

SESSION 06-04 OF ALTERNATE REPRESENTATIVES

SUMMARY RECORD

The Commission for Environmental Cooperation (CEC) Council, represented by its Alternate Representatives, met via conference call on 14 June 2006. Mr. Jerry Clifford (United States) chaired the meeting, Mr. José Manuel Bulás and Mr. David McGovern represented Mexico and Canada, respectively. Mr. William Kennedy, CEC executive director, represented the Secretariat, Mr. Carlos Sandoval, JPAC chair, and Ms. Nathalie Daoust, Council secretary, acted as secretary for the session. Other officials of the Parties and the Secretariat were also in attendance.

Item 1 Adoption of the agenda

The Alternate Representatives adopted the agenda. However, the US representative asked to address the issue of the meeting of the senior environment and trade officials under item 5.

Item 2 Interventions by the executive director and JPAC representative

The executive director cited his report to Council, covering CEC activities since June 2005, which had been distributed to Parties on 5 June. He also mentioned that the first meeting of the Green Building Advisory Group had been held on 13 June at the Secretariat offices, with high quality participation and ensuring this initiative was off to a good start.

The JPAC chair thanked the Alternate Representatives for having agreed to a one-hour joint JPAC/Council meeting in Washington on 28 June. He reported that the agenda for the 27 June public workshop was being finalized with a prominent list of confirmed speakers. He thanked the US representative for having offered the participation of an EPA expert and indicated he looked forward to hearing of the agency's experience in the area of renewable energy.

Item 3 2006 Council Session

Item 3.1 General program for the Council Session

Item 3.2 Council in-camera session

The Chair noted there was no particular issue to be raised under these items except for the meeting of the Alternate Representatives on the margins of the Council Session, which remained to be scheduled. He commended the efforts of the GSC in coordinating the Council agenda.

The Alternate Representatives agreed that a photo opportunity would take place at the end of the in-camera session and that no news conference would be held. The Mexican representative asked that the US Council member consider passing the chairmanship of the Council to Mexico on this occasion. The United States noted, however, that Mexico's chairmanship could be officially announced only at the close of the meeting, but that a few words to that effect could be expressed by Administrator Johnson during the photo session.

Regarding the 2007 funding resolution, the Mexican representative indicated that Mexico would be in a position to sign the Council resolution only after the Mexican elections. The Canadian representative said that a similar situation obtained in Canada, in that the funding request needed to be discussed with the new environment minister.

Item 3.3 Ministerial Statement

The Canadian Alternate Representative indicated that Canada was currently reviewing the Ministerial Statement, which needed to be shortened. The Mexican Alternate Representative confirmed that Mexico would be providing comments later in the week.

Item 4 Submissions on Enforcement Matters

Item 4.1 Council decision on whether to instruct the Secretariat to prepare a factual record for SEM-04-007 (Quebec Automobiles)

The Alternate Representatives indicated they were prepared to vote on whether to instruct the Secretariat to prepare a factual record for SEM-04-007. The Canadian Alternate Representative then read the following statement to be incorporated into the summary record:

I am pleased to support the development of a factual record on the Québec Automobiles Submission on Enforcement Matters. I realize the Council's vote on this submission has taken a regrettable length of time. As you well know, there have been extenuating circumstances here in Canada. Canada fully supports the CEC submission process and will cooperate fully with Québec to furnish any relevant information to the CEC Secretariat. We believe that all three Parties have carefully considered the Secretariat's recommendation.

The instructions in the Council Resolution provide guidance to the Secretariat that respects the goals and parameters of the Submission process. I would like to offer a few comments concerning the Secretariat's recommendation to develop a factual record, as well as the Council Resolution at hand. The process is intended to look at the facts related to how a Party enforced its law. It is Canada's view that the process is not intended to examine whether a Party adopted the best policy approach to enforcing the law in question or whether it should have chosen another policy route. In our view, discretionary public policy choices were never intended to be scrutinized under 14/15. I would also like to offer Canada's reasons for supporting the exclusion of section 20 of Quebec's Environmental Quality Act from the scope of the Factual Record. Our concern was that the submission does not provide an explanation regarding how Quebec has violated section 20 of the Environmental Quality Act. By consequence, Canada was not provided with an opportunity to respond to this particular allegation of non-effective enforcement. As a final comment, I would like to add that Canada's Response to the submission did not indicate that the implementation of a vehicle inspection and maintenance program was a preferred means of enforcing the relevant laws. The Secretariat draws this conclusion on page 9 of the Notification to Council. It is very important that the Secretariat refrain from extrapolating reasoning or deducing arguments on behalf of a submitter, as was the case here.

The US representative commented that the issues mentioned by Canada were ones that United States supported in a general sense. The Secretariat clarified that it does not act on behalf of submitters and that it would be factually inaccurate to indicate that it did so in this case.

The Alternate Representatives voted in favor of instructing the Secretariat to prepare a factual record for SEM-04-007 and indicated they would sign and fax to the Secretariat the Council resolution to that effect.

Item 5 Other issues

Regarding the proposed meeting of the trade and environment officials on 27 June, the US representative conveyed that, although much effort had been engaged in organizing this meeting to discuss the robust trade and environment agenda, the Mexican and Canadian senior trade officials were apparently unable to attend due to conflicting and busy schedules. He suggested holding this meeting on the margins of the next face-to-face meeting of the Alternate Representatives during the summer or the fall. He offered that the US senior trade official, Mark Linscott, work with his counterparts in Canada and Mexico, and the Secretariat to define the meeting agenda.

Item 6 Next meeting of the Alternate Representatives

At Canada's suggestion, it was agreed that a conference call on 22 June would be preferable to a face-to-face meeting on 26 June. The Alternate Representatives agreed to confirm the time of the call as soon as possible.