



## COMMISSION FOR ENVIRONMENTAL COOPERATION OF NORTH AMERICA

### **JPAC Public Workshop on Future Directions for the North American Agreement on Environmental Cooperation (NAAEC)**

**21 June 2004  
Puebla, Mexico**

#### **Summary Record<sup>1</sup>**

The JPAC chair, Donna Tingley, welcomed the participants, described the mandate of JPAC and asked the JPAC members to introduce themselves. She also introduced several former JPAC members who were attending the session. She introduced Jennifer Haverkamp and Blanca Torres, members of the Ten-year Review Committee (TRAC) and congratulated them on producing such a substantive report in such a short timeframe.

The JPAC chair then explained the purpose of the public session: to use the TRAC report as a platform to assist in planning the future of the NAAEC and the Commission for Environmental Cooperation (CEC). She encouraged all present to have a constructive and concrete discussion. She explained that the results of this discussion would be reported by JPAC members during the public session with Council and that JPAC itself would also be meeting with Council privately to discuss the TRAC report and the future of the institution. This would be followed by JPAC developing a formal Advice to Council on the future of the North American Agreement on Environmental Cooperation (NAAEC) and the CEC.

She then asked the TRAC members to make a presentation on their report. Ms Haverkamp delivered a PowerPoint presentation reviewing the key findings of the TRAC report. She introduced this by explaining that the TRAC had taken a broad look at the institution from what she described as a “30,000-foot perspective.” She was specific in saying that they did not focus on the environmental impacts of NAFTA, but rather on the process aspects of that question. She concluded the presentation by describing the CEC as a great institution and saying that the TRAC hopes the CEC remains strong and realizes its potential.

The JPAC chair then opened the floor for comments and questions by JPAC members and the attending public:

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<sup>1</sup> **DISCLAIMER:** Although this summary was prepared with care, readers should be advised that while JPAC members have approved it, it has not been reviewed nor approved by the interveners and therefore may not accurately reflect their statements. Please also note that there were some difficulties with the translation equipment and some portions of the interventions may have been missed.

- Why did the TRAC recommend that the Parties abstain from using Part 5 of the NAAEC?

Ms Torres replied that TRAC felt that there is a fear among the Parties and this could result on diminishing the focus on environmental issues. Cooperation, not confrontation should be the theme.

- From the perspective of indigenous peoples, the institution has been disappointing. We have not seen results that improve our situation in North America. We need an environmental agreement that is as strong as the North American Free Trade Agreement (NAFTA). Culture has to be taken into account.
- A JPAC member thanked the TRAC for the excellent review of JPAC's work and role. She also appreciated the recommendations on capacity building and building synergies with academia and industry.
- When engaging industry, it is important to focus efforts on small and medium-size businesses. They represent 95 percent of the business in Mexico. The CEC should also be careful not to duplicate studies and analyses done by industry and academia.
- Regarding NAAEC Articles 14 and 15, why does the report suggest that the Secretariat went beyond their mandate, and what is meant in the report by "clarifying the ground rules"? Ms Haverkamp replied that the intention of this recommendation was to identify the need to clarify and adhere to responsibilities as set forth in the NAAEC, not to get into specific details. The important message is that a perception was established that was not constructive. It is now time to move forward.
- Rural areas have been forgotten. Small producers and farmers in Mexico need assistance so they can trade their products with the other two countries or gain employment. Perhaps transnational corporations could sponsor exchange programs.
- The roles and responsibilities at the federal, state and local governmental levels need to be clarified. The TRAC report did not focus enough attention on the important policy-making role of local governments.
- The CEC is losing its effectiveness. The budget is contracting and there are fewer and fewer Article 14 and 15 submissions. Also, the value of Article 13 reports is not clear. Are these independent Secretariat reports? More analysis and understanding is required for the role of Article 13 reports in generating information, even if the subject is controversial.
- A member of the public from Windsor, Ontario, commented: "there is nothing green about the way we handle trade." He asserted that NAFTA and the events of September 11 have devastated his community. "What is green about chronic exposure to diesel pollution"?
- There is too much process in the CEC. Is the CEC an efficient tool for helping to enforce environmental laws in North America? That is the key question and the answer is not evident in the report.
- JPAC is a point of contact between NGOs and the CEC. We have petitioned JPAC to help us with the water and biodiversity crisis in Lerma/Chapala. What is the purpose of JPAC if there is no action or follow up? Ms Haverkamp replied that JPAC meets with the public and brings issues to the attention of Council, but is not responsible for follow up—that responsibility rests with the Parties.

- We need an environmental agreement at the same level as NAFTA. The NAAEC is parallel, but not at the same level. The situation described at the Windsor border crossing is not unique. Departments of environment in our countries are at a different level than our trade and commerce departments. We need to be at the same level when we talk about sustainable development. Society and the environment are the bases of sustainability. Ms Torres agreed that the NAAEC has not yet met its potential for advancing sustainable development.

