OBSERVING THE RULES: CANADA-U.S. TRADE AND ENVIRONMENTAL RELATIONS*

ANNETTE BAKER FOX

"...[For] Canada, it is better to have clear rules and fair-minded referees on the playing field than to be scrambling on someone else's terrain and playing, as often as not, according to their rules and without any referees at all."[1] Many other Canadians have made similar pleas for Canadian-American relations to be "rules-based." The assumption is that if bilateral dealings on particular issues were more or less formally regulated, the asymmetry in power between the North American neighbors would tend to be ironed out. The result would be greater equity in treating matters of mutual concern, whether the two countries were competing or cooperating (or both at the same time). The rules would usually be elaborated and enforcement would be supervised by an appropriate organization established by formal agreement

*A list of acronyms used in this article is provided on page 29.

between the two states. In such an organization, Canada might participate on a par with its more powerful neighbor in deciding matters under the auspices of that entity. How has this worked out in practice?

This study focuses not on the negotiating phase but on implementation of particular bilateral agreements in order to determine if a "rules-based system" does in fact diminish the general inequality of influence in the relations between a great power and the adjacent middle power and, if so, when. It will examine experience under the Canada-United States Free Trade Agreement (FTA), which went into force in 1989, and its successor, the North American Free Trade Agreement (NAFTA), which the two partners concluded with Mexico in 1993. (The Mexican relationship will be omitted in this study.) In addition to trade issues, the study will investigate environmental issues mostly related to the Great Lakes Water Quality Agreement of 1972, revised in 1978 and amended by a protocol in 1987; the Air Quality Agreement of 1991; and the North American Agreement on Environmental Cooperation under NAFTA.

Why should Canadians care about rules-based systems? Aside from the widespread sense of being vulnerable to the behavior of their super-power neighbor, segments of Canada's population have frequently experienced specific American trade actions which were clearly arbitrary and harmful to their interests. "Aggressive unilateralism" has often marked United States foreign relations. Disregard for interests beyond the United States borders looks like caprice even when there was no intent to assert an extraterritorial jurisdiction. Since foreign trade amounts to over forty percent of

---

Annette Baker Fox is an associate research scholar at the Institute of War and Peace Studies, Columbia University. She is the author of The Power of Small States: Diplomacy in World War II (1959), The Politics of Attraction: Four Middle Powers and the United States (1977), "Settling U.S.-Canada Disputes: Lessons for NAFTA," *Canadian-American Public Policy* II: September 1992, *co-author of* NATO and the Range of American Choice (1967), *and co-editor of* Canada and the United States: Transnational and Transgovernmental Relations (1976). *In 1987 she received the Donner Medal for her contributions to Canadian Studies in the United States.*

Canada's economy (well over three times its significance in the American GOP), this issue area is of very great importance to Canadians. Although each country is the other's largest trade partner, the ratio of total Canadian trade going to the United States (about eighty percent) is far higher than the ratio of total United States exports going to Canada (about twenty-two percent).

For geographic and demographic reasons, environmental damage to Canadians from American sources is generally greater than that flowing in the opposite direction, especially when it consists of acid rain and other toxic substances. Thus in both environmental and trade areas, it was primarily Canada which sought a bilateral agreement.

Trade and the environment are only two of the many kinds of relationships between the two North American countries, but they are covered by more formal agreements than most other issue areas except for defense and fisheries. (A brief comparative note on fisheries will appear later.) Thus the implementation of these agreements is worthy of close examination.[2]

To enter into such accords the Canadians had to overcome two earlier inclinations. They had previously preferred an *ad hoc* approach, thinking it afforded greater flexibility and the opportunity to exploit some immediate advantage. An exception was the bilateral Auto Pact of 1965, which provided for extensive free trade in motor vehicles and parts. They also feared that a formal institution might merely entrench American dominance. Changes in political leadership, the expansion of multilateral organizations moderating the overwhelming influence of the United States, increasing sentiment for environmental conservation, and global challenges to the economic *status quo* all contributed to a change of perspective.

Why should the United States government want to bind itself to particular rules-based systems in partnership with Canada? Among the reasons was the recognition that a market-oriented trade system generally needs rules. American traders need the confidence which flows from recognized rules of the game. American investors need stable conditions. A free-for-all is an unacceptable alternative to having rules. To get Canadian agreement on some ideas for improved trade, regulation was more readily achieved bilaterally than multilaterally through the cumbersome forum offered by GATT (now the World Trade Organization). Prior agreement could also impel wider acceptance for certain provisions the Americans sought

in the Uruguay Round of GATT negotiations which were going on a the same time as the bilateral discussions.

While there may be differences of degree in the environmental vulnerability of Canada and the United States, the living conditions of some Americans could be significantly harmed by unregulated Canadian pollution near them. For both countries, rules designed to enhance cooperation can achieve a mutually-entertained objective unobtainable alone.

How do rules further these perceived aims? As Friedrich Kratochwil has noted, rules serve to guide the decision-makers by reducing the complexity of choice, indicating what factors they must consider. Rules and their underlying norms are "problem-solving devices in situations in which actors with non-identical preferences meet and cannot pursue their goals without interference."[3] Constraint is also present. In Hedley Bull's definition, rules "require or authorize a prescribed class of persons or groups to behave in prescribed ways."[4]

Sets of rules are often combined in institutions, which, as Robert Keohane has observed, shape expectations as well as prescribing and constraining behavior.[5] The bilateral trade and environmental organizations established by Canada and the United States not only oversee the implementations of the rules for which they were established, but also must follow regulated procedures in doing so, all of which involves specific interpretation of the commitments.

While a contrast can be made between a "rules-based system" and a "power-based system," power is never absent from the observance of rules.[6] The power game itself, noted Kratochwil, may be embedded in a normative structure: Canada-United States governmental relations often reflect this condition.[7] On the other hand, dominating private interests in the more powerful state can affect the way that institutions function.[8] Whether or not rules moderate the super-power's influence over the middle-power neighbor could be tested by examining compliance in particular cases. To prove empirically that a rule has been faithfully observed is not easy, due to the complex interactions among many players involved in a particular issue. Much depends on the circumstances under which two neighbors, Canada and the United States in this case, have made a commitment to each other. Who made the rules? How were they supposed to be carried out?

I. WHOSE RULES? ABOUT WHAT?

In Canadian-American relations, applying a rule is one stage in a circular process. This starts with the pressure from particular groups or individuals to achieve an aim through a bilateral governmental agreement on ways to flesh out such general principles as non-discrimination ("national treatment") and "sustainable development." The Air Quality Agreement was preceded by the efforts of environmental groups in both countries, concerned particularly about "acid rain," to get their respective governments to enact legislation controlling the long distance transport of hazardous air pollutants. The Canadian government and international groups also pressed the United States government to act. Because the Reagan administration was hostile to environmental concern, the anticipated bilateral agreement was not reached until President Bush responded affirmatively to remove one of the sharpest conflicts then current between the two neighbors. In the 1960s, the rapidly deteriorating water clearly visible in Lake Erie and Lake Ontario aroused public worry on both sides of the lakes and impelled the two governments to ask the International Joint Commission (IJC) to investigate. "Epistemic communities" of scientists helped shape the commission's recommendations, acceptance of which then had to be negotiated by the two governments. The Canada-United States Free Trade Agreement was strongly favored by big business on both sides of the border, but the impulse to initiate an agreement came from Prime Minister Brian Mulroney and his Conservative government. They looked to an agreement ensuring better access to the American market as one way to check the decline of the Canadian economy and reduce government intervention in it.[9]

The agenda for negotiation and the subsequent content of the trade and environment agreements reflected how well the advocates for action could overcome such obstacles as the inevitable political opposition as well as certain features of the two different governmental systems. Chemical firms fought but lost the provisions on eliminating phosphorous in the Great Lakes Water Quality Agreement. Coal-burning electric utilities in the Middle West opposed regulations to reduce acid rain, temporarily outweighing pressure from northeastern state victims. Labor unions battled unsuccessfully to get congress to reject NAFTA. Environmentalists, unhappy with the text of NAFTA, wanted more explicit rules and sought trade sanctions to enforce them. They succeeded in getting the supplemen-

tal agreement on environmental cooperation. Although its provisions mirrored the American system of environmental protection, this still did not satisfy some environmental associations in the trade negotiations. Congressional opposition prevented the Canadian government from watering down the United States "trade remedy" system of anti-dumping and countervailing duty rules. Before the Canadian government could complete the negotiations for the Great Lakes Water Quality Agreement, it had to make a compact with the province of Ontario, which like the other provinces, had jurisdiction over environmental matters. (The bargain dealt with federal aid in funding sewer construction which would be required by the international agreement.)

