



**COUNCIL SESSION 96-3
March 6-7, 1996**

Summary Record

Designated Alternate Representatives of Council met in Montreal on March 6-7, 1996 for a special session. The final agenda and the list of delegates will be found as Annexes "A" and "B" respectively. Mr. Anthony Clarke (Canada) chaired the meeting.

REMARKS BY THE CHAIR OF JPAC

In his remarks, the Chair of JPAC made reference to key agenda items of the JPAC session of March 7-8 and more particularly to the opportunity for Council representatives and JPAC members to exchange views at that time on the planning of the next regular session of Council and on other matters of common interest such as the involvement of the private sector in the work of the CEC and the experience of the Border Environment Cooperation Commission (BECC) with public participation.

REMARKS BY THE EXECUTIVE DIRECTOR

In his remarks, the Executive Director observed on the importance of the current session and more particularly on the approval of the 1996 Program and Budget, the 1995 annual Report, the finalization of the North American Environment Fund (NAEF) Guidelines and Council's response to the Silva Reservoir report. He reported on a number of management initiatives completed since the last session such as: the 1994 external audit; the improvements brought to the financial management system and reporting; the hiring of a Chief Accounting Officer and of a Spanish technical editor and the implementation of an employee appraisal system. He also reported on the progress made toward a proposal for the rationalization of CEC committees and working groups; the impending introduction of a document management system for Council and JPAC sessions; the preparation of the 1995 Final report to be circulated by the end of March and the staffing of the position of Head Librarian. He concluded his remarks by indicating that, notwithstanding the fact that the regular session of Council is being deferred to a future date, the effort must be maintained for the development of those program initiatives that are directly related.

In the exchange that followed, Council representatives acknowledged the progress made in management matters over the past year. Mention was made of the importance to provide for operating procedures as part of the proposal for the rationalization of the CEC committees and working groups. It was also suggested to consider the development of Council rules of procedure for Part V *Consultation and Resolution of Disputes* of the NAAEC.

1996 REGULAR SESSION OF COUNCIL

Given the decision to defer the 1996 regular session to a later date, Council representatives reviewed the various implications. In conclusion, they agreed to:

- a) consult their respective minister's office to explore the possibility of holding the regular session in early September;
- b) maintain the same theme and sub-themes for the session;
- c) continue planning along the basic program structure agreed to previously;
- d) maintain the level of effort and timetable for the development of tentative announcements and, to this effect, aim for mid-June for the finalization of the substantive agenda and relevant documentation.

Action: Parties/Secretariat

UPDATE ON PROGRAM IMPLEMENTATION

North American Environmental Fund (NAEF): The discussion centered on the report presented by the Secretariat following the public comment period on the Guidelines which ended March 1, 1996. More specifically the discussion focused on eight topics that required Council guidance, namely: Funding Priorities; Partnership; Leverage; Grant Ceiling; Awards Committee; Integrity of Process; Evaluation and Finalization of the Guidelines. In conclusion Council representatives agreed to the following:

- a) modification of the name of the Fund so as to avoid duplication with existing funds;
- b) modification of the Guidelines so as to place greater emphasis on partnership;
- c) modification of the Guidelines so as to refer to the CEC strategic plan for funding priorities;
- d) clarification of the Guidelines so as to allow for "in-kind" support;
- e) maintaining the award ceiling at CDN \$100,000
- f) modification of the name of the Awards Committee to reflect the nature of the Fund;
- g) requirement for members of the Awards Committee to sign a conflict of interest statement;
- h) requirement for the annual external audit to include audit of the NAEF; and,
- i) requirement for JPAC to complete an evaluation within two years.

In addition, the following timetable was agreed to:

March 18	Revised Guidelines to be circulated to Parties for final comments;
March 25	Deadline for Parties to comment and identify Committee members;
April 1	Finalization of Guidelines.

Action: Secretariat / Parties

Other Program Initiatives: In their report, the Directors advised of the upcoming workshop on NAFTA effects (April 29-30) in San Diego, of the crucial stage reached by the intergovernmental committee on transboundary impact assessment, of the status of the Article 14 submission concerning the construction of a new pier on Cozumel island (Mexico), of the progress made towards the development of action plans for the four toxic substances identified by Council, and of the current discussions on the identification of possible initiatives evolving from the recently signed MOU with business associations of the three countries.

