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## ADVICE TO COUNCIL: NO. 02-04

### Re: The Commission for Environmental Cooperation (CEC) of North America and the North American Free Trade Agreement (NAFTA) Chapter 11

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America:

IN ACCORDANCE with Article 16(4) of the North American Agreement on Environmental Cooperation (NAAEC), that JPAC "may provide advice to the Council on any matter within the scope of this agreement (...) and on the implementation and further elaboration of this agreement, and may perform such other functions as the Council may direct";

MINDFUL of the growing concerns surrounding the environmental implications of NAFTA Chapter 11;

HAVING carefully considered the experiences with NAFTA Chapter 11 case histories to date relating to the investor-state dispute settlement process;

BECOMING increasingly alarmed, first, by the potential of these provisions to constrain governments' ability to regulate, legislate or fulfill its obligations in the public interest and, second, by the lack of transparency and public access in the dispute settlement process;

URGES that Council build on previous efforts undertaken through the Understanding Linkages between Environment, Economy and Trade program and NAAEC Article 10(6), and

1. Instruct that summary records of the Article 10(6) Environment and Trade Officials Group be made public;
2. Instruct that meetings of the Article 10(6) Environment and Trade Officials Group be open to the public as previously recommended by JPAC.
3. Add NAFTA Chapter 11 to the agenda of the second CEC Symposium on Environment and Trade, to be held in December 2002.
4. Take the necessary steps to ensure that NAFTA Chapter 11 issues, as they relate to the environment, are included in the Environment and Trade Ministerial Meeting being organized in 2003 and that a part of this discussion be opened to the public.

Finally, in order to refine further Advice to Council on this matter, JPAC will organize time during the 2002 Council Session on 17–19 June in Ottawa to hold a dialogue with the public specifically on this issue.

APPROVED ON 8 MARCH 2002