

SESSION 05-06 OF ALTERNATE REPRESENTATIVES

SUMMARY RECORD

The Commission for Environmental Cooperation (CEC) Council, represented by its Alternate Representatives, met at the CEC Secretariat in Montreal on 31 August 2005. Mr. Jerry Clifford (United States) chaired the meeting. Mr. José Manuel Bulás and Mr. David McGovern represented Mexico and Canada, respectively. Ms. Jane Gardner, JPAC Chair, represented the Joint Public Advisory Committee (JPAC) and Mr. William Kennedy, CEC Executive Director, represented the Secretariat. Ms. Nathalie Daoust, Council Secretary, acted as secretary for the session. Other officials of the Parties and the Secretariat were also in attendance (Annex A).

Item 1 Adoption of the Agenda

The Chair thanked Canada for its leadership of Council over the last year and for the successful Council Session in Quebec City. He also extended welcoming remarks to Jane Gardner, the JPAC Chair. The Canadian and Mexican representatives agreed with the suggestion made by the United States to postpone the discussion on the working groups. The Alternate Representatives adopted the agenda based on the provisional agenda (Annex B).

Item 2 Intervention by the Executive Director

The Executive Director reported that the Secretariat had been pursuing its many activities and that regular updates had been given to the GSC. He indicated that the Alternate Representatives would be receiving in time for their next meeting a full report on CEC activities since last June. He provided an update on recent meetings and discussions held with the private sector as well as with states and provinces. He reported on a recent trip to Manitoba and Alberta where he met with officials at Alberta Environment and Alberta Sustainable Resource Development regarding a possible twinning project on environmental cooperation between Alberta and a Mexican State. He related that the Alberta representatives from both Alberta Environment and Alberta Sustainable Resources Development could offer their “experience sharing” to a Mexican state. He also mentioned his visit at the Edmonton Waste Management Centre of Excellence (EWMCE) which appeared to be an ideal partner to work with the CEC on the capacity building project in Mexico. He also reported on his meeting with Minister Struthers and his staff who expressed interest in working to identify areas of possible cooperation between CEC and Manitoba in the future.

Finally, he said he was pleased to note Parties’ keen interest in working with the private sector in the CEC’s activities and the proposal put forth by the US to hold a series of conference with the private sector to discuss their concrete involvement. He pointed out that the business associations had also been actively pursuing the idea of working with the CEC and that the Canadian Chamber of Commerce has offered to host a meeting in their offices on October 3 to which the Alternate Representatives and the JPAC Chair would be invited. He also mentioned the

possibility of organizing a meeting with the private sector on the margins of the upcoming PRTR consultative meeting 17-20 October in Monterrey, Mexico.

Item 3 Intervention by the JPAC Chair

The JPAC Chair provided an update on JPAC activities and extended an invitation to the Alternate Representatives to attend the upcoming JPAC meeting in Mexico on 11 October 2005. She also indicated that JPAC will be meeting in Montreal on 29 November in conjunction with the Third symposium on trade and environment. She indicated the meeting would be open to the public and would comprise a roundtable discussion with outside panelists focusing on three main topics: environmental stewardship towards procurement policies, submissions on enforcement matters, and market-based drivers for sustainable growth. Finally, she expressed JPAC support for the Secretariat's proposal to develop an Article 13 on case studies on transboundary environmental impact assessment. In closing, she reminded the Alternate Representatives of JPAC Advice 04-05 on Building the Renewable Energy in North America and indicated JPAC looked forward to Parties' response.

Item 4 2005-2007 Operational Plan

The Chair reported on discussions held between the three Alternate Representatives that same morning concerning budget considerations raised by Mexico. He then asked the Mexican representative to elaborate. The Mexican representative reported that the budget available to Semarnat for its contribution to the CEC in 2005 had decreased considerably due to recent budget reductions voted by the Mexican Congress. He indicated that the budget for 2006 voted by the Mexican Congress had only been published partially but that Mexico's contribution to the CEC in 2006 could suffer an even greater reduction. He conveyed that the budget reductions facing Semarnat would be considerable over the next 15-20 months and that this could well represent a permanent situation concerning Mexico's financial contributions to the CEC. He said that the reductions affected not only the CEC but other international organizations as well. He indicated that a letter from Secretario Luege would be sent to Administrator Johnson and Minister Dion explaining the situation and indicating the specific amount by which Mexico's contribution to the CEC would be reduced for 2005 as well as an approximate figure for 2006. In closing, he indicated that he had explored with Jerry Clifford and David McGovern possible scenarios for response and cooperation and would be looking to the Secretariat for advice on addressing the budget shortfall.

