
Report for Congress

Received through the CRS Web

Trade and Environment: GATT and NAFTA

Updated April 4, 1994

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<http://wikileaks.org/wiki/CRS-94-165>

Trade and Environment: GATT and NAFTA

Summary

Environmental concerns in trade negotiations have received extensive attention by policymakers both with regard to the General Agreement on Tariffs and Trade (GATT) and to the North American Free Trade Agreement (NAFTA). At the conclusion of the NAFTA, environmental concerns were addressed both within the agreement and in side agreements that were critical to passage of NAFTA implementing legislation in the United States. Similarly, although not initially expected to address environment, the GATT Uruguay Round agreement contains a number of provisions advocated by environmental groups. Following completion of the Uruguay Round agreement in December 1993, negotiations continued on formulation of an environmental work program for GATT. Negotiators decided in March that a Committee on Trade and Environment is to be established in the newly established World Trade Organization (WTO).

A number of basic concerns have been raised during the debates on trade and the environment, spanning a wide range of issues. These include concerns that differences in environmental regulations may affect competitiveness, raising the question of whether and how to "harmonize," or achieve some internationally accepted convergence of, environmental standards; concern that if countries are not allowed to control or restrict exports, they may lose a major tool for conserving resources that are overharvested for trade markets; the use of trade measures in international agreements; concerns about unilateral use of trade measures. An important underlying issue is the extent to which environmental issues can or should be negotiated and resolved within the context of trade agreements.

In the final agreement of the Uruguay Round of GATT in December, some environmental issues were addressed directly, while others were deferred by the recommendation that a work program for environmental issues be formulated for approval at the April 15 Ministerial meeting in Marrakech, Morocco, where the Uruguay Round agreement will be signed. Modifications were made in key language on technical barriers to trade (TBTs), sanitary and phyto-sanitary standards (SPS), and dispute settlement, and language on protection of the environment and sustainable development was added to the priorities in the preamble. The December agreement also approved some limited environmental subsidies. Following up on the December decision to formulate a work program on environmental issues to address major environmental concerns in the post-Uruguay period, GATT negotiators decided in March 1994 that a Trade and Environment Committee is to be established within the WTO, and a broad work plan was outlined.

Negotiation of the NAFTA, signed December 17, 1992, involved unprecedented consideration of environmental issues in the context of a trade agreement. In the final text, negotiators included several environment-related provisions, including language to generally preserve participating countries' laws and regulations on environment, health and safety. These are briefly described in this report.

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Trade and Environment: GATT and NAFTA

Introduction

Environmental concerns in trade negotiations have received extensive attention by policymakers both with regard to the General Agreement on Tariffs and Trade (GATT) and to the North American Free Trade Agreement (NAFTA). During 1990, as the multilateral trade negotiations in the Uruguay round of the GATT entered what was expected to be their final year, environmental concerns were increasingly raised. Environmental issues were brought up in connection with bilateral and other trade discussions, as well.

At the conclusion of the NAFTA, environmental concerns were addressed both within the agreement and in side agreements that were critical to passage of NAFTA implementing legislation in the United States. Similarly, although not initially expected to address environment, the GATT Uruguay Round agreement contains a number of provisions addressing concerns of environmental groups, and a decision was taken by GATT negotiators to establish a Committee on Trade and Environment within the newly established World Trade Organization (WTO), and to outline an environmental work program to examine major trade-environment issues.

Background

A number of basic concerns have been raised during the debates on trade and the environment:

- Differences in environmental regulations may affect competitiveness, raising the question of whether and how to "harmonize," or achieve some internationally accepted convergence of, environmental standards; in the absence of similar environmental regulations, lower standards in exporting countries may be considered to be a hidden subsidy by importing countries whose competing industries have to comply with stronger environmental regulations;
- If countries are not allowed to control or restrict exports, they may lose a major tool for conserving resources that are overharvested for trade markets (a concern, for example, with tropical timber);
- Trade measures or sanctions have been increasingly invoked as enforcement mechanisms in environmental agreements (e.g., the Montreal Protocol, fisheries treaties); the individual and cumulative impacts of the use of such measures need to be studied and understood, as well as how to make them compatible with trade rules;

- If a country acts unilaterally to impose trade measures (e.g., an import ban, in order to enforce its own laws against certain practices affecting the global commons) this may be interpreted by current trade regulations as a restriction on fair and free trade, as happened in the U.S.-Mexico dispute over the use of trade measures by the United States to protest Mexican tuna fishing practices that killed excessive numbers of dolphins.
- Environmental regulations, especially those that impose requirements on imported goods, in some cases may be considered restraints on trade.

