFTA and Sustainable Development*

*L. Kinvin Wroth and Hoi L. Kong*

Our numbers-obsessed culture reckons progress by the passage of the decades. In January 2014, we recognized the twentieth anniversary of the North American Free Trade Agreement (NAFTA), which took effect on January 1, 1994, after ratification by the United States.[1] Accordingly, this is an appropriate time for decennial stocktaking.

The impact of NAFTA on the environment became a critical issue when it was proposed for ratification in the United States. Fears were expressed that NAFTA would lead the participating governments to weaken environmental policy and regulation in order to encourage trade, in effect engaging in a "race to the bottom" that would result in significant environmental degradation in North America. NAFTA was ratified by the United States only after adoption and acceptance of a side agreement, the North American Agreement on Environmental Cooperation (NAAEC), by NAFTA's other Parties, Canada and Mexico.[2] NAAEC established the North American Commission for Environmental Cooperation (CEC), providing for environmental cooperation and protection in the implementation of NAFTA.

NAFTA and NAAEC were adopted at a time when the principle of sustainability – that development to meet the needs of the present should not compromise the environmental quality necessary to enable future generations to meet their needs – had attained international acceptance and was reflected in recent legislation of the United States and other developed countries designed to regulate development and growth to protect the natural environment.[3] NAFTA and NAAEC reflect the

[1] North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993), 32 I.L.M. 605 (1993) (NAFTA).

[2] North American Agreement on Environmental Cooperation, U.S.-Can.-Mex., Sept. 14, 1993, 32 I.L.M. 1480 (1993) (NAAEC). For the political background, see Geoffrey Garver, "Forgotten Promises: The Neglected Environmental Provisions of the NAFTA and the North American Agreement on Environmental Cooperation," Chapter 1 of this volume, at notes 1–3; Katia Opalka, "Sustainable Development, NAFTA, and Water," Chapter 9 of this volume, at notes 3–4.

[3] See World Commission on Environment and Development, Report: Our Common Future, ch. 2, "Toward Sustainable Development," [June 1987], UN Doc. A/42/427 (August 4, 1987), in *UN*

continuing tension between that evolving régime of sustainability and the purpose of free trade to encourage economic development on a global basis.

## 1. NAFTA AND NAAEC IN A NUTSHELL

The basic structure and provisions of NAFTA and NAAEC form the essential context of the chapters in this volume.

### 1.1. *NAFTA*

The Preamble to NAFTA, having set forth ten primarily trade-oriented goals, concludes with additional goals to undertake those purposes "in a manner consistent with environmental protection and conservation; . . . [to] promote sustainable development; [and to] strengthen the development and enforcement of environmental laws and regulations."[4] The objectives of NAFTA, set forth in Article 102, are entirely trade-related, however, and the basic provisions of the Agreement regulate trade in goods, services, cross-border investment, and intellectual property and provide elaborate dispute resolution processes. No single chapter of NAFTA is comprehensively devoted to the environment. Article 104 and Annex 104.1, however, provide that five existing international environmental agreements prevail over NAFTA in the event of inconsistency. Article 2101 provides that environmental and conservation measures of the Party states that are nondiscriminatory and otherwise not inconsistent with NAFTA are not barred by the basic trade provisions of the Agreement. As noted in section 2.1, Chapter 11, concerning cross-border investment, provides some recognition of states' environmental protection interests. NAFTA is overseen by the Free Trade Commission, established by Article 2001, which is composed of cabinet-level representatives of the Parties and is responsible for resolution of disputes about interpretation or application of the agreement as well as for general administration, which it exercises through its Secretariat established by Article 2002.

### 1.2. *NAAEC*

The preamble of NAAEC recognizes the importance of cooperative environmental protection in "achieving sustainable development for the well-being of present and future generations."[5] The objectives, set forth in Part One, Article 1, elaborate on

*Documents: Gathering a Body of Global Agreements*, http://www.un-documents.net/ocf-02.htm; Bryan Norton, *Sustainability: A Philosophy of Adaptive Ecosystem Management* (University of Chicago Press, 2005) (examining the theory of sustainability); C.S. Hollings, "Theories for Sustainable Futures," 4(2) *Conservation Ecology* 7 (2000) (examining different perspectives on sustainability); Sustainable Fisheries Act, Pub.L. 104–297, 110 Stat. 3565 (1996), amending 16 U.S.C. §§ 1851–1861.