The JPAC Chair expressed regret and asked whether Mexico's intention was to end its participation in the CEC. The Mexican representative indicated that it was not their intention; that Semarnat had held discussions, defined its priorities and made strategic decisions which included continued support to the CEC.

The Chair invited the Executive Director to provide some initial thoughts. The Executive Director began by offering any support the Parties may require to address Mexico's reduced financial contributions to the CEC. He pointed out that CEC's Financial Rule 4.9 provides guidelines to be followed in such situations: "[...] *If a significant budgetary variance arises, the*

Executive Director shall present a recommended revision to the budget for consideration by the Council.’ He stated that formal notification from Mexico would be necessary before the budgetary variance could be identified and proposals made for addressing it.

The United States representative stressed that this was the first time the CEC had faced a significant and possibly permanent shortfall. He conveyed that the United States would begin an internal dialogue to explore the long-term ramifications of this situation and the impact on the US contribution to the CEC budget.

On behalf of the Alternate Representatives, the Chair provided the following direction to the Secretariat: “Because of an anticipated substantial shortfall in the budget for 2005 and 2006, and pending formal notification, Council requests that the Secretariat immediately take all appropriate steps to control discretionary spending and to present to Council within 30 days of receipt of the formal notification options to manage the shortfall and significantly reduce spending for 2006.”

The Chair suggested that a discussion still take place on the operational plan and invited the Secretariat to present the outcome of the discussions held the previous day among the General Standing Committee (GSC).

The Director of Programs reported that the GSC discussions regarding the 2005-2007 Operational Plan led to a proposal to the Alternate Representatives that, 2005 being a transitional year, the project descriptions developed by the Secretariat and the Parties during 2005 could represent the work plan for 2005. Consequently, the current draft document entitled *2005-2007 Operational Plan* could be re-titled, revised according to Parties’ comments, and updated to respond to the budget shortfall anticipated for 2006, so that it could serve as the 2006-2008 Operational Plan. This proposal would bring the planning process back on schedule for next year. He also reported that the GSC agreed that, in preparing the 2006-2008 Operational Plan, the Alternate Representatives need to discuss and agree on the results to be expected from the 14 approved projects, and that corresponding performance indicators need to be defined. The Director of Programs stressed the importance of continued work on the part of the GSC to complete the 2006-2008 Operational Plan by November of this year. The US representative indicated he understood that a few project descriptions for 2005 still required Parties’ discussion but that it appeared as though the majority of projects had been agreed to by all Parties. The Alternate Representatives agreed with the proposal described by the Director of Programs and asked the GSC to work with the Secretariat in reviewing the remaining 2005 project descriptions.

The Chair asked the Secretariat whether a significant budget carry-over was expected given the delay in implementing the work program this year. The Director of Administration and Finances responded that a carry-over was to be expected and that various options were possible for managing it. He indicated that the Secretariat would be looking into these options in the context of its response to Council on the anticipated budget shortfall.

The Executive Director noted the practice in other international organizations (e.g. OECD) of member countries making voluntary contributions. He asked the Canadian and US representatives when the Secretariat should expect notice of their position regarding Mexico’s

reduced contribution. Both representatives indicated they would need to consult internally following receipt of the letter from Secretario Luege. The US representative reported that the US contribution to the CEC for 2006 had been approved in full and that they were in the process of preparing the budget request for 2007. He indicated that the US was likely prepared to pay its full contribution for at least 2006 and 2007. The Mexican representative stressed that the CEC has been unique in that all three countries have contributed equally to the budget and stated that Mexico believed it was important to maintain this practice.

Speaking of the North American trade and environment portfolio, the Chair applauded the work of the 10(6) working group in developing the Trade and Environment Strategic Plan and proposed its adoption. The Alternate Representatives adopted the Trade and Environment Strategic Plan.

