



ADVICE TO COUNCIL: No. 97-01

The Joint Public Advisory Committee (JPAC), in accordance with the provisions of Sections 16.3 and 16.4 of the North American Agreement on Environmental Cooperation (NAAEC), meets with the CEC Council on the occasion of its special session in Montreal, Canada, on 24 October 1997.

THE JOINT PUBLIC ADVISORY COMMITTEE,

CONSIDERING

- That the Preamble of the NAAEC emphasizes the importance of Public Participation in conserving, protecting and enhancing the environment;
- That the Section 10.2 (f) establishes that the Council shall be responsible for the promotion of public awareness regarding the environment;
- That in accordance with Section 10.1 (b) of the NAAEC the Council shall review during 1997 the operation and effectiveness of the NAAEC in the light of experience;
- That the setting of priorities in the Annual Work Program of the CEC as well as the budget allocations must be consistent with the responsibilities, objectives and goals that are set forth in the working of the NAAEC for the different bodies of the CEC;
- That the Section 16.2 of the NAAEC states that the Council shall establish the rules of procedure for the JPAC;

**SUBMITS TO THE CEC COUNCIL THE FOLLOWING VIEWS ABOUT
SUBSTANTIAL ISSUES FOR THE CEC:**

I. Priorities and evaluation of the NAAEC.

- ***The JPAC and Institutional memory.*** In July 1994 the JPAC met for the first time, in Washington, DC. At that time the Secretariat consisted primarily of the Executive Director, and one assistant. The JPAC has remained a relatively stable group since that time, functioning effectively by consensus as a tri-national group of 15 people, meeting four or five times a year as a group. JPAC has provided both formal and informal advice to the Council, and JPAC provides information on a regular basis to the Secretariat. Many individuals in the JPAC have met with scientists and economists at expert meetings held in all three countries and organized by the Secretariat; JPAC individuals have taken part in additional public consultations such as those involved in the development of the Guidelines for Articles 14 and 15; and they have taken part whenever possible at the National and Governmental Advisory meetings (NAC & GAC) in their home countries. Their role as one part of this three-part CEC is absolutely critical to effective long-term environmental sustainability under the Agreement. It will be important to replace the JPAC members slowly and not all at once in order to keep building our understanding of how to make this unique CEC work most effectively.
- ***The Vision of the JPAC.*** In July 1994 the JPAC collectively wrote a Vision Statement which reflects the intent of the Supplemental Side Agreement document in the North American Agreement on Environmental Cooperation (NAAEC), and establishes the role of JPAC. This Vision Statement is a regular reminder to us of the unique nature of our efforts to provide for a better environment for future generations.
- ***The CEC is constantly evolving and a fragile body.*** There is always a fragile balance of interests among the three parts of the CEC which have three different responsibilities. Trust building between the three parts of the Commission and between the three member countries of the Council is a continuing activity which requires regular reflection on the Objectives in Article 1 of the Agreement. Reference to the Agreement will guide priority setting within the limited budget.
- ***The CEC needs to be more pro-active, less reactive and operate on a bi-annual budget.*** The Council established a working group of Alternates and staff which functions relatively well, despite changing political agendas. However annual budgeting and demand for short term results/products hampers the CEC's ability to make a longer term difference in regard to environment, trade and real sustainability.
- ***Priorities.*** The CEC and the Work Program continue to evolve, but even greater emphasis in priorities could make it more effective. For example public input has emphasized a strong desire for greater clarity regarding the environmental impacts of trade, for clarity concerning human health impacts of pollution, and for a better exchange of information.
- ***Articles 13, 14 & 15 are being used in very effective ways.*** While Articles 14 & 15 allow citizens to seek resolution of a possible problems caused by one of the Parties, Article 13 is being used to permit tri-nation analysis of the scope of serious problems, such as the long distance transportation of air pollutants

II. CEC institutional vision.

- To acknowledge the innovative aspect of the Institution, especially its characterizing transparency and its close relations with the North-American public;
- To maintain the three bodies of the CEC (Council of Ministers, Secretariat and JPAC) with their main responsibilities, as defined under the NAAEC;
- To enhance the strategic function of the Council of Ministers and that of its Alternate Representatives:
 - 3 year planning; setting forth objectives and priorities;
 - Institute 2 years work program;
 - Establish a bi-annual budget approved each year and reduce administrative intervention;
- To confirm the *Executive Director of the Secretariat* as the Chief Executive Officer of the Institution and provide him with the appropriate decision making powers for the carrying out of his responsibilities;
- To ensure that the dialogue with the public becomes an essential function of the CEC, administered by the Secretariat with the required professional staff, which will allow the JPAC to concentrate in providing the Council with its own thoughts.
- To guide the work program of the JPAC towards the accomplishment of strategic objectives, with a horizon of between two to three years, while additionally including opinions on current issues.