The exclusion of certain subjects from the various agreements also reflected the political influence of particular interests. On the United States side, the maritime industry got the proposed transportation section removed prior to the signature of the Free Trade Agreement. In the FTA and its successor, NAFTA, Canada succeeded in keeping out "cultural industries" and supply management systems for dairy products, eggs and poultry, supported by import quotas. Very strong pressure came from Canadian media, and a wide variety of social groups supported the Canadian government's desire to exclude cultural questions. The supply management systems were a particularly delicate political consideration because they involved Quebec's interest in the diary and poultry industries important in that province's economy.

On the other hand, the Canadian government failed to secure an explicit commitment in the Free Trade Agreement for a subsidies code which would protect its exporters from encountering what many Canadians felt were arbitrarily imposed countervailing duties. The best the Canadians could get was a working group which was supposed to develop a code within seven years (a promise never fulfilled.) Meanwhile, the United States succeeded in writing provisions on direct investment, services, and energy into the Free Trade Agreement, matters not on the Canadians' original agenda. These subjects were of very intense interest among American businesses. The United States treasury department obtained the exclusion of disputes about financial services from Chapters 18 and 19 in the bilateral Free Trade Agreement which provided for dispute panels. (They were later included in NAFTA.)

Organizations were established to oversee each of the trade and environmental agreements. They include the Free Trade Commission, the trilateral Commission for Environmental Cooperation, the bilateral Air Quality Committee, and, in the case of the Great Lakes Quality Agreement, an expansion of the existing functions of the International Joint Commission, set up in the Boundary Waters Treaty of 1909. Once established, the scope of the trade and environmental organizations was enlarged to respond to experience under them. Their existence strengthened the proponents, and in turn the supporters strengthened the institutions. The Great Lakes Water Quality Agreement was altered in 1978; the new agreement set limits on the discharges of toxic chemicals, hazardous substances, and radioactivity as well as phosphorous, and extended efforts to those tributaries to the lakes where pollutants would affect the lakes themselves. Despite efforts to modify the Auto Pact or to exclude it, this sectoral trade agreement between the United States and Canada was essentially absorbed into the Free Trade Agreement. When the essence of the bilateral trade agreement was expanded to include Mexico, changes were made to strengthen the compact as a result of experience, including the dispute settlement procedures, the definition of "domestic content," and the addition of intellectual property protection.

In both Canada and the United Sates, government officials handle a large number of public meetings prior to concluding both the environmental and trade agreements. These involved not only nongovernmental organizations (NGOs) and private citizens, but also political entities, provincial and state governments, and municipalities. In advance of the negotiations and during them, very elaborate inter-agency consultations took place with ample opportunities for bureaucratic interchange. Both governments exerted great effort to ensure that interested parties could express their views.

Consultations occurred prior to passing the domestic legislation which in both environmental and trade matters had to precede negotiating the bilateral agreements. They covered subjects not earlier seen as having foreign implications, and they drew in domestic interests previously uninvolved. Then each agreement required further legislation to make it effective. This legislation laid out the principles and allocated responsibility.[10]

II. WHO IMPLEMENTS?

Some limited functions for carrying out both the environmental and the trade agreements are exercised by a joint agent. However, most of the responsibility falls on a variety of federal authorities in the individual governments. This is particular true of the trade agreements, where there has been less stress on collaboration and more on restraint of national actions.

An important part of the trade agreements, the reduction or removal of tariffs, could be more or less routinely carried out by the appropriate national authorities. (The main problems were determining customs valuation and defining safeguards against surges.) Tariff reductions and the other elements of the agreements are supervised in general by the annual meeting and other *ad hoc* meetings of the cabinet-level trade official from each country who form the oversight commission. Part of their responsibilities is to inform each other of governmental actions which may affect their partners' trade. Such meetings regularly occur.

The only international agents involved in carrying out a function of the trade agreements are the specially constituted panels for settling disputes which are set up if none of the preferred procedures, mainly "consultations," are successful in resolving a particular controversy. Panels dealing with interpretation of the trade agreement (chapter 18 in the earlier agreement; chapter 20 in NAFTA) have been used only six times by the end of 1996. Well over sixty cases brought by one or the other government have been handled by panels under chapter 19 covering anti-dumping and countervailing duties imposed by a member government. Cases dealt with a wide range of commodities from red raspberries to self-propelled bituminous paving equipment. In these cases the panels judge whether the relevant agency correctly followed its own national rules. As revised by NAFTA, the five-member panels consist of two chosen from each side by the other side, drawn from a joint roster of professionals. They are chaired by an appointee from the third country or a neutral government, either by mutual agreement or drawn by lot. Their decisions are intended to be binding. Sometimes a panel remands a case to an agency for reconsideration; at other times the agency is overruled.

From the time when the Free Trade Agreement went into effect in 1989 to the current NAFTA, somewhat over half of the cases decided by the dispute settlement panels involved actions of United

States agencies. Both the International Trade Administration in the department of commerce (ITA) and the International Trade Commission (ITC), an independent agency, may accept applications from private industries claiming unfair competition or injury from foreign competitors' imports due to dumping or discriminatory subsidies. Both agencies investigate and then make a judgment, but their procedures differ. Only the ITC holds public hearings, although public comment may be invited by the ITA on a preliminary judgment. The president can overrule a decision for some foreign or economic policy consideration. It is the actions of these agencies which Canadian exporters most fear. (There are Canadian counterparts to these agencies, but they have fewer cases.)

The office of United States trade representative (USTR) directs its gaze towards opening foreign markets to American exporters. However, it occasionally involves itself in trade disputes arising from the other agencies' decisions. In the wheat and softwood lumber disputes between Canada and the United States (to be examined later), it vowed to monitor how well the bargains favoring the United States were being observed. Although all these agencies are authorized to initiate cases themselves, most of their activity is in response to complaints submitted by particular private interests. They may be deemed of sufficient national concern so that the USTR implements section 301 (and for a time super 301) of the Trade Act of 1974 listing for possible retaliation those countries alleged to be unfairly impeding imports from the United States. This amounts to a unilateral extension of United States trade rules, although the effect can sometimes help to free international trade. Canadians have seldom been injured by USTR action, but they feel the threat just the same.

Since the 1980s members of congress have been playing a more and more prominent role in determining trade and environmental rules, often to the disadvantage of Canada. The most egregious example is the Helms-Burton law, attempting to punish foreign firms for doing business in Cuba. Sometimes, however, congressional committees not only projected some specific domestic interest; they also watched over how some environmental obligations were being carried out. Although usually operating behind the scenes, members of congress and congressional committees sometimes influence the actions of the administrative agencies.[11] The ITA is occasionally sensitive to the constituents of members of the ways and means committee of the house of representatives. Congressmen from North

Dakota were actively involved in the Canadian wheat case (discussed below). Very publicly, congressional committees sometimes hold hearings on how particular aspects of the trade agreements have been carried out. There are times when congress has passed legislation which violates the various trade agreements entered into by the United States. Occasionally this occurs when a legislator slips a provision favoring a special interest into a bill which then passes without attention being drawn to the item. In general, congress is more inclined to be protectionist while the administration inclines towards free trade. Helping to ameliorate controversies and keeping an eye on the trade and environment agreements are the regular meetings of the Canada-United States Interparliamentary Group.

Other administrative agencies may also participate in a trade issue. For example, the two countries' agriculture departments had planned to fulfill the Free Trade Agreement provisions for mutual acceptance of equivalent standards by omitting duplicating meat inspections of each other's exports at the border. The effort was stymied by other government agencies and private opposition.[12]

Difficult to implement is the free trade obligation to give "national treatment" to firms of the other party in bidding for government procurement contracts. States and provinces often discriminate not only against foreign firms but also, especially in the case of provinces, against their own country's subnational units. Market incentives presented to desired industries operate similarly. Canadian firms are at an inevitable disadvantage because of the much larger number of American suppliers competing for government purchases.