An important underlying issue is the extent to which environmental issues can or should be negotiated and resolved within the context of trade agreements. Environmental groups have argued that environmental issues are directly affected by trade, and that some environmental concerns need to be addressed in trade agreements. However, trade officials express concern that trade agreements are not the appropriate place to address most environmental problems, and that these should be resolved through multilateral environmental agreements, with trade agreements incorporating ways to accommodate such treaties.

Environment in the GATT

Environmental issues were raised repeatedly during the last three years of the Uruguay Round. In the final agreement, modifications were made in key language on technical barriers to trade (TBTs), sanitary and phyto-sanitary standards (SPS), and dispute settlement, and by inserting protection of the environment and sustainable development to the priorities in the preamble and by allowing limited environmental subsidies. To address major environmental concerns, GATT negotiators agreed that an environmental work program was needed, and the December 15, 1993, decision required that it be formulated by April 15, 1994, for implementation in the post-Uruguay period. On March 23, 1994, negotiators issued a decision that a Trade and Environment Committee should be established in the WTO, with a broad work program as its mandate. However, debate continued over whether the language modifications and the future work program will satisfy demands of environmental interests that the international trading system should accommodate appropriate environmental protection, while not violating the goals of GATT to protect and promote free and open trade.

Historically, within the GATT structure, working parties (ad hoc committees) have customarily been established to study the issues on which members may wish to make decisions in the future. In 1971, the GATT parties established a Working Group on Environmental Measures and International Trade. It was noted at the time that environmental policies vary among countries, and trade disputes may result from these differences.

However, this working group did not meet until 1991, when increasing concerns raised by environmental groups put pressure on the GATT to respond. The group was activated in October, 1991, and had its first meeting in November of that year. It held six substantive meetings in 1992. Its agenda included three items:

- Trade provisions of existing multilateral environmental agreements (such as the Montreal Protocol on ozone depletion, or the Basel Convention on waste trade);
- The transparency of trade-related environmental measures;
- Possible trade effects of packaging and labelling requirements.

A major environmental/resource management issue was hotly debated in GATT in mid-1991, and further raised environmental sensitivities. Pursuant to provisions of the Marine Mammal Protection Act, the United States banned tuna imports from Mexico to protest fishing methods that killed substantial numbers of dolphins. In February 1991, Mexico requested a GATT ruling against the United States for restraint of trade, and in August the dispute panel concluded that GATT prohibits its members from imposing import restrictions based on extraterritorial concerns, or from taking action to dictate how other nations produce their export goods. The implications of this report would be significant if adopted by GATT (a recommendation to the full GATT was made by the dispute panel), limiting trade measures that might be deployed for other environmental goals, and representing an example of the concerns expressed by U.S. environmental groups that GATT procedures and decisions could undermine U.S. laws aimed at protecting the global environment. Following extensive reaction to these implications, Mexico indicated that it would not seek a final GATT ruling on its complaint. (For more information, see CRS report 91-666 ENR: Tuna and the GATT)

Environmental protection objectives were not originally identified as U.S. negotiating objectives for the Uruguay Round in the Omnibus Trade and Competitiveness Act of 1988, which spelled out U.S. goals. However, a sense of the Congress resolution was passed in the 102nd Congress that stated the President in trade negotiations "should seek, inter alia, to address environmental issues related to the negotiations and to modify GATT articles to take into consideration the national environmental laws of the GATT Contracting Parties and international environmental treaties."

Until the last phase of the negotiations, it had appeared that environmental issues would not be taken up directly in the Uruguay Round, but would be deferred as one of the high priority issues to be taken up by GATT after conclusion of the Uruguay Round talks. In the last days of the negotiations, however, led by U.S. positions in some cases, environmental provisions were included in the agreement or in related decisions by the negotiators.

Provisions of the Multinational Trade Negotiations Final Act (MTN/FA) of the Uruguay Round, signed by negotiators on December 15, 1993, addressing environmental concerns include the following:

- The preamble to the agreement establishing the World Trade Organization (WTO) recognizes, among other things, the objective of sustainable development, including seeking to protect and preserve the environment (MTN/FA II).