The JPAC chair then introduced the first plenary session

### **A North American Environmental Agenda—chaired by Jane Gardner, JPAC member**

Ms Gardner introduced the session by asking a series of questions to help stimulate the discussion. She noted that in her view, the NAAEC and JPAC represent an important trilateral experience to ensure prosperous trade while at the same time protecting the environment and the citizens of North America. Trade is growing and environmental protection increasing. Some things have been done well and in other areas things could be done better. Our common challenge is to improve what needs to be improved. What are those areas and what can we do and how do we get there?

She then opened to floor for comments.

- A former JPAC member noted that the industrial sector is placing more emphasis on sustainable development and more is needed. He argued that it is extremely important to include the social dimension in any discussion of trade and environment. He urged the CEC to involve the private sector in all of its activities. He also noted that the pollutant release and transfer register should distinguish recycling and final disposition. Regarding the budget issues, the CEC should focus on fewer issues.
- Another former JPAC member addressed the difficulties in maintaining a commitment to the CEC as governments change. The CEC needs a clear, long-term strategic plan to help insulate the CEC from political change. To date, the CEC operates too much ‘at the whim’ of Council. The program is too ambitious and lacking focus. The projects are not moving in parallel towards a common objective. She recommended to always “go back to your objective and ask how you meeting it.”
- How many public institutions subject themselves to this kind of evaluation? Congratulations on doing so. The institution would benefit from visionary leadership. Our political leaders need to think decade-to-decade. The current budget is not sustainable. At a meeting earlier this year in Miami on hemispheric trade, government spent US\$8.7 million for security alone—to separate the public discourse from the leaders! We should remind our leaders that it is time to rethink budget priorities and put resources where the real dialogue is occurring. The CEC is a model for institutional dialogue
- The role of the CEC in delivering programs needs to be questioned. Should the CEC be delivering programs or developing strategic action plans that others implement?
- Another former JPAC member complimented JPAC on its efforts as an avenue for public discourse. He also urged that the North American Fund for Environmental Cooperation (NAFEC) be reinstated because of its important role in seeding larger projects and building grass roots support for sustainable development. The CEC should look at

options for funding. There is no reason that NAFEC could not be funded disproportionately outside of the CEC annual budget. NAFEC is one very good way of assuring the continuing development of a North American constituency and that will provide great benefit for the CEC.

- Sustainable development is a distant goal in Mexico. Biodiversity is under siege. Laws are not applied or worse, modified, to support development. In Mexico, private sector interests are given priority over public interests. Regarding transgenic maize, we demand the results of the CEC's Article 13 report. What is the true commitment of the CEC to such issues?
- The principle of 'polluter pays' is troublesome. Large companies can afford to continue polluting. We need remedies, not just payments.
- The CEC could take the Lerma/Chapala Basin as a model for action. It has all ingredients of a great project to assess and develop remedial measures for pollution, water management, agriculture, etc. This would help reduce the level of frustration citizens are feeling that the CEC does not produce results.
- Another former JPAC member returned to the TRAC report and the area of public participation and the need to create a North American constituency that transcends changes in administration: the TRAC report's recommendations need to be followed up and he encouraged JPAC to monitor this follow up and report on it to the public.
- JPAC has the important function of helping to hold governments accountable. We are losing biodiversity in Mexico and money that is earmarked for remediation never reaches the issue. Businesses at the US border are left to operate without environmental regulation. Governments need to be held accountable. We need practical results on the ground. Damage is being done and it is very profound. Waiting until 2006 is too long for reporting back.
- The construction industry in Mexico is a large consumer of primary energy and water. The CEC should work on developing criteria for a sustainable construction industry.
- The funds given the CEC are public funds, paid by the taxes of citizens. Is this money being well spent? Where are the concrete results? You have spent C\$450,000 on the Article 13 maize work and there is still no report or even discussion with the ministers. Our interests are not being served. At the same time there is less and less funding for public participation. You have your meetings in fancy hotels and the people involved in maize production cannot afford to attend. Do we really need an expensive Secretariat? Maybe it is better to provide the money to people who need it at the local level.

The JPAC chair then introduced the second plenary session.

### **The Environmental Goals and Objectives of NAFTA – Chaired by Gustavo Alanís-Ortega**

Sr. Ortega reviewed several of the relevant TRAC recommendations, specifically those related to:

- cooperation with the NAFTA Free Trade Commission (an issue that has preoccupied JPAC for several years and has been the subject of two public workshops and an Advice to Council),
- the environmental effects of free trade and areas where the CEC should focus its attention, namely: energy management, water management and biodiversity conservation, and finally, and

- exploring the environmental impacts of NAFTA, including the TRAC conclusion that NAFTA had not resulted in any apparent 'race to the bottom' regarding environmental protection.