Connected to NAFTA but with a different set of objectives, involving different agencies, is the North American Agreement on Environmental Cooperation. A hybrid arrangement, it established a trilateral Commission for Environmental Cooperation (CEC) with a governing council composed of the principal environment officer in each government, a central secretariat, and a joint public advisory committee. The connections with trade are minimal. They include advising the Free Trade Commission on environmental matters. The critical trade connection relates to disputes which might arise if a party's failure to enforce its environmental rules is alleged to harm another party's trade. If other less drastic ways fail to settle the dispute, trade sanctions may ultimately be imposed. In the brief life of the CEC, Canada's environmental record has not been challenged

by one of its partners. Nevertheless, just as it is under scrutiny, so is the record of the United States and Mexico so far little challenged.

The CEC's activities resemble those of the other environmental organizations, including conducting studies and undertaking various forms of public relations relating to the parties' obligations. A "Permanent Working Group on Environmental Enforcement and Compliance Cooperation" includes federal, state and provincial officials. It helps prepare annual reports on the parties' progress in protecting the environment and examines specific problems, the stress being on information-sharing and other forms of cooperation.

Although in both Canada and the United States several federal agencies may implement some environmental rules, the main actors are the United States Environmental Protection Agency (EPA) and Environment Canada. In both governments there is the inevitable jurisdictional rivalry between domestic agencies; as a relative newcomer in the Canadian government, Environment Canada has had to try hard to maintain its status. It has been aided by the existence of the various international environmental agreements to which Canada is a party.[13] Because international agreements are involved, both the U.S. department of state and Canada's department of foreign affairs and international trade have their own officials concerned with environmental issues, but their tasks are consultation rather than administration.

Other agencies with responsibilities for particular aspects of the environment include those dealing with fish and wildlife and energy. Their functions may involve different bilateral (and multilateral) agreements, for example, the 1917 bilateral treaty protecting migratory birds and the multilateral Convention on International Trade in Endangered Species. The principal bureaucratic restraints on environmental officials are likely to be exerted by budget and treasury agencies, whether in the United States or Canada.

Coordination, so necessary if an ecosystem approach is accepted, became a real problem in carrying out the Great Lakes Agreement. Here the International Joint Commission (IJC) has played an important role, even though its only administrative responsibilities are to monitor the implementation of the Agreement and to advise the two governments. Composed of three appointees from each country, IJC members are expected to act neutrally, not to represent their respective governments.[14] Under IJC impetus, the EPA eventually adopted an elaborate guidance plan for improving

all aspects of the Great Lakes environment on the American side. This plan is to be carried out by a number of agencies, including the coast guard, the army corps of engineers, the national oceanographic and atmospheric administration, the department of agriculture, and the fish and wildlife service of the department of the interior. Eight state governments are also involved.

Although its Great Lakes responsibilities are currently the major concern of the IJC, its older tasks under the Boundary Waters Treaty of 1909 continue, i.e., investigating the facts and recommending action on specific trans-border environmental problems referred to it by the member governments. The IJC can so interpret a reference as to broaden its environmental implications. The commission staffs investigations with personnel from federal, state, and provincial operating agencies from the two countries, in addition to other experts. Officials seconded for IJC functions are to act independently of their bureaus, but their expertise and position in their own agencies means that their recommendations under IJC auspices are likely to be carried out later.

In addition to such associations between American and Canadian bureaucrats, other trans-national ties are very common among middle-level officials, whether environment or trade. These are contacts among individuals, and they continue over time. Personal relationships provide a kind of psychological support for agreements in which they are involved. During the Reagan administration, the first two heads of the EPA were hostile towards environmental protection, but this did not prevent the IJC, which dealt with lower-level officials, from carrying on in a cooperative fashion. While the principal obstacles to implementing agreements between Canada and the United States are to be found in the governmental system of the larger country, a serious restraint in Canada is the absence of the equivalent to the interstate commerce provision in the United States constitution. Dispute settlement rules under the North American Agreement on Environmental Cooperation could not apply to a province without its assent. Through 1996, only Alberta and Quebec had committed themselves to the Agreement's obligations. To be fully applicable in Canada, consent is necessary from provinces representing 55 percent of the country's gross national product. The federal government is thus without authority to call on its international partners for some kinds of implementation.[15]

The EPA relies on state action for carrying out some American environmental legislation. Curbs on long-range transport of air pollutants pits states in the Northeast against some Middle West states. They share the plight of eastern Canada because of the prevailing winds blowing from polluting Middle Western power plants. While the federal agency has the upper hand, the states are still jealous of their prerogatives and are not always cooperative with the EPA or other states.

Divided authority has not prevented provinces and neighboring states from a variety of cooperative arrangements. Long before the Clean Air Act was passed in the United States, New England state governments and neighboring provincial governments agreed among themselves to combat acid rain. Annually, the International Great Lakes-St. Lawrence Mayors Conference meets to review their riparian communities' environmental challenges.

Nongovernmental organizations (NGOs) also play a role in implementing agreements, if indirectly. Environmental associations closely watch over how governmental agencies perform. Among their operations, lawsuits to compel a relevant agency to carry out its duties are powerful implements. Granted, the eyes of the NGOs are primarily on the national agencies, not the international agreements. Environmental conditions around the Great Lakes are the concern of a great many associations, private as well as public, including agencies with Great Lakes responsibilities, who also cooperate among themselves in line with the binational international agreements.

In environment disputes, a controversy is unlikely over the choice of forum, bilateral or multilateral, since they usually concern only border issues between the two partners. Where an environmental dispute might also involve trade, NAFTA specifically gives precedence to certain international environmental organizations. When trade alone is concerned, a choice of venue can sometimes permit a party to avoid a bilaterally agreed-upon rule. Canada's supply management systems were ultimately outlawed in the Uruguay Round establishing the WTO. Quotas were to be converted to tariffs, a process know as "tariffication." When Canada then imposed very high tariffs on products covered formerly by supply management programs, the United States declared the action contrary to NAFTA. The Americans won the choice of forum to decide the dispute but lost the case. The choice between the North American forum and (earlier) GATT or now the WTO is usually less controversial. The regional

trade agreements specified that a dispute could be handled under either's auspices, but once begun had to continue with the procedures of that organization. The United States has usually chosen the world organization when the issue appeared to affect other countries besides Canada. Still, the choice may be made on the basis of expected advantage.

III. WHAT KINDS OF RULES?

The trade and environment commissions have regulations as to how they should operate, establishing, for example, the scope of their activities and their responsibilities. The parties may have accepted a specific injunction, e.g., eliminating customs user fees. But the trade and environmental agreements tend towards declarations of intent and guidance rather than command. Especially with respect to the environmental agreements, the rules involve cooperation and collaboration rather than prohibition of particular kinds of behavior, such as the ban on export taxes. The rules outline classes of events, specifying those combinations of circumstances to which particular actions apply.[16] Through the environmental organizations, the partners may "sunset" certain practices such as jointly agreeing to phase out the use of specific toxic chemicals. It is up to the relevant national agencies to fill in the details as they carry out their administrative responsibilities.

Nevertheless, the behavior of the national agencies may be modified by the roles assigned to the commissions of the binational agreements. A principal function is monitoring. The NAFTA Commission's supervision is aided by particular committees (composed of national officials) who monitor and report on specific issues. Private groups are also consulted, and business interests can be counted on to keep an eye on those rules important to them.

Multilateral environmental organizations commonly monitor but depend largely on information supplies by national agencies.[17] In contrast, North American environmental organizations have more ways to influence implementation. That high-ranking national officials who are responsible for environmental affairs in their respective governments head the organization of NAFTA's Agreement on Environmental Cooperation and the Air Quality Agreement strengthens the monitoring functions of these organizations. The independent composition of the IJC gives it increased opportunities to be a watchdog, which the commission has not hesitated to grasp.

The IJC supports its monitoring through two advisory boards, the Great Lakes Water Quality Board and the Great Lakes Science Advisory Board. Under their auspices, extensive investigations which include data collection, research, and evaluation have occurred. A regional office in Windsor, Ontario, provides technical assistance.

Twice in recent years the United States government has sought to rein in a tendency of the IJC to spread its advisory activities towards operating functions. On the second occasion the 1987 protocol expanded the IJC's functions to monitor the two governments' efforts to reduce airborne sources of toxic materials and contaminated groundwater, but it also limited the IJC to evaluating progress in achieving the various plans' objectives.[18]

To make monitoring effective, all the North American agreements require the commissions to publish reports. The CEC annual reports include the member country reports on implementation of their commitments. The IJC not only reports to the department of the state and Canada's foreign affairs ministry, it also issues elaborately designed and detailed reports to the public on the progress of programs and the situation regarding specific pollutants. In recent years, the EPA has in turn issued similar reports both to congress and to the interested public. Prepared in partnership with Environment Canada, these give much specific information on the state of the Great Lakes ecosystem.[19] In the Air Quality Agreement, the IJC's functions are limited to obtaining comments, including from public hearings. They are then passed on to the Air Quality Committee and to the public. The IJC can also receive references from the committee for effective implementation of the agreement.