- A subsidy to industries to promote adaptation of existing facilities to new environmental requirements would, under limited and specified circumstances, be "non-actionable" (couldn't be challenged)(MTN/FA II-13, Section 8.2 (c)). This provision is one of several "non-actionable" subsidies that are regarded as problematic by some U.S. industry representatives, who feel this may provide a general opening to countries that wish to subsidize exporting industries, thereby providing a competitive advantage to their firms. U.S. business interests are urging that the United States seek ways to assure that unwarranted subsidies are not allowed to their competitors.
- Language was adopted to protect national standards from being lowered in the areas of both sanitary and phyto-sanitary standards (SPS), e.g., food safety standards, and technical barriers to trade (TBT), e.g., domestic legislation such as fuel efficiency or clean air standards that would require imports to meet such standards. Adjustments were made in these areas to meet concerns over whether environmental standards of one country could be lowered through "harmonization" and how disputes over environmentally related trade conflicts might be handled.

In both cases, environmental groups welcomed the language that seeks to ensure a country's standards will not be lowered by trade requirements, but they see continued problems in that challenges to a country's environmental rulings could be allowed through the requirement that environmental objectives be met through "least trade restrictive" methods. Conversely, business interests fear that this language is sufficiently ambiguous that more trade restrictive practices might not be challenged. Both environmental and business interests are seeking clarifications of the language in the SPS and TBT sections.

- The MTN/FA recommends the establishment of a Working Party on Trade in Services and the Environment (MTN/FA III-7 (c), to examine whether additional changes are needed in the General Agreement on Trade and Services (GATS).

Other language of concern to environmental groups in the Final Act of the Uruguay Round agreement is that on dispute resolution. They raise concerns about "transparency" in terms of inadequate public participation and availability of GATT documents; they argue that although some changes to allow expert testimony before GATT panels on scientific and technical issues in trade disputes are beneficial, the GATT system still allows for challenges to U.S. laws that could result in pressure to lower environmental standards because they have been ruled barriers to trade.

Committee on Trade and Environment

At the conclusion of the December 15 Uruguay Round Agreement, the negotiating committee reached a separate decision to establish a future work program on environment, to deal with unresolved environment and trade issues. The December decision noted that there should be no contradiction between environmental protection and an open trading system. It spelled out the need for

rules to enhance positive interaction between trade and environmental measures for promotion of sustainable development, noting the need for special consideration to needs of developing countries. The decision also responded to trade-related concerns by stating the need to avoid protectionist trade measures and to adhere to multilateral disciplines to ensure responsiveness of the trading system to environmental objectives.

A major objective of environmental interests, and one advocated by the Clinton Administration, had been a commitment to environmental negotiations in a "green round" following the Uruguay agreement, and the establishment of an environment committee in the newly created World Trade Organization. In the end, the GATT negotiators declined to include a WTO Environment Committee in the December agreement and related decisions; instead, they agreed that a program of work on environment should be drawn up in time for endorsement by the Ministerial Conference on April 15, 1994. This work program, negotiators agreed, was to spell out the issues to be taken up by GATT related to environment. In effect, this deferred decisions on some of the most difficult trade/environment issues until the post-Uruguay work program could deal with them.

Some environmental groups accepted this objective, and focused their efforts on assuring that what they considered to be appropriate elements were incorporated in the work plan. Other groups opposed the December 15 decisions; they felt that a work plan and/or environment committee would lead to a drawn-out and inadequate response. They argued that a full "green" round of negotiations is needed, and they urged a forcing mechanism such as a moratorium on all environmental challenges until completion of the round. Over 75 Members of Congress have written to President Clinton, urging imposition of such a moratorium on challenges to environmental measures, such as those taken in the tuna-dolphin case, until negotiations are undertaken and completed within GATT to address the "full complexity" of these issues. Such a moratorium would require agreement from all GATT parties that if trade restrictions were imposed by a country in order to enforce environmental goals and objectives, no challenges to these trade restrictions would be posed in the GATT system. However, some observers argue that such a moratorium could not obtain approval from GATT participants unless a reciprocal moratorium on the imposition of trade restrictions for environmental purposes were also put into effect.

On March 23, 1994, GATT negotiators announced a Decision on Trade and Environment that directs the first meeting of the General Council of the WTO to establish a Committee on Trade and Environment, open to all members of the WTO. The Committee is to report to the first biennial meeting of the Ministerial Conference after the WTO enters into force, when the work and terms of reference of the Committee will be reviewed, along with the Committee's recommendations.