In the context of the CEC initiatives on Joint Implementation, Council Representatives considered and approved two carbon sequestration project proposals for prefeasibility studies (Chiapas,

Mexico and Northern Oaxaca Sierra, Mexico) and deferred decision to March 28, for two additional technology related projects.

Action: Secretariat

Council Representatives took notice of the intention to prepare a resolution concerning data compatibility for air quality and emissions and requested the GSC to review the current proposal and assist the Secretariat in its further development.

Action: GSC

SILVA RESERVOIR REPORT

Council Representatives considered and concurred with the essence of a draft resolution which addresses the main substantive issues raised in the Secretariat Report and which is to be finalized by the GSC. It was also agreed to refer the Continental Waterbird Management component of the resolution to the recently created *Canada, US, Mexico Trilateral Committee for Wildlife, Plants and Ecosystems Conservation and Management* with a view to obtain a progress report from the Committee within ninety (90) days.

Action: GSC

CEC ANNUAL REPORT

The Secretariat reported on the current progress and plan for the finalization and printing of the first CEC Annual Report. Canada and Mexico committed to the production of their respective contributions and Council concurred with a mid-April timeframe for the printing of the report. Advanced copy of the country specific sections will be provided to the Chair of JPAC.

Action: Canada / Mexico / Secretariat

1996 PROGRAM AND BUDGET

Project Approval. Council Representatives reviewed project 96.05.02 *Environmental Protection and Potential Trade Distortion* for which a decision was deferred at the time of the February 13, 1996 session. The project was not approved. The Secretariat will undertake specific studies and publish the resulting reports under the rubric of *Specific Obligations Under NAAEC*. The proposed budget for this project will be reassigned accordingly.

Council Representatives confirmed the need for the Secretariat to continue with its efforts in attempting to define an appropriate role for the CEC in minimizing trade related disputes, with a view to propose a project in this area as part of the 1997 Program. To this end and in the context of the preparatory process for the upcoming Bolivia Summit, the Secretariat's suggestion to plan a high level intergovernmental meeting with the participation of trade representatives was accepted.

Action: Secretariat

1995 Budget - Unused Funds: Council representatives discussed the policy implications of allowing the disposition of surplus funds from a given budget year in a manner different from that provided for in the Financial Rules. Canada indicated that a derogation of the Rules is not possible for its share of the surplus funds. The US indicated that a derogation is possible if a

specific waiver of the Rules is authorized by Council. As a matter of policy, they concluded that uncommitted funds at the end of a fiscal year should be minimized, that waiving of the CEC Rules is to be done on an exceptional basis and that a review of the Financial Rules should be conducted to explore the need and opportunity for modifications.

In the context of the policy discussion, it was decided to use the US and Mexico portion of the 1995 projected surplus funds (initially 80% of \$US 100K) to undertake — in 1996 — an activity relating to a US/Mexico border aerial photography initiative under project 96.09.02.

Action: Secretariat

Approval: Council representatives concluded the discussion of this agenda item by approving the 1996 Program and Budget and to this effect, asked that draft resolution 96-01 be reviewed and finalized to adequately reflect the decision on the use of the 1995 budget projected surplus funds. They also suggested that the Executive Director consider a strategic circulation of the approved 1996 Program.

Action: Parties/Secretariat

1997 PROGRAM

The Executive Director provided an overview of the process he intends to use for the development of the 1997 Program. He underscored the need for the three governments to participate in the process and to provide adequate time for proper consultations. He indicated that the 1997 program would consist of follow-up projects from the 1996 program and of new initiatives. He committed to the circulation of a proposed plan reflecting key milestones and schedule that would result in a preliminary draft of the 1997 Program and Budget in September.

Council representatives welcomed the proposal and suggested that in preparing the program proposal the Executive Director consider providing a status report on current major initiatives (e.g. chemicals management, shared ecosystems, energy,...) and incorporate a significant outreach component. They also indicated that the plan should provide for an initial input by the Parties and JPAC as early as June 1996.