4 NAFTA, Preamble.

5 NAAEC, Preamble.

that point and emphasize cooperation and transparency in serving NAFTA's environmental goals and securing compliance with and enforcement of environmental laws and regulations. In Part Two, the Parties undertake significant commitments to reporting, providing high levels of environmental protection, and establishing effective public and private remedies for violation of environmental laws and regulations. Part Three establishes and describes the functions of the CEC, a tripartite structure consisting of the Council, composed of cabinet-level representatives of the Parties; the Secretariat, consisting of an executive director and staff; and the Joint Public Advisory Committee. Other sections provide for dispute resolution procedures, information sharing, and administration.[6]

## 2. DISPUTE RESOLUTION PROVISIONS OF NAFTA AND NAAEC

The dispute resolution mechanisms of NAFTA and NAAEC provide the framework in which the provisions of the two agreements are applied in particular circumstances.

### 2.1. *NAFTA: Chapters 11, 19, and 20*

NAFTA provides three principal dispute resolution mechanisms.[7] The most basic is the intergovernmental dispute resolution process established in Chapter 20, which applies to all disputes between the Parties concerning interpretation or application of the Agreement or Party actions inconsistent with or nullifying it for which the Agreement does not make other specific provision (Article 2004). Article 2005 provides that the responding Party in an environmental dispute that could be resolved under either World Trade Organization (WTO) or NAFTA procedures may require the dispute to be brought in a NAFTA forum. The Chapter 20 process consists of successive steps from consultation between the Parties through conciliation or mediation by the Free Trade Commission to proceedings before an arbitral panel. The Parties to an arbitration are expected to conform to the recommendations provided in the final report of the panel.[8] If a Party fails to comply, the other Party may suspend certain benefits to the noncompliant party through a procedure provided in Article 2019. Very few Chapter 20 proceedings have been completed since 1995.[9]

[6] NAAEC, Part Four (Cooperation and Provision of Information), Part Five (Consultation and Resolution of Disputes), Part Six (General Provisions), Part Seven (Final Provisions).

[7] See, generally, David A. Gantz, *Regional Trade Agreements: Law, Policy, and Practice*, pp. 121–27, 133–144 (Durham, N.C.: Carolina Academic Press, 2008); Donald McRae and John Siwiec, "NAFTA Dispute Settlement Process: Success or Failure?," *Biblioteca Virtual del Instituto de Investigaciones Juridicas de la UNAM* (Mexico City, UNAM, 2010), pp. 363–87.

[8] NAFTA, Arts. 2006 (consultation), 2007 (good offices, conciliation, mediation), 2008–2018 (arbitration).

[9] Gantz, *Regional Trade Agreement*, pp. 142–143 (three proceedings between 1995 and 1998 in which panels were assembled; at least ten consultations).

Chapter 19 provides a separate procedure for disputes concerning the antidumping or countervailing duty laws of a Party.[10] Under Article 1904, the parties agree to forego judicial review of final antidumping or countervailing duty determinations in favor of review of such determinations by bi-national panels established by the Parties from NAFTA rosters and subject to review by Extraordinary Challenge Committees similarly established under Annex 1904.13 by the Parties. Chapter 19 proceedings have seen significantly greater use; as of 2010, 137 proceedings had been filed – 97 against the United States, 22 against Canada, and 18 against Mexico.[11]

Chapter 19 and 20 proceedings are between the Parties, though the governments involved may in fact represent the interests of their subnational units or individual citizens. Chapter 11, governing cross-border investment, provides a unique procedure under which an individual investor may obtain arbitration of a claim against the government of one of the Parties and receive damages for violation of Chapter 11 obligations by federal or state or provincial action. The arbitration is conducted before a three-member panel chosen by the complaining investor and the state, using one of three sets of international arbitration rules. Grounds of challenge under Chapter 11 include violations of the provisions of Articles 1102–1105 concerning standards of treatment for foreign investors and that the state action is an expropriation or taking of the investor's property. The arbitrators' award is binding but may be enforced or revised or annulled in a court of the state where the panel sat. If enforcement proceedings fail, the government of the prevailing investor may bring Chapter 20 dispute resolution proceedings against the other government. Article 1114 allows state measures otherwise consistent with Chapter 11 that ensure that investment activities are "sensitive to environmental concerns and prohibits relaxation of environmental measures by a Party to encourage investment."[12]