III. Budget.

- Each Party contributes equal amounts to the annual budget of the Commission, which totals nine million dollars. However, the three million dollar contribution has a different impact in each country: what represents **one** unit, in terms of the gross national product for the United States, is the equivalent of **12** units in Canada and **26** in Mexico;
- Of the total budgeted amount, the CEC allocated in 1996 *one half* to the development of programs under the responsibility of the Secretariat, *one third* to professional consulting services and *two million canadian dollars* to the financing of the NAFEC. In 1997, the percentage allocated to programs decreased *one third* and it is expected that in 1998 further reductions will be necessary in order to meet lease payments for the CEC premises;
- The JPAC recommended to the Council, in the Advice to Council 96-05, that alternate sources for the funding of the NAFEC be explored; however, while these materialize, the selection of projects and the restructuring of the budget, based on a longer range strategic vision, is of the essence. In any event, it would be advisable to rely on a two year planning horizon for the program and the budget while reducing the areas of interest, in order to gain greater depth in the analyses performed and the results obtained;
- Some of the members are preoccupied by the high proportion of the budget devoted to consulting services. It may be an indication that a permanent team of consultants is required in order to support the needs of the CEC, thereby avoiding the hiring of ad hoc consultants. In any event, it would be advisable to make public the rules governing the granting of contracts, for the purpose of adding transparency to the process and avoiding any type of arbitrariness. Likewise, the reports containing the results of these contracts must be accessible to all Parties and bodies of the CEC;

- In connection with the budgetary execution, the implementation of a healthy principle would mean that each body would have a precise knowledge of the cost of its operations and activities. This would allow a more accurate assessment and facilitate the definition of cost priorities;
- It is obvious that the budgetary restraints that the Commission will feel in 1998, as a consequence of commitments made, will lead us to forego programs and activities which are desirable but not possible to undertake. At the time when decisions have to be made regarding the work program, it is most important that the mandates from the Council be congruent and consistent with the availability of resources needed to carry them out;
- The Independent Evaluation Group, under the chairmanship of Maurice Strong, acknowledged that the institutional mechanisms for public participation, such as the JPAC, are pioneers in their own field and that they are extremely important for the successful implementation of the NAAEC.
- Regarding the budget allocated for the operation of the JPAC and given the fact that its members perform their duties ad-honorem, the operating expenses only represent 1.1% of the total. As for the outlays pertaining to the organization of public consultations, they will amount to 2.2% of the total budget this year.
- We recommend that a conceptual review of the CEC budget be undertaken. Starting from the obligations assumed by the Parties to the NAAEC, it would be advisable to allocate the resources to the fulfillment of the CEC mission, redirecting its program aiming at establishing linkages between the environment and trade, compacting the different parts of the program according to the priorities established by the Council and emphasizing the feature that makes the CEC unique: the participation of the public and its transparency in regard to environmental protection.

IV. The Road Ahead for the CEC.

From the perspectives gained in three years of operating experience, it is clear that the cooperative model is a success. As the process of institution-building continues, however, certain needs and opportunities are becoming clear.

- For example, we see that some projects in the implementation stage are being slowed by procedural questions. Assuring that agreed-upon actions actually get done is likely to be a growing concern. The immediate issue at hand is the Sound Management of Chemicals Program. Some sort of coordinating mechanism may be needed on the policy/political side to monitor performance and to advise Council on implementation issues. The cooperation of state and provincial governments is critical and should be promoted.
- NAFTA has opened policy space to look at regional and cross border issues in new ways. The Commission should take the initiative by addressing what might be called the “next generation NAFTA issues”. Three issue-areas have significant environmental impacts due to increased trade and integration:
 - The Pollutant Pathways Project is a promising initiative to bundle a range of air and air-related issues.
 - Freshwater issues, such as pollution and availability, should be examined systematically and regionally, in addition to addressing specific cross-border aspects. The estuary project is a promising approach and can evolve into a program for coastal waters.
 - Also coming into focus are transportation corridor issues-the pollution and land use effects of increased truck traffic and the North-South rail connections.

- Cooperative ways to address problems being created in our shared environment need to be better known and supported. Polls show that, by large majorities, the public in all three countries has an ecological consciousness. The Commission can draw energy and legitimacy from this widespread sentiment. At the JPAC consultations we have seen some of the first signs of an emerging North American community. Ways should be found to recognize this community and to claim the high ground as an institution both friendly to and supportive of the community.
- Finally, the Commission should move ahead expeditiously with the program to measure the effects of trade on the North American environment, as part of a larger, related effort to specify trade-environment linkages. This would enhance its credibility as a role model, both in concept and in fact, during discussions about the FTAA and with Mercosur.