In the late 1980s, the IJC recommended to the two governments a more activist program which was accepted in the 1987 protocol. Following it, the IJC identified forty-two "areas of concern," polluted urban areas around the Great lakes, five of them in Canada. "Remedial action plans" were worked up by local interests in each community composed of officials and private groups or individuals. They identify the specific problems and suggest cures. These are examined by the IJC and returned for revision and ultimately for implementation. This collaborative problem-solving is necessarily a very slow process, but it ensures that eventually the problems of pollution will be tacked by those who are most directly affected by them.

In connection with the IJC's biennial reports on Great Lakes water quality, the commission has held very large conferences co-sponsored by private organizations. Such meetings increased public understanding and support; they also gave interested groups a voice in Great Lakes issues. The IJC's public relations activities were another way of prodding operating agencies into action, if indirectly.[20]

A more direct way is the setting of standards and targets which sometimes are embodied in the agreements themselves, such as the annex to the Air Quality Agreement which committed the parties to specific reductions in the emissions of sulphur dioxides and nitrogen oxides in a specified period to time. NAFTA laid down standards for the protection of intellectual property and defined "domestic content" for the automobile trade and for textiles. More commonly, the agreements provide for setting up working parties and task groups to develop more specific rules related to their general aims including standards for such items as animal and vegetable health as these relate to trade among the parties.

All the agreements contain rules on how to handle disputes. The procedures in NAFTA, which ensure neutrality and set specific time limits for various steps, are a particular safeguard for the smaller partners' trade. The chapter 19 process was originally supposed to be a stopgap until a subsidies code was adopted. It later became a temporarily acceptable way to deal with the absence of such a code, blocked by American reluctance to proceed. Although a reference to the IJC to find the facts in a particular controversy relating to boundary waters ends only in a recommendation to the member governments, it is customary for them to accept the judgment.

Aside from the functions outlined above, the agreements contain other provisions calling upon the parties to follow specified procedures. For example, the relevant agencies in each country are to exchange information with their counterparts. They are to give national treatment to investors from the other parties, i.e., not to discriminate in favor of their own. They are to notify the other governments when new policies are adopted which will affect the trade or environment interests of the other. Because there is so much personal interchange and mutual knowledge among the American and Canadian officials dealing with trade or the environment, this formal obligation may already have been observed informally, or at least made less necessary. The obligation is not always observed,

especially by congress. Nevertheless, including in the environment agreements the promise to take the other country into account in environmental assessments is a useful reminder. For Canada it was important that United States agencies follow agreed-upon procedures, even when the object was to enlarge the pie rather than to divide it. A comparison of the ways of implementing the North American Free Trade Agreement and the Great Lakes Water Quality Agreement appears in the Appendix.

IV. "ENFORCING" THE RULES

The Canadians failed to secure "binding" rules about trade remedy practices during the Free Trade Agreement negotiations and had to settle for the novel method of dispute settlement described already. This raises the question of what "binding" means. Both Canada and the United States have regularly accepted the decisions of chapter 19 panels. Sometimes the issue was revived by further negotiation. Or the losing government could say to the claimants, "we tried," and was then relieved of its responsibility. Under the agreement, there is no appeal. The extraordinary challenge procedure is only supposed to be available in case a member is alleged to be guilty of materially violating the rules of conduct, or the panel has failed to follow the agreed-upon procedures, or clearly exceeded its authority. The three attempts by some frustrated American claimants to misuse this procedure as a measure of appeal have failed. The easy reply to how to enforce a rule is to impose a penalty for deviation. Trade sanctions are a favorite instrument of American policy makers seeking to impose a rule on others. (Business enterprises usually do not support this predilection, because they lose markets.) Partly because it is vulnerable, Canada has been leery of this method of enforcing an international environmental agreement. With Mexico it held back when American environmentalists sought to put "teeth" into NAFTA's environmental provisions. Canada then succeeded in gaining acceptance of an exceptional procedure if a panel were to determine that a penalty be imposed for failure to implement a dispute settlement. Unlike the United States and Mexico, a federal court would apply the penalty in Canada's case. (The whole subject of environmental law enforcement was included in the Agreement because of Mexico's dubious record.) Meeting Canada's and Mexico's concerns, the supplementary agreement (Article 17) states that "nothing in this Agreement shall be construed

to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party." Since panels can only examine the proper enforcement of a party's own laws, Canada's lack of some of the more stringent environmental regulations current in the United States is not subject to the dispute settlement procedures.

Not just difference in vulnerability explains Canadian reluctance to accept sanctions as a method of enforcement. Canadians and Americans have a different style of preceding to ensure compliance. Americans are notoriously litigious and tend to rely on lawsuits and courts to enforce rules. Canadians prefer a more flexible approach, stressing consultations between government authorities and the affected interests in order to arrive at some accommodation. They would rely on general principles and self-interest to achieve the desired result. Depending upon guidelines rather than sanctions would avoid the "endless" litigation the Canadians see in the United States practice.[21]

Trade sanctions are a kind of negative "reciprocity." Typically, the trade rules provide for withdrawal of benefits otherwise available in the contract if a party fails to carry out an obligation. They are a form of threat. With or without a formal agreement, trade retaliation is difficult to practice in Canadian-American relations because of the diversity and importance of bilateral trade. Many American business interests would be held hostage if the United States were to play the tit-for-tat game. But when American officials have invoked the possibility of pursuing a trade sanction, the effect could be intimidating. Usually the bluff is called. If the complaint were to be a claim of pollution, there would be no possibility of reciprocating in kind; hence the environmentalists' desire for trade sanctions.

More effective in Canadian-American relations are positive forms of reciprocity. Since the agreements considered here contain provisions for information-sharing, consultation, and promises to cooperate, they depend on good faith for implementation. The common interest is met by self-enforcement bolstered by tradition and habit. This is especially marked in the case of the ICJ, due to its staffing method.

Backing up good faith, reports to the public about a member's back-sliding may shame that government into compliance. But the United States is notoriously deaf to complaints about its own shortcomings regarding trade policy. In any case, the government is

sufficiently fragmented so as to weaken the importance of good reputation. Still, if failure to comply with an accepted obligation impedes future accords, monitoring and reporting can be effective. The need for further agreements is ever-present in Canadian-American relations.

One obstacle to verifying the fulfillment of a trade agreement promise lies in the diversity of standards, which can provoke controversy. Those dealing with environment, sanitation, and other social concerns sometimes hide trade protection for a domestic industry. How compare standards across national boundaries to determine if they are legitimate? NAFTA has numerous working groups seeking to harmonize various kinds or to reconcile different but compatible national standards. For example, agricultural groups have been working on animal and plant health, veterinary drugs, pesticides, and labeling. *Ad hoc* working committees for specific issues can be set up by the trilateral Committee on Sanitary and Phytosanitary Measures. Under a Committee on Standards-Related Measures, there are subcommittees dealing with land transportation, telecommunications, automotive standards and on labeling textiles and apparel goods. There are practical difficulties in relying upon monitoring to implement environmental agreements which are not present in trade accords. When an ecosystem approach is adopted, non-point sources of toxic substances are difficult to pin down, as the term suggests.[22] How evaluate "progress" in making the Great Lakes safe to fish in, swim in, or provide potable drinking water? The IJC has been very active in promoting ways to measure mitigating efforts.

When specific targets are set for reduction of specific pollutants, such as particular toxic chemicals listed in Annex 1 of the Great Lakes Water Quality Agreement of 1978 as amended, the environmental authorities know what they are expected to accomplish. Requiring reports alerts them to their responsibilities. But bureaucratic procrastination is well-known and does not distinguish Americans from Canadians, although the greater size of the American agencies is a special hindrance.

Transparency is a hallmark of the Canadian-American agreements. This has enabled NGOs more effectively to prod their respective federal officials into implementing domestic legislation whether or not also an international obligation. These efforts may eventuate in congressional hearings and / or general accounting office reports at congressional request. Both the IJC and NAFTA's CEC actively

promote public participation, including binational conferences. Such efforts bring Canadians and Americans together to further common aims.