Chapter 11 proceedings have been the subject of continuing controversy throughout NAFTA's history. Objections to the process include that the proceedings are commonly used to challenge state environmental, land use, or other important regulatory measures; that they occur largely outside traditional court systems and are not subject to a system of precedent; that they undermine federalism because states or provinces whose laws are challenged do not have standing in the proceedings; and that they have imposed significant costs on taxpayers.[13] That said, it should be noted that between 1995 and 2014, only eighty-four Chapter 11 proceedings have been instituted – twenty-one against the United States, thirty-five against Canada, and twenty-eight against Mexico. There have been eleven awards – six against Canada

[10] NAFTA, Arts. 1901–1911 and Annexes 1901.2–1911.
[11] McRae and Siwiec, "NAFTA Dispute Settlement Process," p. 374.
[12] NAFTA, Article 1114(1).
[13] Gantz, *Regional Trade Agreements*, pp. 122–24. See, e.g., Public Citizen, *Table of Foreign Investor-State Cases and Claims under NAFTA and other U.S. "Trade" Deals* (August 2014), p. 1, available at http://www.citizen.org/documents/investor-state-chart.pdf.

(including three settlements) and five against Mexico. Twenty-one claims were dismissed by the panel, twenty-seven never began arbitration or were withdrawn, nine were concluded on other grounds, and sixteen are pending.[14]

### 2.2. *NAAEC: Article 14 and 15; Part 5*

NAAEC contains a multistage dispute resolution procedure aimed at reviewing and addressing the effectiveness of a Party's enforcement of its environmental law. Article 14 provides for Submissions on Enforcement Matters (SEM) to the CEC Secretariat by any individual or NGO residing in a Party state claiming ineffective enforcement by a Party. The Secretariat is to consider the submission if it meets certain formal requirements, is not aimed at harassing industry, and has been communicated in writing to the Party. The Secretariat may then request a response from the Party if it determines that pursuing the matter, among other things, would advance the goals of the Agreement and private remedies have been unavailing. If the Party's response states that the matter is subject of a judicial or administrative proceeding, the Secretariat is to go no farther. Otherwise, under Article 15, the Secretariat is to advise the Council if preparation of a factual record is warranted and is to prepare it if the Council so directs by a two-thirds vote. In preparing the factual record, the Secretariat may consider information from a variety of sources. Parties may comment on the draft factual record. By a two-thirds vote, the Council may make the final factual record available to the public. Through 2013, 84 SEMs had been pursued – 31 involving Canada, 41 involving Mexico, and 12 involving the United States. Factual records have been prepared in 22 SEMs; five SEMs are currently pending.[15]

Part Five of NAAEC provides a Party-initiated consultation and resolution procedure based on "a persistent pattern of failure" by another Party to enforce its environmental law.[16] If consultation between the parties fails to resolve the matter, a Party may request the Council to undertake conciliation, mediation, or other means to do so. If those efforts fail, the Council, on the request of a party, by a two-thirds vote, may convene an arbitral panel to make findings and conclusions if the initial failure of enforcement involves goods or services traded between Parties or competing with those of another Party. No arbitration proceedings have been undertaken under this provision.[17] If a panel were convened and were to find a persistent pattern of nonenforcement, and the Parties could not agree on a plan to remedy it, the panel could be reconvened on the request of a Party and could

[14] These figures are based on a consolidation of the compilations of proceedings on the web page "Foreign Affairs, Trade, and Development Canada," http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/nafta.aspx?lang=eng, and Public Citizen, *Table of Foreign Investor-State Cases*, pp. 2–31.

[15] http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=542&BL_ExpandID=502.

[16] NAAEC, Art. 27(1).

[17] See Garver, "Forgotten Promises," Chapter 1 of this volume, at notes 61–86.

ultimately impose a monetary enforcement assessment or a suspension of benefits in the event of nonpayment.[18]

## 3. THE CONTENTS OF THIS VOLUME

NAFTA has been the subject of much academic commentary, with the trade elements of NAFTA dominating the discussion.[19] As discussed earlier, NAFTA contains a commitment to sustainable development, and scattered provisions of it partially reflect that commitment, but the adoption of NAAEC was politically necessary to its successful ratification. The objectives of NAAEC echo the aspiration, inherent in the concept of sustainability, to balance the economic, environmental, and human costs of development. The process established by NAAEC aims to protect the Parties' environmental laws from the effects of NAFTA by ensuring that different environmental standards adopted by the Parties do not lead to distortions that cause increased trade to result in increased environmental degradation.