Item 5 Article 13

The Chair invited the Executive Director to introduce the proposed next topic for the Article 13 report. The Executive Director began by pointing out that it was the first time the Secretariat had chosen a topic outside of the work program. He explained that the choice had been prompted by the renewed idea of an agreement on transboundary environmental impact assessment (TEIA) being discussed in the context of the Security and Prosperity Partnership (SPP). Although negotiations had taken place on TEIA in the first years of the CEC, no in-depth analysis or case studies had ever been conducted of specific projects involving transboundary impacts. He believed that case studies prepared by the CEC could complement the negotiations taking place between the three countries on TEIA. In addition, he indicated that the Secretariat could assume full authorship of the report given his own and other Secretariat staff's expertise on this topic.

The JPAC Chair stressed that the Secretariat was in a position to bring expertise on this topic and that Council should take advantage of it. She also added that JPAC needed to be involved in the process and be provided an opportunity to give its perspective.

The Canadian representative asked the Executive Director whether, in light of the recent budget announcement and the need to be cost-effective, he would consider not doing an Article 13 report. The Executive Director made reference to the report prepared by David Wirth on the history of the Article 13 process and indicated that the report would assist him in ensuring the best process possible and the production of a cost-effective report. He stated that because of the unique role of the Secretariat under Article 13, a budget for Article 13 should be maintained regardless of the budget situation, and any reductions should be spread among all CEC activities.

Following a brief explanation by the Canadian and Mexican representatives regarding their involvement in the SPP, the Chair reported that the Parties had assessed individually and discussed together the Secretariat's proposal and concluded that the specific pressures related to the TEIA negotiations under the auspices of the SPP impeded Parties to support the Secretariat's proposal. He referred to the North American Environmental Law and Policy Series, Volume 4 (http://www.cec.org/pubs_docs/documents/index.cfm?varlan=english&ID=258), a CEC publication released in spring 2000 which represented a useful document as it provided extensive background information on TEIA. He indicated that the Parties had agreed the CEC resources

would not be best served by the preparation of an Article 13 report on this topic. The Alternate Representatives voted in favor of Council Resolution 05-07 which was then circulated for their signature (Annex C).

Item 6 CEC working groups

The Alternate Representatives had agreed at the outset of the meeting to postpone discussion on this topic.

Item 7 Management Issues

The Chair indicated that this issue would be increasingly important in light of the reduced budget. However, he indicated that the United States were not prepared to carry out any specific discussions on this topic at this time. The Mexican representative pointed out that, in his view, the Financial Rules may require amendment, in particular concerning the reporting of travel by senior Secretariat staff. The Canadian representative supported Mexico's call for more disclosure and indicated that budget transparency represented a challenge in Canada as well. He pointed to the proactive disclosure website of Environment Canada which provides a summary of senior executive expenses as well as contracts exceeding \$10,000. He assured the intent of the Council was transparency and not micromanagement given that such measures lead ultimately to accountability. He indicated that Canada was preparing a proposal which would be forwarded for discussion. The Chair noted an approach used in the United States, called PART, could have elements that would be useful for the CEC.

The Executive Director welcomed these suggestions and acknowledged that the CEC needed to continue improving in this area. He conveyed that since his arrival at the CEC he had been actively instituting changes in the overall budget and project management of the organization. He referred to the new Management Information System which allowed close budget tracking. However, he cautioned that the CEC was an international organization and that any comparison in terms of reporting should be with other similar international organizations.

The Mexican representative mentioned that amendments were being proposed to the signed agreement between CEC and Semarnat concerning the implementation of the Mexican National Implementation Plan for POPs. The SEM Director indicated that the Secretariat had translated and forwarded to the representatives of the Parties involved in previous discussions on this topic the proposed revised text in order to facilitate discussions. He added that the Secretariat had initiated its review of the document and pointed out it was important to ensure that any modifications respect the terms of the NAAEC and CEC rules and the integrity and international character of the CEC. The Mexican representative indicated that Mexico would be looking forward to receiving a notification from the US and Canada regarding the next steps on this issue.

Item 8 Involvement of Private Sector

The US representative introduced this item and reminded his counterparts and the Secretariat of Council's direction to strengthen the involvement of the private sector in CEC activities. He

indicated the proposal put forth by the US and the suggestion to hold a series of meetings with private sector representatives was intended to have something to report at the next Council Session. However, he believed that consideration should be given to the budget constraints the CEC was now facing. The JPAC Chair asked whether Parties would consider private sponsorship for these meetings. The Secretariat confirmed that the CEC can receive in-kind financial contributions as provided for in rule 5.6 of the CEC Financial Rules. The US representative reported that meetings between EPA officials and private sector representatives had already been planned and that JPAC should be involved in any future efforts, particularly in ensuring the right people are invited. The Executive Director pointed to the 3 October meeting being hosted by the Canadian Chamber of Commerce as well as the PRTR consultative meetings which both represented opportunities for discussions with the private sector.