A positive kind of anticipated reciprocity is embedded in the Great Lakes Water Quality Agreement. Since the waters of the lakes recognize no national boundaries, they cannot be conserved or improved without explicitly-expressed common goals and rules to reach them. One party's actions are based on the expectation that the other party will take like action. The Air Quality Agreement embodies a similar kind of reciprocity. So should the anticipated CEC legal instrument which is to outline procedures for an environmental impact assessment when a project is planned on one side of the border that may have adverse effects on the other. As noted in the five-year review of the agreement made in 1996, the two governments had difficulty in agreeing on a formal method of assessment due to differences in their laws and regulations.[23]

Will the next step in reciprocity be trans-national pollution trade credits, as they are now part of the American system of inducing individual companies to reduce emissions of pollutants?[24] This measure could help to meet the most serious obstacles to implementing the environmental agreements: adequate funding. Money became a very politically controversial issue when the 104th congress began its efforts to down-size environmental protection in the United States. At least as serious were the actions of the Ontario government under the Conservatives to cut funding for the province's environmental programs. On the federal level the Canadian government, faced with a colossal budget deficit, also cut its programs to the bone. In the mid-nineties both federal governments were devolving responsibilities on to provinces or states. At the subnational level, financial resources are often lacking, thus on each side further imperiling the implementation of the international agreements.

In such a context, the fact that environmental officials of the two countries and even their trade officials might act in a collegial fashion rather than as adversaries in seeking to implement their agreements was less decisive than the behavior of their political masters. The rules they were to follow failed to reflect the "intensity of preference" which regulations can sometimes communicate.[25]

V. OUTCOMES

If and when rules were followed, were the results "fixed and

fair," as the Canadians hoped, and thus not affected by unequal power? Those dealing with trade need to be distinguished from those relating to the environment in the bilateral agreements considered here. The former tended to proscribe, while the latter mostly prescribed. The parties are generally merely guided by the environmental rules, but the trade rules had a compelling aspect not always accepted in practice. Still, specific trade cases have been handled on their merit in an evenhanded manner regardless of nationality and the decisions carried out. The rules narrowed the range of acceptable alternatives, restraining some arbitrary United States behavior. Order and predictability benefitted business in both countries. Confrontation on new issues continued, and some disputes still were tinged with ideology.[26] There are a few egregious exceptions, described below, where American muscle was all to evident. At one period Canadians complained that the dispute settlement procedures were being followed all too thoroughly. Some American petitioners used every possible step to the exhaustion of their adversaries.

Removing tariff barriers enhanced Canadian exports to the United States, just as it increased American exports to Canada. For whatever causes, from 1991 to 1996 Canadian exports to the United States more than doubled.[27] Much of this did involve intra-firm or intra-industry, especially in automobiles, an integrated industry under the Auto Pact of 1965. The principal losers were those enterprises which depended upon protection to be profitable. A considerable reshuffling of industrial activity in Canada took place, painful for some, but generally making the Canadian economy more competitive in the global marketplace.

American trade officials continued to gnaw away at the exclusion of Canadian cultural industries from the trade rules but were unsuccessful even in the Uruguay Round of GATT. This time the French saved the Canadian cause during the negotiations. But when the Canadians tried to exclude an American country music program on television in favor of a newly-created Canadian country music station, consultations ended in a kind of merger. On the other hand, a very high and discriminatory tax and postage rate levied on "split run" foreign magazines (in this case *Sports illustrated*) prompted the United States to take the issue to the WTO. Thus the United States evaded the NAFTA exception for cultural industries. The Americans

won their case when the dispute settlement panel ruled that Canada had violated international trading rules.

Among the two or three trade cases which became politicized, that dealing with softwood lumber stands out. The controversy went on for almost fifteen years, ending in a political agreement in early 1996 which all too clearly revealed Canada as the weaker partner. The industries on the two sides of the border were highly competitive for a large American market, and in Canada's case represented a vital segment of the national economy. During this period the Canadian share of the American market grew markedly. Differences in the way the two countries determined prices led the American industry to claim unfair subsidy was responsible for Canadian inroads. In the several cases they brought, they lost to the Canadian side. Unfortunately for the image of impartiality, the split for and against the American industry among the members of the extraordinary challenge panel was along national lines. The American coalition of softwood lumber companies persisted, culminating in high level negotiations. As a result, the Canadian government agreed to a quota on exports with penalties of rising taxes on quantities above the quota. This was a violation of the provisions in NAFTA against taxes discriminating between domestic and foreign sales. In return Canada received a promise that no further actions would be attempted against their softwood lumber industry for five years.[28]

The negotiations took place in a complex political situation involving many extraneous pressures, but the most potent were persistent senators who held very powerful positions in congress. They represented the region where softwood lumber companies were a leading part of the economy. The major consumers, home builders and building material dealers, were unable to counter their influence at the time, although they continued to try. The Canadian government was put in the awkward political position of having to allocate the quotas among the four main exporting provinces. Apparently the government was willing to pay the political price for ending the controversy rather than trying to change the method of pricing lumber which might hurt exports to countries other than the United States, or to end the ban on exporting logs which protects Canadian mills. (Although there were significant environmental aspects to the lumber trade, not much was made of one factor in the American firms' cost; stricter United States rules for forest protection which put the American firms at a competitive disadvantage.) By the

fall of 1996 Canadian exports had exceeded the quotas, thus costing many millions of dollars in penalties, but the booming American market was so attractive that the penalties did not deter large Canadian lumber companies.

The softwood lumber industry in the United States had very deep pockets to pursue its cause beyond the rules. Another persistent industry, also highly competitive with Canadian producers, involved pork and live hogs. However, after all the procedural rules had been exhausted, so apparently was the industry in its efforts to procure protection.

Almost as notorious an example of American muscle-flexing as the softwood lumber case is that involving the very competitive wheat producers. The contest was essentially over market share but was also over the Canadian wheat board. This institution, also under attack by some Canadian growers, has long been the target of American competitors for its role in marketing Canadian wheat (and barley) through a government monopoly on exports. In the early 1990s Canadian exports to the United States surged to fill a vacuum left by American subsidies for wheat exports as well as by crop failure. Pressed hard by congressmen from the grain-growing region whose support for approving NAFTA was important to the Clinton administration, the United States imposed a one-year quantitative restriction on imports of wheat and barley from Canada with a punitive tariff on amounts exceeding the quota. This was contrary to the FTA in spirit as well as letter. The memorandum of understanding included a binational commission of ten, who reported in August, 1994, shortly before the expiry of the ban. Their recommendations appear to have been less influential than other developments which permitted attrition of the dispute. The WTO agreement changed acceptable methods of restricting imports and the United States export enhancement subsidy ceased.

Meanwhile a surge in world grain prices provided enticing markets for Canadian grain growers in addition to the American market. The Canadian wheat board remained in operation, although to satisfy some Canadian grain interests its rules were somewhat modified to make its operations more transparent. American pasta makers could again be assured of securing the highly-valued Canadian durum which was an important element in the wheat dispute.

Intense competition between Canadian and American brewers produced another heated contest, but in this one the two governments were more evenly matched even when the issue became politicized. The Free Trade Agreement did not remove existing restraints on the trade in beer, and thus the rules to be applied were mostly under the aegis of GATT. American brewers strenuously employed GATT procedures to enforce access to Canadian markets. Canadian beer interests have fought back through similar means, winning a GATT decision against trade restraints imposed by some American states. Gradually the barriers the provinces had erected against each other as well as against foreigners began to fall. While the Canadian government secured support from a multilateral organization against some United States practices, it also felt the pressure from other members to modify its own system.[29] This time consumers won.[30]

In contrast to trade disputes, when the IJC dealt with a boundary waters disagreement it often was able to find some gain for both sides. But this opportunity was not always available. In the long history of references to the IJC following the Trail Smelter case in the 1930s, one instance stands out where the American side would clearly lose and the recommendation was not decisive. The proposed Garrison diversion of the Missouri river in North Dakota, intended to provide irrigation and land reclamation, was substantially altered after years of contention. The IJC determination that carrying it out would harm Canadian waters by introducing destructive fish biota was only one among many factors in hindering a controversial development. The IJC finding did gain time as the Canadian government faced a complicated tangle of American political interests.[31]

One environmental result of the Great Lakes Water Quality Agreement can easily be identified: the very great reduction of the phosphorous content of the water, thus ending its injurious effects. Other physical outcomes are harder to trace to the guidance and monitoring of the environmental organizations. Generally, the rules involved are elaborated separately by each country and are subject to numerous domestic pressures. "Responding" to international recommendations may be undocumented and very informal, as part of an agency's reaction to a number of influences. In the case of the Air Quality Agreement, the EPA carried out its responsibilities under the Clean Air Act of 1990: the acid rain reduction requirements were

carried over as the American commitment in the 1991 Air Quality Agreement.[32]

While administering their agencies, American and Canadian environmental officials do routinely exchange data. They sometimes work together on joint undertakings. Progress toward deep reductions in acid rain, for example, is regularly measured and reported. The CEC is encouraging the partners to carry out their commitments. In the mid-nineties the principal obstacle to greater effectiveness is budgetary, as the responsible governments radically reduced funds for these activities.