Action: Executive Director

OTHER MATTERS

Sessions 96-01 and 96-2 Summary Records: The Summary Records were approved. Council representatives were advised that the resolutions adopted at the 1995 regular session have been forwarded to Minister Copps for her signature. Her signature will complete the ratification process.

Action: Canada

1994 and 1995 External Audits: Council representatives approved the 1994 Financial Statement and authorized the Secretariat to proceed with the 1995 audit with the same external auditor. They directed that the external audits for future years (1996 and beyond) include auditing of the North American Environment Fund.

Action: Secretariat

Privileges and Immunities: Council representatives were informed of the progress made by each Party to give effect to the privileges and immunities provided for under Article 44 of the NAAEC. More specifically they were advised of the progress made in the revision to the *Headquarters Agreement* with Canada, the development of an *Agreement* with Quebec, the possibility of a *Tax Reimbursement Agreement* with the USA and on matters such as those outlined in the November 8, 1995 memo from the Executive Director. In light of the delay in bringing these matters to a conclusion it was decided that each Party, in consultation with the Secretariat, would identify the actions that have to be taken to extend to the Secretariat and its staff, the full immunities and privileges provided for under Article 44. The various actions will be consolidated into an overall action plan to be presented to the Council representatives at the time of the next teleconference on March 28 and progress to be reported on at the time of the June session. D. Langlois, L. Cohen, N. Munguia and G. Lamoureux were respectively designated by Canada, the United States, Mexico and the Secretariat to prepare this action plan.

Action: Parties / Secretariat

NAAEC - Language Accuracy / Translation of Rules: Council representatives concurred with a proposal to review the French and Spanish versions of the NAAEC to ensure language accuracy and to publish an official CEC trilingual text of the Agreement following an exchange of diplomatic notes between the Parties. D. Langlois, L. Cohen, N. Munguia together with J. Palafox and M. Paquin were respectively designated by Canada, the United States, Mexico and the Secretariat to complete this undertaking by mid-June.

Action: Parties / Secretariat

Revenue Generation: Council representatives exchanged views on the opportunity for the CEC to recover certain costs, charge certain fees or seek sponsorships. Council requested that the Secretariat prepare a discussion paper on this matter for their consideration at the June session.

Action: Secretariat

NAAEC - Annex 41: Canada advised of its intention to make a first declaration under Annex 41 of the NAAEC thereby listing the province of Alberta as of June 1, 1996.

NEXT SESSIONS

Members agreed to a proposed chairing formula which will be applied for a full cycle thereby allowing each Party to chair sessions of the Alternate Representatives for the entire period leading to the next regular session which that Party is scheduled to host. Under this formula, Mr. Anthony Clarke (Canada) is assuming the chair until the next regular session. In his absence, another Alternate Representative is to be designated to chair the session.

Members agreed to the following sessions:

March 28	Session 96-04: Teleconference (JI Projects/Action Plan: Immunities and Privileges)
April 22	Session 96-05: Teleconference

May 23 Session 96-06: Teleconference
June 10-11 Session 96-07: Meeting in Montreal
July 18 (tent) Session: Teleconference
Aug. 8-9 (tent) Session: meeting in Montreal
Sept. 9-11 (tent) Annual Regular Session of Council

Action: Council Secretary

MEETING WITH MEMBERS OF JPAC

This agenda item essentially focused on an exchange of views based on a proposal by members of JPAC on Public Participation as it relates to the process of the development of the CEC program and the annual regular session of Council. JPAC members highlighted the benefits of a structured and ongoing process including in region meetings to allow ideas to emerge, assure contact with local people and provide timely input in the CEC program development. More specifically JPAC proposed to hold two public preparatory sessions centered on the main themes and sub themes for the regular session of Council. One meeting would be held in Montreal and the other at a location to be determined on the US-Mexico border. A final meeting would be held at the time and location of the regular session of Council.

Council representatives thanked the members of JPAC and gave full support to their proposal. They requested that representatives of the Parties, the Secretariat and of the JPAC explore opportunities to achieve further economies without prejudicing the proposal. They agreed that the proposal be implemented while such economies are sought, reported back to JPAC and reflected in a revised budget. They also concluded on the need for the 1997 budget to include a discrete item for public participation.