This volume seeks to address this underappreciated and underdeveloped aspect of NAFTA. Its chapters were initially presented as papers at a preliminary workshop held on June 14, 2013, at the Montreal facilities of the Secretariat of the CEC. The workshop, coordinated by this volume's editors, was jointly sponsored by the McGill University Faculty of Law, Vermont Law School, and the CEC. It was the product of a longstanding relationship between Vermont Law School and McGill intended to take advantage of Vermont's leadership in environmental law and McGill's leadership in international and comparative law and sustainable development.[20] Sixteen individuals affiliated with McGill, Vermont Law School, the CEC, and other academic and governmental or other institutions in the United States, Canada, and Mexico, and representing a variety of perspectives, made presentations at the workshop. The present volume contains 16 chapters, 15 presented as papers at the workshop and one prepared for the workshop that could not be offered there.

The chapters are grouped in three parts focused on three general themes.

[18] NAAEC, Arts. 39–41.

[19] See Sébastien Jodoin, "Pathways of Influence in the NAFTA Regime and Their Implications for Domestic Environmental Policy-Making in North America," Chapter 14 of this volume, at notes 1–4; Gantz, *Regional Trade Agreements*, pp. 122–24.

[20] Following a successful series of conferences and exchanges that began in the 1990s, the two faculties in August 2006 formally established the "Vermont-McGill Initiative on Cross-Border Sustainability." For publications resulting from these joint efforts, see Symposium, "Law and Civil Society," 15 *Ariz. J. Int'l & Comp. L.* 1–317 (1998); Symposium, "Quebec, Canada and First Nations: The Problem of Secession," 23 *Vt. L. Rev.* 699–859 (1999); Symposium, "Mountain Resorts: Ecology and the Law," 26 *Vt. L. Rev.* 509–751 (2002); Symposium, "Accommodating Differences: The Present and Future of the Law of Diversity," 30 *Vt. L. Rev.* 431–937 (2006); "Joint McGill-Vermont Law School Workshop on Water," 34 *Vt. L. Rev.* 855–973 (2010); "Joint Cross-Border Conference on Sustainability," 13 *Vt. J. Envtl. L.* 417–573 (2012). These activities have enjoyed significant support from Canadian Studies Program Enhancement and Conference grants awarded by the Government of Canada through the Canadian Embassy in Washington.

### 3.1. *Part I: Process: NAFTA and NAAEC*

Part I examines the procedures with which compliance by NAFTA Parties with its sustainability goals can be assessed.

Geoffrey Garver provides an overview of the development of NAFTA and NAAEC and a general evaluation of their implementation.[21] He then explores three provisions intended to support environmental goals, which have been largely neglected: NAFTA Article 1114(2) and other provisions that sought to discourage the Parties from weakening existing environmental protections; the provisions of NAAEC Part V providing Party-to-Party dispute resolution in cases of persistent failure to enforce environmental laws; and NAAEC Article 10(7) obligating the CEC to develop a process for transboundary environmental impact assessment. He concludes that these failures illustrate the more general proposition that the environmental protection features of NAFTA are overmatched by the international trade purposes of the Agreement.

Giselle Davidian addresses the purposes and functions of NAAEC's Submissions on Enforcement Matters (SEM) and the effectiveness of the process.[22] Asserting that a duty of public accountability, including procedural justice, is a developing principle of international law, she examines the SEM process to determine the degree to which it applies that principle. She concludes that the success of SEM in countering the "race to the bottom" effect is offset by failures of process, including lack of access, politicized use of the process by the CEC, lack of clear procedural provisions governing Council proceedings, lack of independence for the CEC Secretariat, and lack of oversight and enforcement provisions for its conclusions. After reviewing other examples, she offers recommendations designed to increase the independence of the process, increase public participation, and depoliticize it. She concludes that failure to make such changes will leave the process so weak that it would be preferable to develop an adversarial process for addressing noncompliance with NAAEC.

Paolo Solano explores the meaning and scope of the concept of "environmental law," an essential element of a complaint to be submitted in the SEM process.[23] Parties responding to complaints have consistently argued for a narrow definition of "environmental law," and the CEC Council has also taken a narrow view. In an extensive body of decisions on submissions, however, the Secretariat has developed a detailed and nuanced broad view. The chapter details those decisions in nine procedural and substantive areas of domestic law. Mr. Solano concludes that the broad view is necessary and appropriate under the international law principle of

[21] Geoffrey Garver, "Forgotten Promises: The Neglected Environmental Provisions of the NAFTA and the NAAEC," Chapter 1 of this volume.