In addition to absence of political will reflected in inadequate funding, a further problem lies in the technical difficulties of measuring progress. Thus an important step has been taken in carrying out the Great Lakes Water Quality Agreement by IJC-sponsored research to identify indicators of change. For environmental problems as well as for trade issues, comparability of data which are to be exchanged also has been improved. These activities take time and continual pressure to overcome bureaucratic obstacles. The Great Lakes Initiative organized by the EPA apparently needed a strong push, including a lawsuit filed by an American environmental association. Nevertheless, it was an accomplishment to arrange for the coordination of several states with the federal government to provide for specific guidance in promoting an ecological approach.

That the oldest agreement, that on the Great Lakes, can show more practical effect than the newer ones indicates the importance of experience. The newest, the CEC, has taken some years to go beyond the preliminary stage. Among its limitations for practical results is the ruling that its dispute settlement procedures are not available for preventing future acts. American environmental groups failed in their effort to apply its procedures in their fight against the "salvage lumber" legislation in 1995. At first, the CEC concentrated on providing services and stimulating interest rather than proposing specific rules. (The initial dispute settlement panels involved Mexico.)

All the environmental organizations have been successful in laying out programs, devising strategies and setting targets. That neither party has lived up to some of the declared objectives is regularly pointed out by the IJC. Its role as "official nagger" has been particularly evident in the campaign to "virtually" eliminate persistent toxic substances from the Great Lakes. Towards that end the EPA and Environment Canada have jointly prepared a strategy

which is in line with principles already worked out by the IJC. The commission's efforts to arouse the affected public to remedial action in their local "areas of concern" may prove a particularly effective program over the long run, depending on genuine local interest. Results are beginning to be discerned in some localities.

In their reports to the IJC, the governments have been able to claim progress in some areas. With respect to the Great Lakes, sunsetting the use of PCBs and reducing pollution from pulp and paper mills have been cited. As to air quality, the United States could report for 1996 a sharp decrease in sulphur dioxide emissions from the worst sources--large coal-fueled electric utility plants. Progress in reducing nitrogen oxides, the other major component of acid rain, was still only anticipatory. Very extensive scientific studies, many of them jointly conducted, pointed towards targets established by the Air Quality Agreement.[33] In April of 1997 the two governments also agreed to address other pollutants, including ground-level ozone, air toxics, and particulates.[34] The required five-year review of the Air Quality Agreement concluded that there was more work to be done to improve air quality. These efforts, along with other bilateral cooperation, were praised by the Organization for Economic Development's progress report on the United States environment in 1996.[35]

"Form matters." John Ruggie's observation concerning multilateralism applies here as well.[36] The very existence of the bilateral organizations meant that the Canadian government could exercise the right to participate in dealing with specific matters of mutual concern. Thus it had a voice in the outcome, if effective sometimes only as a reminder of future behavior. For example, in March of 1997, the Canadian government added its own critique to the comments made by interested American groups when the EPA opened up for public comment its proposed enhanced requirements for improving air quality.[37] Canadian ozone standards were higher than those in the United States.

Does the existence of rules make a difference? A clue to the answer could come from contrasting the conservation of fisheries in the Great Lakes with the situation in the adjacent coastal waters of Canada and the United States. There is clear evidence that some kinds of fish are staging a come-back from danger of extinction in the Great Lakes following (if not necessarily because of) implementation of the Great Lakes Water Quality Agreement and a related 1955

agreement setting up the Great Lakes Fishery Commission. In contrast, valuable fish species in both the Atlantic and Pacific coastal waters are at dangerously low levels, and in some areas fishing has been closed completely in an effort to revive them. A century of aborted efforts to regulate these fisheries by bilateral agreement has been marked by only some rare instances of success. The dual tasks of limiting catches to conserve the resource and deciding on shares of legitimate catch have run into almost insuperable political obstacles. A 1978 treaty on east coast fishing was not ratified by the United States senate due to opposition from the New England fisheries. It would have established a method of joint management of the stocks, on the Grand Banks and Gulf of Maine within the two countries' exclusive economic zones (EEZs). No further cooperative regulation was later attempted, and the ill effects were aggravated by the lack of control of overfishing "straddling stocks" (fish moving in and out of the EEZs).

The Pacific Salmon Convention of 1985 required quotas to implement its provisions, and these could not be set because of the state of Alaska's recalcitrance. Not only does Alaska have jurisdictional powers to foil the other American states and Canada (especially British Columbia), it also is almost literally awash in some kinds of salmon and its fishermen are in a geographically strategic position to catch salmon headed for the Fraser river in Canada. The fishing industry is a very important element in the Canadian economy, while it is primarily of regional concern only in the United States. Thus Canadians have been the initiators in efforts to manage the various fisheries, and they are the principal losers in the absence of rules. But no one won. (Other factors are also partly responsible for the calamitous declines in commercial fish; this is a global problem, requiring multilateral measures to alleviate.)

VI. CONCLUSION

Depending on circumstances, the rules of trade and environmental organizations have indeed protected some Canadians and some interests of the Canadian public when their government dealt with the giant neighbor on their behalf. When the Canadian government was able to influence the outcome, were there other factors than the rules of bilateral organizations which could explain the results? It is hard to avoid the reasoning, *post hoc, ergo, propter hoc.* To complicate matters, some trade issues have also been dealt with

multilaterally. In cases taken to GATT and its successor, the WTO, Canada has had no provable advantage compared to cases dealt with bilaterally.

Across the border, Canada had allies with a common interest in a trade or environmental issue, whether this involved competition or cooperation. They were able to press their own cause on some part of the United States government regardless of bilaterally agreed-upon rules.[38] Self- enforcement meant that Americans helped some Canadian interests when they helped themselves. If an issue became highly politicized due to strong constituent pressure or other electoral considerations, the existence of rules provided little protection outside the appeals to legitimacy. Further, the Canadian government was sometimes only an interested though vocal bystander when there was a tug-of-war between bureaucrats and congressmen regarding application of a particular rule. However, the Canadian government's ability to protect the environment--or meet trade obligations--was sometimes curbed more by provincial authority than by American behavior.

Rules for openness and for standardization as well as procedures for joint planning and setting targets mitigated the inequality of influence between the parties. The commitments to report and the publicity about the governments' enforcement efforts helped to make American agencies conscious of Canadian interests otherwise easy to overlook.

Obstacles to fuller compliance with agreed-upon rules were lack of funding, jurisdictional weakness respecting subfederal governments, and the cumbersome, fragmented character of the American government system. Trade issues involving industries which were highly competitive across the border were more difficult to settle than those where the economic activity was integrated. On occasion the ability of some American industry to push its claim to the very limit of the rules, exhausting Canadian patience and pocketbooks, revealed the difference in power to affect the outcome. Instances of unilateral behavior by the United States government might be more frequent, but the Canadian government has also acted to make its own rules as well, although not within the context of the agreements considered here.[39]

Trade and environment issues involve specific groups and localities, whatever might be the "national" interest claimed. Thus the overall preponderance of the United States government is less

significant to managing a particular transnational problem. Instead, agreed-upon rules break up the bilateral relationship into segments in which Canadians can influence results. Habit and tradition make the operative officials more likely to follow the rules, especially as they know that future situations will arise when this is to their country's advantage.

Although the power deriving from a government's good reputation is hard to estimate, being regarded as trustworthy is valued by its individual officers. In the Canadian-American context, personal relationships among officials across the border strongly influence comity and mutual understanding. They are also inclined to follow some unwritten rules, such as avoiding linking unrelated issues or resorting to retaliation which can hurt potent interests in their own country. The openness of the American governmental system and the Canadians' uniquely easy access to domestic interests in the United States which coincide with their own have provided opportunities to exert pressure for observing the rules.