The March decision document reiterates the elements of the work plan outlined in the December 15 decision as the Committee's terms of reference. The program of work will include identification of the relationship between trade measures and environmental measures in order to promote sustainable development, and would cover the issue of how GATT will respond to environmental agreements and treaties. It will also make appropriate recommendations on whether modifications of the

provisions of the Multilateral Trading System are required--compatible with open, equitable, and non-discriminatory trade. The negotiators left open the option that the Committee could address "any relevant issues" in relation to several broad concerns, including, among others:

- the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes;
- the relationships between environmental policies relevant to trade or with significant trade effects, and the provisions of the multilateral trading system;
- the relationship between the multilateral trading system and charges and taxes for environmental purposes and other requirements for environmental purposes, such as those for standards, packaging, or labelling;
- relationships between dispute settlement mechanisms in the trading system and those in environmental agreements;

Pending the first meeting of the WTO, which is expected in 1995 at the earliest, the work of the Committee on Trade and Environment is to begin under a Sub-Committee of the Preparatory Committee of the World Trade Organization.

Among the most difficult and key issues the Committee's environmental work program is likely address include the question of the unilateral use of trade measures to "enforce" a country's environmental priorities or laws. A closely linked issue is that of "processes and production methods (PPMs),"--the extent to which it is legitimate for an importing country to refuse to accept imports that involve what it considers unacceptable environmental consequences in their production processes, even though the product may not cause environmental damage to the importing country itself. GATT rules to date generally do not permit a country to impose trade restrictions unilaterally in response to policy choices of other countries. This was at issue, for example, in the "tuna-dolphin" dispute between Mexico and the United States, in which the United States refused to import tuna caught with methods that killed or harmed excessive numbers of dolphins. Another example could be concerns over global deforestation that have led to calls for reducing or refusing imports of wood harvested by "unsustainable" methods.

Given the difficulty and complexity of many of the trade-related environmental issues, it is unclear exactly what the Committee's final work program will contain. Environmental interests have expressed the need for a full examination of environmental priorities in the work program in order to assure that strong environmental protection is not jeopardized by free trade objectives--through a "downward harmonization" of environmental standards, for example.

However, there have also been strong opponents to various aspects of a possible environmental agenda. Among these opponents are some from developing countries who fear threats to their sovereignty and the possibility that environmental standards may be used to justify trade restrictions that will damage their economies. Another

concern is that environmental trade restrictions might be used by countries to disguise protectionist policies or practices.

OECD Trade and Environment Agenda

The Organization for Economic Cooperation and Development (OECD) has work underway on an extensive agenda of trade and environment issues, which may reflect an agenda that includes many of the issues considered for a GATT environmental work program. The OECD, consisting of the major industrialized nations, plays an active role on a variety of issues, allowing regional debates of international issues. Included in the very extensive OECD work program are the following:

- Effects of trade liberalization on the environment, including sector studies in such areas as forestry, fisheries, etc.;
- Processes and production methods (PPMs), including identification of the domestic, transboundary and global environmental and trade implications of various processes and production methods;
- Use of trade measures for environmental purposes, both within the context of international agreements and outside them;
- Packaging and eco-labelling, including attention to life-cycle analysis of environmental implications of all stages of a product's development.
- Harmonization of national environmental standards, including a review of procedures for establishing international standards;
- Development of trade and environmental principles and concepts;
- Dispute settlement, including comparison of compliance and dispute settlement provisions and procedures in existing environmental and trade agreements.

Current U.S. Objectives

On February 3, 1994, State Department Counselor Timothy Wirth outlined current thinking behind development of U.S. positions on trade and environment in testimony before a subcommittee of the Senate Committee on Commerce, Science and Transportation. He indicated environmental objectives include "protecting biodiversity and endangered or threatened species; protecting the oceans and their resources; protecting the atmosphere and addressing climate change; and protecting the environment and resources that are within or partially within U.S. jurisdiction."

Counselor Wirth indicated that U.S. trade policy objectives include, among others, "constructing a market-oriented, rules-based system for international trade in goods, services, and investments; increasing market access for U.S. goods and services; and building confidence in the international trading system by promoting

policies that conform to obligations under the GATT and other international trade agreements."