Item 9 Next meeting of the Alternate Representatives

The Alternate Representatives agreed they should get together as soon as the Secretariat has laid out options for addressing the budget shortfall, preferably by the end of October. In the meantime, they encouraged the GSC to get together as often as possible to maintain the momentum of the discussions.

SESSION 05-06 OF ALTERNATE REPRESENTATIVES

**Montreal, Quebec Canada
Delegations List
(as of 31/08/05)**

CANADA

Alternate Representative

David McGovern, Environment Canada
Julie Pelletier, Environment Canada
Jane Keenan, Environment Canada
Leonardo Iannone, Environment Canada
Tim Gallagher, Environment Canada
Johanne Forest, Foreign Affairs Canada
Louise Lapierre, Ministère du Développement durable, de
l'Environnement et des Parcs, Quebec
Daryl Hanak, Alberta Ministry of Environment

MEXICO

Alternate Representative

José Manuel Bulás Montoro, Semarnat
Elena Porras Calderón, Semarnat

UNITED STATES

Alternate Representative

Jerry Clifford, US EPA
Sylvia Correa, US EPA
Robert Wing, US EPA
Luis Troche, US EPA, OIA
Elizabeth Etchells, USTR

JPAC

JPAC Chair

Jane Gardner
Marcela Orozco, JPAC Liaison Officer

SECRETARIAT

Executive Director

William Kennedy
Nathalie Daoust, Council Secretary
Doug Wright, Director of Programs
Geoffrey Garver, Director, Submissions on Enforcement Matters Unit
Eduardo Delgadillo, Director of Administration and Finances
Hernando Guerrero, Director of Mexico Liaison Office
Mihaela Vulpescu, Administrative Support

AGENDA

SESSION 05-06 OF ALTERNATE REPRESENTATIVES

*CEC Secretariat
393, St-Jacques Street West, Suite 200
Tel.: 514-350-4300; Fax: 514-350-4349*

Wednesday, 31 August 2005 from 13:30 to 18:00

Chair: United States

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| 12:30-13:30 | Lunch (the Atrium) |
| 13:30-13:45 | Item 1 Adoption of the agenda |
| | Item 2 Intervention by the Executive Director |
| | Item 3 Intervention by the JPAC Chair |
| 13:45-15:00 | Item 4 2005—2007 Operational Plan |
| 15:00-15:30 | Item 5 Next Article 13 report |
| 15:30-16:30 | Item 6 CEC working groups |
| 16:30-17:30 | Item 7 Management Issues |
| 17:30-18:00 | Item 8 Involvement of private sector |
| | Item 9 Next meeting of the Alternate Representatives |

ANNOTATED AGENDA FOR ALT. REPS SESSION 05-06

Meeting Goals:

- Discuss and provide guidance to the Secretariat in finalizing the 2005-2007 Operational Plan
- Identify issues for discussion and finalization at the next Alt Reps meeting

Item 1 Adoption of the agenda

The Alternate Representatives shall adopt the agenda.

DOCUMENT(S):

- a) Draft annotated agenda (distributed on 26/08/2005) C/C.01/05-06/AGEN/01/rev.2

Item 2 Intervention by the Executive Director

The Executive Director will briefly address the Alternate Representatives on Secretariat activities and any matter requiring their attention.

Item 3 Intervention by the JPAC Chair

Under this item the JPAC Chair will provide an update on JPAC's activities.

DOCUMENT(S):

- a) JPAC Advice to Council 04-05: Building the Renewable Energy in North America (distributed 29/11/2004)
- b) Letter from JPAC Chair to Council dated 22 August 2005 re: preparation of an article 13 report on case studies on transboundary environmental impact assessment (TEIA) (distributed on 22/08/2005)

Item 4 2005-2007 Operational Plan

Following an introduction and overview of the 2005-2007 Operational Plan by the Secretariat, the Alternate Representatives are invited to exchange views on the overall structure and principal elements of the draft 2005—2007 Operational Plan. They are expected to:

- Review the results statements which are crucial to the completion of the planning work conducted since 2004;
- Provide guidance to the Secretariat in finalizing the 2005-2007 Operational Plan;
- Determine how they would like to proceed in preparing the Operational Plan for 2006;

Under this item the Alternate Representatives may also wish to approve the Trade and Environment Strategic Plan.