Whatever the relative weight of rule observance, both countries have benefitted from greatly expanded continental trade, cleaner air, and restored water quality in the Great Lakes.

ACRONYMS

CEC	Commission for Environmental Cooperation
EEZs	exclusive economic zones
EPA	U.S. Environmental Protection Administration
FTA	Free Trade Agreement
GDP	gross domestic product
GATT	General Agreements on Tariffs and Trade
IJC	International Joint Commission
ITA	U.S. International Trade Adm. (in Dept. of Commerce)
ITC	U.S. International Trade Commission
NAFTA	North American Free Trade Agreement
NGOs	non-governmental organizations
USTR	United States Trade Representative
WTO	World Trade Organization

NOTES

[1] Allan Gotlieb, *I'll Be With You In A Minute, Mr. Ambassador*, (Toronto: University of Toronto press, 1991), p. 150.

[2] Numerous other bilateral agreements on environmental subjects, notably wildlife conservation, are not examined here. That trade and environment issues often intersect has been examined, among other works, in John Kirton and Sarah Richardson, eds., *Trade, Environment & Competitiveness* (Ottawa: National Round Table on the Environment and the Economy, 1992); John H. Jackson, "World Trade Rules and Environmental Policies: Congruence or Conflict?" in *Washington and lee law Review*, 40 (Spring, 1994); Patrick Low, ed., *International Trade and the Environment* (Washington, D.C.: World Bank, 1992); Jagdish Bhagwati, "Trade and the Environment," in *International Trade*, 1992 (Geneva: General Agreement on Tariffs and Trade, 1992); and K. Anderson and R. Blackhurst, eds., *The Greening of World Trade Issues* (London: Harvester Wheatleaf, 1992).

[3] Friedrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, (Cambridge: Cambridge University Press, 1989), pp. 10 and 91.

[4] Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, (New York: Columbia University Press, 1977), pp. 54 and 56.

[5] Robert O. Keohane, "International Institutions: Two Approaches," *International Studies Quarterly*, vol. 32, No. 1 (Dec. 1988), p. 383

[6] John H. Jackson, *The World Trading System*, (Cambridge; M.I.T. Press, 1989), pp. 85-86. He used the contrast often.

[7] Kratochwil, p. 52

[8] Observed, among others, by Judith Goldstein and Robert O. Keohane, eds., *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, (Ithaca; Cornell University Press, 1993), pp. 20-21.

[9] Among accounts of the Canadian approach to the Free Trade Agreement, see G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story*, (Toronto: Stoddart, 1991); Gilbert R. Winham,

"Why Canada Acted," in Wlliam Diebold, Jr. ed., *Bilateralism, Multilateralism, and Canada in U.S. Trade Policy*, (Cambridge; Ballinger, 1988); Michael Hart, Bill dymond, and Colin Robertson, *Decision at Midnight: Inside the Canada-U.S. Free Trade Negotiations*, (Vancouver: University of British Columbia Press, 1994).

[10] For the Free Trade Agreement, see David Leyton-Brown, "Implementing the Agreement," in Peter Morici, ed., *Making Free Trade Work: The Canada-U.S. Agreement*, (New York: Council on Foreign Relations, 1990).

[11] For the trade agencies and their relations with congress and the president, see Judith Goldstein, "Ideas, Institutions and Trade Policy," *International Organization*, vol. 42, No. 1, Winter, 1988; Judith Goldstein and Stefanie Ann Lenway, "Interests or Institutions; An Inquiry into Congressional-ITC Relations, *International Studies Quarterly*, Vol. 33, No. 3, Sept. 1989; Wendy L. Hansen, "The International Trade Commission and the Politics of protectionism," *American Political Science Review*, Vol. 84, No. 1, march 1990; and Wendy L. Hansen and Kee Ok park, "Nation-State and Pluralistic Decision Making in Trade Policy: The Case of the International Trade Administration," *International Studies Quarterly*, Vol. 39, No. 2 June, 1995.

[12] Theodore H. Cohn, "Emerging Issues in Canada-U.S. Agricultural Trade in the GATT and NAFTA," *Canadian-American Public Policy*, No. 10, June 1992, pp. 36-38.

[13] C. Bruce Doern and Thomas Conway, *The Greening of Canada: Federal Institutions and Decision*, (Toronto: University of Toronto Press, 1994), pp. 124-25, 129, 233-34; Glen Toner, "The Green Plan: From Great Expectations to Eco-Backtracking... Revitalization?" in Susan D. Philips, ed., *How Ottawa Spends, 1994-95*, (Ottawa: Carleton University Press, 1994), esp. p. 232; Glen Toner and Tom Conway, "Environmental Policy," in G. Bruce Doern, Leslie A. Pal, and Brian Tomlin, eds., *Border Crossings: The Internationalization of Canadian Public Policy*, (Toronto: Oxford University press, 1996).

[14] An excellent review of the IJC up to 1981 is to be found in Robert Spencer, John Kirton, and Kim Richard Nossal, eds., *The International Joint Commission Seventy years On*, (Toronto: Centre for International Studies, University of Toronto, 1981). See also William R. Willoughby,

The Joint Organizations of Canada and the United States, (Toronto: University of Toronto Press, 1979), Chapters 2-5.

[15] Pierre Marc Johnson and Andre Beaulieu, *The Environment and NAFTA: Understanding and Implementing the New Continental Law,* (Washington: Island Press, 1996), Chapter 11, "A Special Regime for Canada."

[16] Kratochwil, p. 70.

[17] General Accounting Office, *International Environment: International Agreements Are Not Well Monitored,* (Washington: G.A.O., 1992).

[18] General Accounting Office, *State Department: Need to Reassess U.S. participation in the International Joint Commission,* (Washington: G.A.O., 1989), pp. 3 and 17.

[19] *State of the Great Lakes,* (Environment Canada and Environmental Protection Agency, 1995).

[20] Alan M. Schwarz, "Canada-U.W. Environmental Relations: A Look at the 1990s," *American Review of Canadian Studies (ARCS),* Vol. 24, No. 4 (Winter, 1994), pp. 492-94, 501-02 also Schwarz, "Great Lakes, Great Rhetoric," in Jonathan Lemco, ed., *Tensions At The Border: Energy and Environmental Concerns in Canada and the United States,* (New York: Praeger, 1992), esp. pp. 71-74

[21] For this tendency, see Doern and Conway, p. 131, and Seymour Martin Lipset, *Continental Divide: The Values and Institutions of the United States and Canada,* (Toronto: Canadian- American Committee, 1989).

[22] In 1987, Annex 13, "Pollution from Non-Point Sources," was added to the Great Lakes Water Quality Agreement, which included a commitment to develop watershed management plans.

[23] *United States-Canada Air Quality Agreement, Progress Report, 1996,* (Washington: E.P.A., 1996).

[24] Fredric C. Menz, "Minimizing Acidic Deposition Control Costs Through Transboundary Emissions Trading," *ARCS,* vol. 23, No. 2, Summer, 1993.

[25]Peter M. Haas, Robert O. Keohane, and Marc A. Levy, eds., *Institutions for the Earth: Sources of Effective International Environmental Protection*, (Cambridge; M.I.T. Press, 1993), p. 404.

[26] Subsequent events have generally confirmed the positive view of the dispute settlement procedures early expressed in "The Challenge of the Canada-United States Free Trade Agreement: An Assessment From Many Perspectives," the subject of a special issue of *ARCS*, vol. 21, Nos. 2-3, Summer-Autumn, 1991, especially section on "Implementation."

[27] A Toronto *Globe and Mail*, editorial, "Uncle Sam, What Deep Pockets You Have," (Feb. 24, 1997), credits the Free Trade Agreement for the greatly increased exports to the United States, already recorded.

[28] Charles F. Doran, in "Trade Dispute Resolution on Trial: Softwood Lumber," *International Journal*, vol. 51, No. 3, autumn, 1996, gives a good account of the case. See also *International Trade Reporter*, April 3, 1996, pp. 557-58, for terms and reaction.

[29] Robert E. Hudec, *Enforcing International Trade Law*, (Salem, N.H.: Butterworth Legal Publishers, 1993), chapter 11.