[22] Giselle Davidian, "Should Citizens Expect Procedural Justice in Nonadversarial Processes? Spotlighting the Regression of the Citizen Submission Process from NAAEC to CAFTA-DR," Chapter 2 of this volume.

[23] Paolo Solano, "Choosing the Right Whistle: The Development of the Concept of Environmental Law under the Citizen Submissions Process," Chapter 3 of this volume.

effectiveness to carry out the purposes of NAAEC and to sustain public respect for the process.

Montserrat Rovalo analyzes the status of the NAAEC provision that upon notice of pending judicial or administrative proceedings, the Secretariat should not proceed with a SEM complaint.[24] New SEM guidelines have eliminated the requirement that the Secretariat provide reasons for its decision not to proceed. She analyzes the scope and meaning of the NAAEC provision and describes the Secretariat's interpretation of the provision in specific cases under the former guidelines as well as the positions of the Parties and Council on the question. Noting that providing reasons is essential to the integrity of the SEM process, she assesses the impact of the New Guidelines on the process and advances some proposals to mitigate their possible negative implications.

Leslie Welts identifies procedural barriers caused by increasingly formal interpretations in the implementation of NAAEC's procedural requirements for submissions in the SEM process.[25] The procedural burden has risen for submissions, decreasing the public's access to information and limiting the ability of the public to hold the Parties accountable for enforcing their environmental laws. This shift has the effect of stifling submissions and hindering the NAAEC's prime tool for achieving its sustainable development goals. Ms. Welts analyzes the Secretariat's interpretation of NAAEC's procedural requirements over time and assesses how the increasingly heavy burden impacts the CEC's success in implementing NAAEC's sustainable development goals. She concludes that this interference demonstrates a need to revisit the procedural requirements to encourage increased public participation via citizen submission in order to improve prospects of achieving those goals.

### 3.2. *Part II: Specific Environmental Issues under NAFTA and NAAEC*

Part II addresses the application of various NAFTA, NAAEC, and related measures to specific problems and in specific settings.

Pamela Vesilind considers the effect of NAFTA and NAAEC on sustainability issues in Mexican farmed animal agriculture.[26] She notes that the ten-year assessment of these issues did not consider the effect on hog farming and the environment of intensive livestock operations (ILO) undertaken by U.S. interests in Mexico with impetus provided by NAFTA. Two efforts by indigenous agricultural and environmental interests use the CEC SEM process to address this issue. Ms. Vesilind suggests that the process was ineffective because of the narrow scope of NAAEC,

[24] Montserrat Rovalo, "Pending Proceedings in the New Guidelines for Submissions on Enforcement Matters: An Improved Regression?," Chapter 4 of this volume.

[25] Leslie Welts, "Form Over Substance: Procedural Hurdles to the NAAEC Citizen Submission Process," Chapter 5 of this volume.

[26] Pamela Vesilind, "Downward Harmonization: Mexico's Industrial Livestock Revolution," Chapter 6 of this volume.

the inadequate nature of Mexican environmental regulation, the fundamental disconnect between the engine of free trade and traditional agriculture, and finally that NAFTA was basically designed to advantage U.S. and Canadian industrial agriculture at Mexico's expense.

Laurie Beyranevand analyzes the impact of NAFTA on U.S. and Canadian agricultural biotechnology policies' influence over Mexico's environment and agriculture.[27] NAFTA lifted the barriers that had prevented bioengineered crops from entering Mexico. Though the CEC agreed in a report that bioengineered corn from the U.S. and Canada represented a threat to Mexico's traditional maize crop, many other crops remained at risk of bioengineered imports from the U.S. and Canada, which had allowed their production under regulations developed on a cost-benefit basis. Neither country addressed the risk to Mexican agriculture, however. Professor Beyranevand recommends a variety of solutions suggested by the CEC and a joint U.S.-Canadian effort to assess the risks for Mexican agriculture and develop a tripartite regime to address them.