DOCUMENT(S):

- a) Draft 2005-2007 Operational Plan and attachments (distributed on 29/07/2005)
- b) Trade and Environment Strategic Plan (17 June draft re-transmitted 25/08/2005)

Item 5 Article 13

Pursuant to Article 13, the Secretariat notified the Council on 5 August 2005 that it wishes to prepare a Secretariat report on case studies on transboundary environmental impact assessment (TEIA). Consistent with Article 13, the Council may object by a two-thirds vote to the preparation of the report within 30 days following the notification.

DOCUMENT(S):

- a) Memo from the Executive Director dated 5 August 2005 (distributed 5/08/2005)

Item 6 CEC working groups

Having reached agreement on the 2005-2007 Operational Plan, the Alternate Representatives may wish to revisit the role and mandate of the working groups in relation to the new priorities.

DOCUMENT(S):

- a) Proposal from Canada (distributed on 31/03/2005)
- b) List of CEC working groups and committees (distributed on 31/03/2005)
- c) Chart of CEC groups and committees for 2003-2004 (distributed on 31/03/2005)

Item 7 Management Issues

Under this item, the Alternate Representatives may wish to exchange views on CEC management issues which have been raised in recent months.

The Alternate Representatives may also wish to discuss with the Secretariat the latest issues and questions raised regarding the use of surplus funds for the PRTR initiative.

DOCUMENT(S):

- a) Letter from Jerry Clifford re: Request for financial information dated 10 August 2005 (distributed 10/08/2005)
- b) Response letter from William Kennedy dated 18 August 2005 (distributed 18/08/2005)
- c) Additional budgetary information provided by the Secretariat (distributed 22/08/2005)
- d) Memo from the Executive Director re: Use of surplus funds (distributed on 1/08/2005)
- e) Response letter from Jerry Clifford re: Use of surplus funds (distributed on 29/08/2005)

Item 8 Involvement of Private Sector

As a follow-up to Council Resolution 05-06 on *Expanding partnership with the Private Sector and other stakeholders*, the United States have presented a proposal for incorporating the private sector in CEC activities. The Alternate Representatives may wish to review the proposal and discuss possible next steps for its implementation.

DOCUMENT(S)

- a) US Proposal for Private Sector Participation in CEC Activities (distributed 25/08/2005)

Item 9 Next meeting of the Alternate Representatives

Under this item, the Alternate Representatives are expected to confirm the date and time of their next conference call and/or their next face-to-face meeting.

DOCUMENTS:

- a) Schedule of Council/Alt Reps/JPAC sessions in 2005 (rev.3 distributed on 29/07/2005)

31 August 2005

COUNCIL RESOLUTION 05-07

Decision Regarding the Proposal by the Secretariat of the Commission for Environmental Cooperation (CEC) to Prepare an Article 13 Report on Case Studies on Transboundary Environmental Impact Assessment.

THE COUNCIL,

SUPPORTIVE of the process provided for in Article 13 of the North American Agreement on Environmental Cooperation (NAAEC) regarding the preparation of reports by the Secretariat on matters within the scope of the annual program of the CEC or any other environmental matter related to the cooperative functions of the Agreement,

HAVING CONSIDERED the Secretariat's notification to Council, dated 5 August 2005, regarding its proposal to prepare an Article 13 report on Case Studies on Transboundary Environmental Impact Assessment,

AFFIRMING that Article 13 reports should inform, support and advance cooperation on environmental matters among the Parties, without duplicating existing work, and provide timely and relevant information and analysis, and

CONSIDERING the efforts currently underway among our three countries to conclude an agreement on Transboundary Environmental Impact Assessment (TEIA) under the auspices of the Security and Prosperity Partnership of North America (SPP),

HEREBY UNANIMOUSLY

DECIDES, in accordance with Article 13(1) of the NAAEC, and in light of the considerations noted above, that the objectives of the NAAEC and the resources of the CEC would not be best served by the preparation of an Article 13 report on Case Studies on TEIA at this time and therefore objects, pursuant to Article 13(1), to the preparation of such a report.

APPROVED BY THE COUNCIL:

Judith E. Ayres
Government of the United States of America

José Manuel Bulás Montoro
Government of the United Mexican States

David McGovern
Government of Canada