ADJOURNMENT

The session adjourned at 1;30 p.m. March 7, 1996

Prepared by Gilles Lamoureux
March 15,1996

ALTERNATE REPRESENTATIVES SESSION 96-03

To be held on Wednesday, March 6 starting at 10:00 AM and continuing on Thursday, March 7 until 1:00 PM, at the Secretariat of the CEC, Montreal

Final Annotated Agenda

CHAIR: A. Clarke (CAN)

Wednesday, March 6, 1996 - from 10:00 AM to 7:00 PM

- Item 1 Approval of Agenda
- Item 2 Remarks by the Chair of JPAC
- Item 3 Remarks by the Executive Director
- Item 4 1996 Regular Session of Council
- Item 5 Update by the Secretariat on Program Implementation
 - Item 5.1 North American Environment Fund
 - Item 5.2 Other Program Initiatives
- Item 6 Silva Reservoir Report
- Item 7 CEC Annual Report
- Item 8 1996 Program and Budget
 - Item 8.1 96.05.02 - Environmental Protection and Potential Trade Distortions
 - Item 8.2 1995 Unused Funds - Funding of Other Initiatives
 - Item 8.3 Formal Approval
- Item 9 1997 Program
- 7:30 - 8:30 Presentation of the CEC HomePage and informal gathering with members of JPAC

Note: A light lunch will be served between 1:00 and 2:00 PM at the Secretariat

ALTERNATE REPRESENTATIVES SESSION 96-03

Final Annotated Agenda

Thursday, March 7, 1996 - from 9:30 AM to 1:00 PM

- Item 5 Update by the Secretariat on Program Implementation:
 - Item 5.2 Other Program Initiatives: P96.03.02: North American Cooperation on Climate Change - Potential Joint Implementation Projects

 - Item 8 1996 Program and Budget
 - Item 8.1 96.05.02 - Environmental Protection and Potential Trade Distortions
 - Item 8.3 Formal Approval

 - Item 9 1997 Program

 - Item 10 Other Matters:
 - Item 10.1 Sessions 96-01 and 96-02 Summary Records
 - Item 10.2 Headquarters Agreement (Canada) - Action plan
 - Item 10.3 Agreement with Québec - Action plan
 - Item 10.4 Tax Reimbursement Agreement - USA - Action plan
 - Item 10.5 Privileges and Immunities - Action plan
 - Item 10.6 NAAEC - Language Accuracy / Translation of Rules
 - Item 10.7 Revenue Generation
 - Item 10.8 NAAEC - Annex 41/Declaration by Canada

 - Item 11 Next Sessions (revised annotation attached)

 - Item 12 Meeting with Members of JPAC (from 12:00 - 1:00)

 - 1:00 PM Adjournment
- Lunch buffet with members of JPAC will be served at the Secretariat

ALTERNATE REPRESENTATIVES SESSION 96-03

ANNOTATIONS

WEDNESDAY, MARCH 6, 1996 - FROM 10:00 AM TO 7:00 PM

Item 1. Approval of Agenda

ACTION: Approval of the agenda

DOCUMENTS:

- a) Provisional Annotated Agenda (revised March 1, 1996)

Item 2. Remarks by the Chair of JPAC

A regular agenda item to allow the Chair of JPAC to update Council Representatives on Committee activities

ACTION: For information

DOCUMENTS:

- a) Agenda for session 96-01 of JPAC (distributed Feb. 28)

Item 3. Remarks by the Executive Director

A regular agenda item to allow the Executive Director to update Council Representatives on Secretariat activities

ACTION: For information

DOCUMENTS: None

Item 4. 1996 Regular Session of Council

This agenda item is to discuss implications of a rescheduled regular session, more specifically: new dates and venue; theme and sub-themes; substantive agenda (announcements,...). Note: JPAC will be presenting a discussion paper on public participation under agenda item 12.

ACTION: Discussion

DOCUMENTS: None

Item 5. Update by the Secretariat on Program Implementation

A regular agenda item for the Secretariat to update Council representatives on matters related to program implementation with a particular emphasis on the implications of the rescheduling of the 1996 regular session.