The U.S. framework to be used in developing a position on when consideration of the use of trade measures might be appropriate to protect the environment include:

- when trade measures are required by an international environmental agreement to which the United States is a party, assuming non-discriminatory treatment of non-parties;
- when the environmental effect of an activity is partially within U.S. jurisdiction, and there is reasonable scientific basis for concern;
- when a plant or animal species, wherever located, is endangered or threatened, or where a particular practice would likely cause a species to become threatened, assuming there is reasonable scientific basis for concern;
- where the effectiveness of a scientifically based international environmental or conservation standard is being diminished, provided that the standard is specific enough that the judgment as to whether it has been "diminished" can be made objectively.

Environment in NAFTA

Negotiation of the North American Free Trade Agreement (NAFTA), signed December 17, 1992, involved unprecedented consideration of environmental issues in the context of a trade agreement. In the final text, negotiators included several environment-related provisions, including language to generally preserve participating countries' laws and regulations on environment, health and safety.

Upon assuming office, President Clinton pledged he would not send NAFTA and its implementing legislation to Congress until he had negotiated side agreements addressing additional environmental and labor issues. Trade officials from Canada, Mexico, and the United States began negotiations in March 1993. On September 14, 1993, the three countries concluded negotiations on environmental and labor side accords that include provisions to address problems with enforcement of environmental and labor laws.

In separate negotiations, the United States and Mexico agreed to establish a Border Environmental Cooperation Commission (BECC) and a North American Development Bank (NADBank) to provide financing for environmental investments. NAFTA implementing legislation passed Congress in November, 1993, and the agreement entered into force on January 1, 1994.

Background

Environmental issues emerged early in NAFTA negotiations, particularly in the context of liberalizing trade and investment rules between the United States and Mexico. One question concerned how NAFTA might affect one country's more stringent environmental standards, and whether these standards could be challenged successfully as nontariff trade barriers. Could U.S. health, safety, and environmental product standards, if stricter than other Parties' standards, be weakened if NAFTA obliged Parties to harmonize and adopt international standards? Conversely, the question asked was whether one country's weaker environmental protection measures or their ineffective enforcement constituted an implicit subsidy, thus providing an added incentive for businesses to relocate production to the less regulated country. Many in Congress have expressed concern that, while Mexican environmental regulations are becoming more like U.S. regulations, Mexico currently has many fewer requirements and historically has had lax enforcement.

NAFTA proponents and opponents generally have agreed that further economic development in Mexico could, in the long run, enable that country to increase investments in environmental protection. Although many agree that liberalizing trade and investment with Mexico would require that some environmental precautions be taken, they disagree as to whether the trade negotiations were the appropriate forum. Trade officials argued that environment is not a traditional trade issue, and that NAFTA talks were not the appropriate mode for resolving substantive environmental issues. They contended that environmental concerns would be more appropriately addressed in multilateral agreements on specific issues. However, the level of concern raised by Congress during NAFTA negotiations required that the Bush Administration respond to those concerns with some specificity.

The final NAFTA text includes a number of environment-related provisions, including several that are unprecedented for trade agreements. Briefly, NAFTA contains provisions that conditionally protect stricter environmental laws and standards (provided that, among other things, such measures are scientifically based), encourage upward harmonization of standards; place the burden of proof that an environmental measure is inconsistent with NAFTA on the Party challenging the measure in a NAFTA dispute proceeding; and take some steps toward integrating environmental protection and sustainable development into economic decision-making. The Agreement does not directly affect a country's ability to determine its own levels of protection for process standards, e.g., emission controls and waste management rules.

NAFTA also identifies three trade-related international environmental agreements that would generally take precedence over NAFTA, and provides that the Parties can agree to add other agreements. [The specified agreements are the Montreal Protocol on Substances that Deplete the Ozone Layer; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; and the Convention on International Trade in Endangered Species (CITES). The U.S.-Mexico and U.S.-Canada bilateral agreements on waste trade are also included.]

Notwithstanding the inclusion of these and other environmental provisions in NAFTA, some remain concerned that NAFTA's ultimate effect on specific standards-related measures may not be predictable. NAFTA comprises a mix of rights, obligations, and disciplines, and to the extent that the language may be ambiguous or conflicting, there is room for debate and uncertainty as to which provisions would prevail in particular instances. Administration officials, however, have stated that U.S. environmental measures generally should withstand any challenges under NAFTA.