Betsy Baker considers the methods used to assess NAFTA's effect on the marine environment and possible lessons for the CEC from the experience of other ocean assessment measures.[28] She notes the amount of NAFTA's ocean area and describes assessment processes generally and the World Ocean Assessment (WOA) to be completed in 2014. Describing the tools available to and used by the CEC to address marine environmental issues, including reports, ecological scorecards, and works such as its 2012 *North American Environmental Atlas*, she proposes methods by which the CEC can participate in ongoing ocean assessment activities.

Katia Opalka draws on her experience as a legal officer at the CEC to provide a personal reflection on NAFTA's impact on sustainable development in water policy.[29] After a discussion of the development of NAFTA and NAAEC, in which she had a role, Ms. Opalka describes the current state of the CEC's role with water issues, with examples of a number of activities and SEM proceedings. She concludes that water issues have not been a major part of the CEC's agenda because national sovereignty concerns have deterred the Parties and their leaders from making a sustained commitment to a CEC role.

Nicole Schabus considers the effect of NAFTA and NAAEC on indigenous people's rights.[30] She argues that indigenous peoples in North America have managed their resources and territories sustainably and maintained sustainable economies as, for example, with the salmon fisheries of the Pacific Northwest. Though colonization

[27] Laurie Beyranevand, "Agricultural Biotechnology and NAFTA: Analyzing the Impacts of U.S. and Canadian Policies on Mexico's Environment and Agriculture," Chapter 7 of this volume.
[28] Betsy Baker, "Assessing Assessments of NAFTA's Marine Environment: The Commission for Environmental Cooperation Meets the World Ocean Assessment," Chapter 8 of this volume.
[29] Katia Opalka, "Sustainable Development, NAFTA, and Water," Chapter 9 of this volume.
[30] Nicole Schabus, "Indigenous Peoples in North America: Bridging the Trade and Environment Gap to Ensure Sustainability under NAFTA and NAAEC," Chapter 10 of this volume.

has marginalized indigenous peoples, indigenous rights are today recognized in many international instruments, and NAFTA also should recognize and implement them. She examines Canada's regulation and deregulation of collective lands and describes the proceedings brought by indigenous peoples of British Columbia before WTO and NAFTA tribunals claiming Canadian intrusions on their lands. She also sets out the role indigenous peoples can play in ensuring environmental, cultural, and economic sustainability through their knowledge of traditional environmental concerns.

Freedom-Kai Phillips discusses the effect of regional approaches to renewable energy regulation and emissions reduction on global competitiveness.[31] He notes that climate change has emerged as an increasingly prevalent threat globally. Although NAFTA Parties are employing individual policy measures domestically, the NAAEC has the additional potential to assist Parties in combating climate change together in a comprehensive and efficient manner. Capitalizing on the experience of the European Union, NAFTA Parties have an opportunity to integrate their individual climate change strategies. By leveraging lessons learned, Parties can collectively increase policy effectiveness and decrease costs of implementation.

Avidan Kent considers the effect of the sustainable development principle on public participation in arbitration proceedings under NAFTA Chapter 11 governing foreign investment.[32] After reviewing the general principle of public participation and access, as well as its role in international law and, specifically, NAFTA and NAAEC, the chapter describes the challenges to providing for participation in Chapter 11 disputes and its "creeping acceptance in those proceedings." After reviewing the current practice in a number of specific cases, Dr. Kent notes the example of the EU and UNCITRAL as models for future development under Chapter 11 and makes recommendations based on those sources.

Danni Liang and Jingjing Liu in their joint paper discuss lessons that China can learn from the NAFTA experience in addressing impacts of free trade on the environment, in particular the concerns over the potential for a "race to the bottom" in light of lax environmental regulations and weak enforcement in China at a time of rapid economic engagement.[33] They describe cases under NAFTA Chapter 11 and the risks of sacrificing environmental concerns to investor interests that they reflect, then argue for an evolution of process that will resolve that conflict. After a review of China's current challenges and well-developed environmental laws but weak enforcement structure, the authors recommend that China incorporate

[31] Freedom-Kai Phillips, "Climate Change, Sustainable Development, and NAFTA: Regional Policy Harmonization as a Basis for Sustainable Development," Chapter 11 of this volume.

[32] Avidan Kent, "The Principle of Public Participation in NAFTA Chapter 11 Disputes," Chapter 12 of this volume.

[33] Danni Liang and Jingjing Liu, "Preventing Environmental Deterioration from International Trade and Investment: How China Can Learn from NAFTA's Experience to Strengthen Domestic Environmental Governance and Ensure Sustainable Development," Chapter 13 of this volume.