V. Environment and Trade.

The interrelationship of trade and the environment is of critical importance to progress under the North American Agreement for Environmental Cooperation, as evidenced by:

- The linkage of trade and environmental issues in the NAFTA trade and environmental side agreements;
- The history of mutual supportability founded in Our Common Future and in the Rio agreements between economic development and environmental protection;
- The emphasis accorded the interrelationship between trade and the environment in the JPAC public hearings of 1996 and 1997, as reported to the Council in Toronto and in Pittsburgh;
- JPAC's informal and formal recommendations at the end of 1996 that the CEC key on trade and environment and that Council support the NAFTA effects project as a part of the program recommendation;
- The 1997 study of the University of California at Irvine focusing on cooperation and interdependence in the North American environment as critical factors;
- The CEC Secretariat publishing a 1997 vision statement with a focus on the trade and environment relationship;
- The observation of the evaluation committee, under the chairmanship of Maurice Strong, in 1997 that the interrelationship of trade and the environment is a unique and key element in the work of the CEC; and
- The recent emphasis in the press on the importance NGO's place on the role of the Commission on trade and environment issues, particularly relative to trade expansion.
- JPAC recommends to Council that it have a main focus in its discussions and the programs it supports in the CEC on the unique characteristic of the interrelationship of trade and the environment through cooperation and mutual supportability on these issues, by encouraging sustainability and environmental protection and by specifically supporting the NAFTA effects project.

VI. National Committees.

- Pursuant to the North American Agreement on Environmental Cooperation (NAAEC), each one of the Parties may convene a National Advisory Committee, comprising members of its public and non-governmental organizations. Their mission is to advise the Party on the implementation and further elaboration of the Agreement (Art. 17). Likewise, and to the same end, it may establish a Government Committee comprising representatives of the different Government levels (Art. 18).
- National Advisory Committees and Government Advisory Committees from the three countries have not performed within the full scope of the mandate granted under the NAAEC in connection with the production of ideas, information, proposals, studies, opinions, advice and publications, as it relates to the tasks undertaken by the CEC, in accordance with Articles 17 and 18 of the Agreement. Their performance has been more visible inside each country than in relation to the other two countries which make up the CEC; the interaction with their counterparts in the other two member countries has been insignificant.
- In this regard, Canada has already set up both committees. The government committee has three members, while the national one is made up of six members that belong to citizen organizations and industry.
- On its part, the United States Government Advisory Committee comprises 10 representatives of various government agencies which operate in different parts of the country. As for the Nacional Advisory Committee, it was convened in July of 1994 and dissolved in January of 1997. Within the framework of the fourth regular Council session held in Pittsburgh this past June, the JPAC was made aware that the committee now comprises 13 members and was to meet in July 1997.
- As far as Mexico is concerned, it has not yet convened either a Governmental or a National Advisory Committee. However, there exists a National Advisory Council for Sustainable Development, which comprises 50 members who belong to the public, private and social sectors, besides the 5 members of the JPAC. Within the said Council, the “NAFTA Group” deals mainly with Agreement related issues.
- The government of Mexico has not explicitly advised the other two governments that the National Advisory Committee for Sustainable Development and the Permanent Technical Commission have been carrying out, in the country, the functions of the National Advisory Committees and those of the Government Advisory Committees, respectively.
- In this regard, it is believed that the Mexican government has the intention to transform the Permanent Technical Commission into the Mexican National Advisory Committee, in accordance with the provisions of the NAAEC, and set up the Government Advisory Committee in accordance with Articles 17 and 18 of the Agreement.
- The lack of communications between these committees and the bodies of the CEC is the most serious obstacle faced by the committees of each country in order for them to function in accordance to the general goals of the CEC and the NAAEC.
- It would be advisable to request that the National Advisory Committees and the Government Advisory Committees submit a 1998 Working Program that include:
 - Permanent communication mechanisms with the CEC bodies.
 - Periodic interaction mechanisms with the counterparts from the two other countries.
 - The planning of an agenda aimed at organizing a meeting of the representatives of these committees with the JPAC and the Executive Director of the Secretariat of the CEC.

- It is deemed necessary that the two Mexican committees be convened, besides having the communication network among the committees of the three countries materialize, pursuant to NAAEC provisions.

VII. Submissions under articles 14 and 15 of NAAEC.

- Between June 30, 1995 and May 26, 1997 ten submissions on Enforcement Matters have been recorded by the Secretariat. They come from all three NAFTA countries.
- No submission has gone through the entire Article 14 process to conclusion. Thus the JPAC recommends that no changes to either Articles 14 or 15, or the applicable Guidelines for submissions on enforcement matters be made at this time. The JPAC believes that evaluation and discussion of the Articles should be informed by experience and precedent gained through their application. This will be possible when a number of proceedings have been concluded.
- It is understood that recommendations for modification of Articles 14 and 15 may be suggested by one or more of the Council members. When those are received the JPAC will evaluate them and comment.

APPROVED BY THE JPAC MEMBERS

3 October 1997