Side Agreement on Environment

Many in Congress concurred with the President on the need for an environmental side agreement. A key concern was that NAFTA contained no provisions to address lax enforcement of domestic environmental laws, and that if NAFTA were implemented, border pollution could worsen. A second unresolved issue involved identifying ways to finance environmental infrastructure and cleanup in the U.S.-Mexico border area. Some Members also expressed concern about specific environment-related provisions contained in NAFTA; however, the President stated he would not reopen the text in supplemental negotiations. The three NAFTA governments completed the North American Agreement on Environmental Cooperation (NAAEC) on September 14, 1993. Following is a synopsis of this agreement.

Commission on Environmental Cooperation. The side agreement, or NAAEC, creates a Commission on Environmental Cooperation (CEC) to be headed by a Council comprised of each country's top environmental official. The CEC also includes an independent Secretariat under the direction of an executive director and a Joint Advisory Committee comprised of nongovernmental organizations from the three countries to advise the Council. The Commission's major goal is to broaden cooperation among the Parties. It will also serve as a point of inquiry for public concerns about NAFTA's environmental effects and as an avenue for dispute settlement panels to obtain environmental expertise. The Council is given key responsibilities regarding the side accord's dispute settlement provisions involving persistent patterns of non-enforcement of environmental laws.

Enforcement of Domestic Environmental Laws. The most contentious environmental issue throughout negotiations involved whether or how to address a Party's persistent lax enforcement of domestic environmental laws. The United States proposed authorizing the use of trade sanctions to address patterns of nonenforcement of environmental laws. This concept met considerable resistance from Canada and Mexico. Ultimately, the NAFTA countries agreed to a dispute settlement process that includes sanctions as a last resort.

Briefly, dispute resolution in these cases would involve a multi-step process, beginning with consultation, moving to a recommendation of an action plan to correct nonenforcement, and, if necessary, proceeding to the imposition of a "monetary enforcement assessment." If a Party failed to pay the assessment, or continued to fail to enforce its laws, the Party would be liable to ongoing enforcement actions. In the case of Canada, the Commission would collect the assessment and would enforce an action plan in summary proceedings before a

Canadian court. In the case of Mexico or the United States, the complaining Party(ies) could suspend NAFTA benefits based on the amount of the assessment.

To invoke the dispute settlement process under the side agreement, a complaint must concern the failure of a Party to effectively enforce its environmental laws, and the alleged failure must be trade-related or involve competing goods or services. The NAAEC authorizes the Secretariat to consider a submission from any nongovernmental organization or person asserting that a Party is failing to effectively enforce its environmental law. However, only NAFTA Parties--the United States, Canada or Mexico--could initiate a dispute settlement proceeding under the side agreement.

U.S.-Mexico Agreement on Environmental Funding

The need for funding to finance environmental improvements in the border area was a theme voiced throughout the NAFTA debate by those concerned about environmental impacts of the agreement. The Administration estimated that approximately \$8 billion over the next decade would be required just to address needs for drinking water, sewage treatment, and solid waste infrastructure projects along the border.

The United States and Mexico entered into separate negotiations on this issue and, in October 1993, the two governments reached agreement on a new institutional structure to provide financing. A North American Development Bank (NADBank) is being established to fund infrastructure projects, initially in three areas: clean water, wastewater treatment, and solid waste. The NADBank will work in concert with the newly established Border Environmental Cooperation Commission (BECC) which will assist border States and local communities to plan and finance environmental infrastructure projects with cross-border impact. The NADBank will function as a purely financial institution, and the BECC will play the major substantive role with regard to site approval, design, and environmental impact assessment. All projects funded by the NADBank must be approved and certified by the BECC. Also, ten percent of the resources of the NADBank may be made available for community adjustment and investment, which need not be in the border area. The BECC will have 10 commissioners, five each from Mexico and the United States. Each country will contribute \$225 million over four years, leveraging a \$3 billion loan capitalization. Projects funded by the NADBank will be on both sides of the border, and will be selected using an ecosystems approach.

The negotiation of this border infrastructure financing strategy was separate from NAFTA and NAFTA side agreement negotiations; however, it was considered fundamental to the Administration's effort to garner congressional support for NAFTA. The President included provisions authorizing the establishment of the BECC and the NADBank in the NAFTA implementing package submitted to Congress for approval.