Item 5.1 North American Environment Fund

Secretariat will report on the public comments on the guidelines and progress in implementation of the NAEF

ACTION: Provide guidance to the Secretariat in finalizing the Guidelines

DOCUMENTS:

- a) Discussion Paper: Public Comments on Proposed Guidelines for the NAEF and Summary of Public Comments (distributed March 5)

Item 5.2 Other Program Initiatives

Secretariat will advise Council representatives of key developments with a particular focus on the implications of the 1996 regular session of Council being deferred to later in the year. Council representatives are asked to consider a resolution aimed at ensuring data compatibility for air quality and emissions.

ACTION: For information and approval of draft Resolution 96-2

DOCUMENTS:

- a) Draft Resolution 96-02 (distributed March 1)
- b) P96.03.02: North American Cooperation on Climate Change - Potential Joint Implementation Projects: (tabled March 6)

Emissions Reduction Projects:

Energias Renovables para la Islas Natividad y Cedros en Baja California
 Proyecto para el ahorro de energia en San Luis Potosi
 Central Hidroelectrica de Patla

Carbon Sequestration Projects:

Carbon Sequestration and Sustainable forest management in the State of Chiapas, Mexico
 Captura de Carbono: Silvicultura Comunitaria en la Sierra Norte de Oaxaca
 International Model Forest Program - Chihuahua

Item 6. Silva Reservoir Report

This agenda item is to allow for a discussion of Council's response to the *CEC Secretariat Report on the Death of Migratory Birds at Silva Reservoir (1994-95)*

ACTION: Discussion of Council's response to the report and of any follow-up actions

DOCUMENTS:

- a) Draft resolution 96-7 prepared by Mexico and changes proposed by USA (faxed by USA on March 1)
- b) Silva Reservoir Report (previously distributed)
- c) JPAC Advice #95-7 (previously distributed)

Item 7. CEC Annual Report

This item is to formally approve the first annual report of the Commission

ACTION: Approval

DOCUMENTS: Draft CEC Annual Report (previously distributed)

Item 8. 1996 Program and Budget

This agenda item is to consider outstanding matters related to the finalization and approval of the 1996 Program and Budget Proposal.

Item 8.1 Project 96.05.02 - Environmental Protection and Potential Trade Distortions

Approval of this project was deferred pending revisions. All other projects have been approved.

ACTION: Review the revised project proposal

DOCUMENTS:

- a) Revised Project Description (distributed Feb. 28)

Item 8.2 Unused Funds - Funding of Other Initiatives

On February 13, Council representatives concluded on the need for a discussion of the policy implications of funding other initiatives with 1995 unused funds. One specific proposal has been submitted: US/MEX Border Aerial Photography Initiative

ACTION: Discussion

DOCUMENTS:

- a) Project Description (revised 96-3-6): Transboundary Resources Assessment (tabled March 6)
- b) US/Mexico joint proposal: an invitation to participate in the US/Mexico Border Aerial Photography Initiative (previously distributed)

Item 8.3 Formal Approval

Following review of the outstanding project and decision on the allocation of the balance of 1995 unused funds, a formal approval of the Program and Budget is required

ACTION: Formal approval of the 1996 Program and Budget

DOCUMENTS:

- a) Revised Project and Budget Summary (distributed Feb. 23)
- b) Draft Resolution 96-1 (distributed Feb. 28)

Item 9. 1997 Program

This agenda item is to allow an initial discussion on the process, key milestones and timetable for the preparation of the 1997 Program.

ACTION: Discussion

DOCUMENTS: None

THURSDAY, MARCH 7, 1996 FROM 9:00 AM TO 1:00 PM

Unfinished business from previous day

Item 10. Other Matters

This item allows for a review and decisions of more pressing non-program related matters that were not considered at the previous session.