[30] For a description of the tit-for-tat game played about beer (through 1994), see Thomas O. Bayard and Kimberly Ann Elliott, *Reciprocity and Retaliation in U.S. Trade policy*, (Washington: Institute for International Economics, 1994), pp. 70 and 451-54.

[31] Kim Richard Nossal, "The Unmaking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," *Behind the Headlines*, vol. 37, No. 1, 1978; John E. Carroll and Roderick M. Logan, *The Garrison Diversion Unit*, (Montreal: C.D. Howe Research Institute, 1980); National Audubon society, *News Journal*, June, 1986, pp. 1 and 18.

[32] Note comments by Schwarz, "Canada-U.S. Environmental Relations," pp. 500-01.

[33] *United States-Canada Air Quality Report, 1996*, pp. 11, 13 and 23-52.

[34] At a meeting of the prime minister and president in Washington, April 7, 1997, when the two environment ministers also met.

[35] Organization for Economic Cooperation and Development, *Environmental Performance Reviews: United States, (Paris: O.E.C.D., 1996), pp. 197 and 211-12.*

[36] "Multilateralism: The Anatomy of an Institution," *International Organization*, vol. 46, No. 3, summer, 1992, p 593.

[37] Willoughby, Chapters 6-8; Peter B. Doeringer, David G. Terklas, and Audrey Watson, "Regulations, Industry Structure and the North Atlantic Fishing Industry" *Canadian-American Public Policy*, No. 22, June, 1995; Gordon R. Munro and Robert L. Stokes, "The Canada-United States Pacific Salmon Treaty," and Percival Copes, "Canadian Fisheries Management Policy: International Dimensions," in Donald McRae and Gordon R. Munro, eds., *Canadian Ocean Policy: National Strategies and the New Law of the Sea*, (Vancouver: University of British Columbia Press, 1989); Gordon R. Munro, "Evolution of Canadian Fisheries Management Policy Under the New Law of the Sea: International Dimensions" in A. Claire Cutler and Mark W. Zacher, eds., *Canadian Foreign Policy and International Economic Regimes*, (Vancouver: University of British Columbia Press, 1992); Stephen Clarkson, *Canada and the Reagan Challenge*, (Toronto: James Lorimer, updated ed., 1985), Chapter 9; Miro Cernetig, "Understanding Alaskan Mentality Key to Salmon Dispute, *Globe and Mail*, Sept. 5, 1996; "U.S. Approves New Fishing Restrictions for New England," *Greenwich Time*, May 17, 1996.

[38] Lynton K. Caldwell has noted that NGOs in many regions have developed a transnational role in monitoring international agreements, "Beyond Environmental Diplomacy; The Changing Institutional Structure of International Cooperation," in John E. Carroll ed., *International Environmental Diplomacy*, (Cambridge; Cambridge University Press, 1988), pp. 22 and 25.

[39] Allen L. Springer, "The Canadian Turbot War With Spain: Unilateral State Action in Defense of Environmental Interests," *Journal of Environment 7 Development*, vol. 6, No. 1, March 1997.

APPENDIX
SOME COMPARISONS OF THE NORTH AMERICAN FREE TRADE AGREEMENT WITH THE GREAT LAKES WATER QUALITY AGREEMENT

	Supervisory Organization	Methods of Supervision	Rule Implementation Agencies	Types of Rules	"International" Characteristics	Transparency
NAFTA	Free Trade Commission: the principal trade minister in each member government	"Consultation," including informing, mediating Monitoring Reporting Dispute settlement by special panels	National, state/provincial governments	Explicitly defined actions, usually framed as prohibitions Standards promotion	Neutral binational dispute settlement panels	Dispute settlement panels' procedures limit
GLWQA	International Joint Commission, 3 members chosen by Canadian government, 3 by U.S. government	Monitoring Reporting Recommendations from expert groups Public education Pressure for government action Facilitating local remedial action plans	National, state/provincial governments Local communities	General commitments to undertake specified kinds of measures Obligation to "cooperate" Standards promotion	IJC members and staff serve as individuals, not representatives of their governments Special transnational study groups IJC oversight of local remedial action plans	Very marked Public hearings Large transnational conferences Publications

CANADIAN-AMERICAN PUBLIC POLICY

Occasional papers on a wide range of issues in U.S.-Canadian relations

CAPP 1: April 1990 — **Canada-U.S. Relations in the Bush Era**
Joseph T. Jockel

CAPP 2: July 1990 — **Transboundary Air-Quality Relations: The Canada-United States Experience**
John E. Carroll

CAPP 3: October 1990 — **Canadian Culture, the Canadian State, and the New Continentalism**
Allan Smith

CAPP 4: December 1990 — **Forests, Timber, and Trade: Emerging Canadian and U.S. Relations under the Free Trade Agreement**
Thomas R. Waggener

CAPP 5: March 1991 — **Change and Continuity in Canada-U.S. Economic Relations**
William Diebold

* CAPP 6: June 1991 — **Trade Liberalization and the Political Economy of Culture: An International Perspective on FTA**
Graham Carr

CAPP 7: September 1991 — **If Canada Breaks Up: Implications for U.S. Policy**
Joseph T. Jockel

* CAPP 8: December 1991 — **Ogdensburg Plus Fifty and Still Counting: Canada-U.S. Defense Relations in the Post-Cold War Era**
Joel J. Sokolsky

* CAPP 9: March 1992 — **The Regulation of U.S.-Canada Air Transportation: Past, Present and Future**
Martin Dresner

* CAPP 10: June 1992 — **Emerging Issues in the U.S.-Canada Agricultural Trade Under the GATT and FTA**
Theodore H. Cohn

* Out of print

CAPP 11: September 1992 — **Settling U.S. - Canada Disputes: Lessons For NAFTA**
Annette Baker Fox

CAPP 12: December 1992 — **Canada-U.S. Electricity Trade and Environmental Politics**
William Averyt

CAPP 13: June 1993 — **Canadian Politics in a Global Economy**
Gordon T. Stewart

CAPP 14: September 1993—**The Intersection of Domestic and Foreign Policy in the NAFTA Agricultural Negotiations**
Theodore H. Cohn

CAPP 15: November 1993—**A New Global Partnership: Canada-U.S. Relations in the Clinton Era**
John Kirton

CAPP 16: December 1993 — **The Impact of Free Trade on Canadian- American Border Cities**
Peter Karl Kresl

CAPP 17: April 1994 — **North American Social Democracy in the 1990s: The NDP in Ontario**
Mildred A. Schwartz

CAPP 18: August 1994 — **The Politics of Health Care Reform in Canada and the United States**
Antonia Maioni

CAPP 19: October 1994 — **Public Policy and NAFTA: The Role of Organized Business Interests and the Labor Movement**
Henry J. Jacek

CAPP 20: December 1994-- **The Secret of Transforming Art Into Gold: Intellectual Property Issues In Canada-U.S. Relations**
Myra J. Tawfik

CAPP 21: January 1995--**Anticipating The Impact of NAFTA on Health And Health Policy**
Pauline V. Rosenau, Russell D. Jones, Julie Reagan Watson and Carl Hacker

CAPP 22: June 1995--**Regulation, Industry Structure, and the North Atlantic Fishing Industry**
Peter B. Doeringer, David G. Terkla and Audrey Watson

CAPP 23: November 1995--**The Moral Economy of Health and Aging in Canada and the United States**
Phillip G. Clark

CAPP 24: December 1995--**Multilateralism or Bilateralism in the Negotiation of Trade-Related Investment Measures?**
Elizabeth Smythe

CAPP 25: February 1996--**The Abortion Controversy in Canada and the United States**
Raymond Tatalovich

CAPP 26: May 1996—**Health Care Reform or Health Care Rationing? A Comparative Study**
Joan Price Boase

CAPP 27: September 1996—**Resolving The North American Subsidies War**
Peter Morici

CAPP 28: December 1996—**Calling Maggie's Bluff: The NAFTA Labor Agreement and the Development of an Alternative to Neoliberalism**
Stephen Herzenberg

CAPP 29: April 1997—**The Long Journey to Free Trade in U.S.-Canada Airline Services**
Michael W. Pustay

CAPP 30: July 1997—**Are Canadian and U.S. Social Assistance Policies Converging?**
Gerard Boychuk

CAPP 31: November 1997—**Observing the Rules: Canada-U.S. Trade and Environmental Relations**
Annette Baker Fox

CONTENTS

ISSN 1047-107