Item 10.1 Sessions 96-01 and 96-02 Summary Records

ACTION: Approval and review of outstanding items

DOCUMENTS:

- a) Session 96-01 draft Summary Record (distributed Feb. 28)
- b) Session 96-02 draft Summary Record (distributed Feb. 28)

Item 10.2 1994 and 1995 External Audits

ACTION: Review, approval and signature of 1994 External Audit report and discussion of follow-up actions. Discussion of the scope and timeframe for the 1995 External Audit

DOCUMENTS:

- a) Final version of 1994 Auditor's Report (distributed March 4)

Item 10.3 Headquarters Agreement (Canada)

ACTION: Progress report and discussion of timeframe for follow-up actions

DOCUMENTS: None

Item 10.4 Agreement with Québec

ACTION: Status report by Canada

DOCUMENTS: None

Item 10.5 Tax Reimbursement Agreement with the USA

ACTION: Progress report and discussion of timeframe for follow-up actions

DOCUMENTS: None

Item 10.6 Privilege and Immunities

ACTION: Progress report and discussion of timeframe for follow-up actions

DOCUMENTS:

- a) November 8, 1995 memo from Executive Director (previously distributed)

Item 10.7 NAAEC - Language accuracy / Translation of Rules

NAAEC: The Secretariat is often required to distribute copies of the Agreement to experts, consultants and the public at large. Until now, since the CEC as such has not presented an official version, the Secretariat has been distributing the Agreement using the text printed by Canada (in the three languages).

In order to allow the posting of the Agreement up on the CEC's Internet Home Page, the Secretariat has prepared an electronic version of the Agreement. The Secretariat would also like to use the CEC version for further distribution of the Agreement. A disclaimer stating "Not Official Version" has been integrated to the Secretariat's version pending Council guidance. This may present an opportunity for the Parties to review the linguistic accuracy of the Agreement amongst the three languages, if deemed necessary.

CEC Rules: The Spanish version of the CEC Rules (4) is not available

ACTION: Discussion on the opportunity and process that could be followed in preparing a CEC official version of the NAAEC and agreement on the process and timeframe to complete the Spanish version of the CEC Rules

DOCUMENTS:

- a) Paper copy of the electronic version of the NAAEC prepared by the Secretariat (previously distributed)
- b) Draft Spanish version of the Council Rules (previously circulated by Mexico)

Item 10.8 Revenue Generation

This item is to allow an exchange of views on the opportunity for the CEC/Secretariat to 1) recover certain costs or charge certain fees to third parties; and, 2) to seek sponsorships for publications, events,...

ACTION: Discussion and identification of follow-up actions

DOCUMENTS: None

Item 11. Next Sessions

This agenda item is to allow for a discussion on the merit of establishing a calendar of sessions for 1996. Considerations could also be given to the modification of the chairing formula of the Alternate Representatives sessions whereby the sessions would be chaired by the host country of the next annual Regular Session of Council.

ACTION: Discussion of a proposed 1996 Session calendar

- April 18 Conference call
- May 16 Conference call
- June 18-19 Meeting in Montreal (N.B. JPAC intends to meet on June 20-21)
- July 18 Conference call
- August 8-9 Meeting in Montreal
- **September 9-11 Regular Session of Council**
- November Conference call (dates to be determined)
- December Meeting in Montreal (dates to be determined)

DOCUMENTS: None

Item 12. Meeting with JPAC Members

This agenda item was originally planned as an exchange on the planning of the April regular session of Council. An exchange on the proposed workplan of the JPAC and consideration of a proposal related to public participation could take place

ACTION:

DOCUMENTS:

- a) JPAC Discussion Paper: Public Participation (distributed Feb. 28)
- b) Agenda for session 96-01 of JPAC (distributed Feb. 28)

ALTERNATE REPRESENTATIVES SESSION 96-3

Montreal, Canada, March 6-7, 1996

List of Participants

CANADA

Alternate Representative Clarke, H. Anthony
Bowcott, Andy
Cerutti, Rita
Côté, Louise
Ecclestone, Susan
Langlois, Denis
Moore, Jennifer

MEXICO

Alternate Representative Samaniego, José Luis
Aguilar, Mario
Cabrera, Javier
Hoth, Jürgen
Munguia, Norma
Palafox, Jaime

UNITED STATES

Alternate Representative Nitze, William A.
Cohen, Larry
Marsh, Christian
Rowley, Anne
Trejo, Maria
Smith, Russell
Wilson, Serena
Yeager, Brooks

JPAC

Chair Plaut, Jonathan