He then opened the floor to comments, which were as follows:

- It is very important that other agencies of government, besides the environmental ministries, become involved in the work of the CEC.
- If trade and environment are not a clear priority of the CEC there is no reason for this institution to exist.
- How are results measured? Are objectives being met? Many would say not. In Baja California, for example, we are now used as energy providers to the United States. At the same time there exist embargos on some Mexican products into the United States. Regarding labor, the Canadians provide return flights for migrant laborers. In the United States they are left to their own devices. This creates social problems.
- Water is a priority for Mexico. It is scarce and polluted and NAFTA has exacerbated the problem. The Lerma/Chapala basin is a prime example of this crisis. There, 80 percent of the water used is for agriculture and of that, 50 percent is lost because of antiquated irrigation techniques. We need modernization, remediation and the enforcement of environmental laws.
- We need a common environmental accounting system for North American in order to measure environmental debt. We need indicators beyond the Gross National Product. We are creating an ecological deficit.
- Perhaps NAFTA has improved life for some, but not for indigenous farmers. Quite the opposite. There is more poverty. For us the issue of transgenic maize is very important. We need real discussion. We will defend ourselves, despite what you do or don't do with your maize report. We don't want transgenic corn. We will not allow the Council of ministers to determine our future. That is why we are here. If we are not involved then it will demonstrate that society's needs are not a priority for the CEC. The trade agenda is not more important than our rights. We will not back off. Don't kid yourselves, ministers will not advocate for society's interests.
- We all know that our current lifestyles are unsustainable. The CEC needs to have a long-term vision. While trade and environment linkages are important, so is pollution prevention. The CEC should promote a shift in consumption habits. Regarding GMOs, we do not have the information to make the decision in the marketplace. In North America the reality is that industry promotes technology and governments support it because it creates jobs and economic growth. But at what larger cost?
- The CEC needs more efficiency, results and quality. We can't wait years to get reports out. We also need progress on transboundary environmental impact assessment as part of the trade and environment discussion. We need transparent negotiations. The CEC is getting further and further away from the public and responding to the wishes of governments. You need more public participation in your research. If the maize report is not published, this would demonstrate a lack of respect for society.
- A member of the National Advisory Committee (NAC) for Canada thanked the TRAC for its report and noted that Mexico still does not have a functioning NAC. The most important recommendation is to restore funding. Otherwise the CEC cannot do its job. There are many committed people working in and with the CEC. National governments

cannot deal with continental problems—we need the CEC for this. There are huge expectations for the CEC and it needs the resources to succeed. Seven out of the 14 recommendations have resource implications. It is not realistic to commit to action on the recommendations without addressing the funding issue.

- Farm workers in the United States are not protected. When talking about trade and environment, don't forget labor. US agricultural subsidies are displacing Mexican producers. Business is moving to the border region. Migrant labor is cheap and also under attack. Be creative and include labor and outreach to the Labor Commission of NAFTA.
- Since NAFTA there has been increased consumption. Consumption is linked to sustainable development. For example, there is open burning of garbage in rural communities which we know produces PCBs. This is not internalized in the costs. The CEC should do more work on human health, especially that of children.
- The CEC should interact with the Free Trade Commission over NAFTA's Chapter 11. The CEC could participate directly as an expert witness.
- Green buildings and certification for minimizing environmental impacts in the construction industry should be promoted.
- Environment and the rights of citizens cannot be subordinated to trade.

The JPAC chair then introduced the third and final plenary discussion.

### **The NAAEC institutions and public involvement – Chaired by Donna Tingley**

Ms Tingley posed two questions to stimulate discussion: how well are the main institutions created under the NAAEC working together, and has the CEC facilitated greater public involvement in North American environmental management? She also raised the issues of NAFEC and the citizen's submission process under Articles 14 and 15 of the NAAEC, both areas where JPAC has great interest and has contributed considerable Advice to Council over the years.

She then opened the floor to comments.

- The CEC needs a strategic plan. Other institutions, agencies, etc., can be responsible for implementation. The CEC cannot do everything. Criteria are required for where and when the CEC should be involved, other than its clear obligations under the NAAEC. Examples of appropriate criteria are: mitigating negative environmental impacts from free trade or where trilateral environmental problems or issues are involved. The CEC should not 'replace' governments. Regarding Articles 14 and 15, the Secretariat has not overstepped its authority. It has lived up to its authority and should continue. The CEC needs to be able to deal with widespread failure to enforce and not be limited to specific examples. There are other mechanisms in Canada and the United States to deal with specific examples. NAAEC intended us to look at this widespread failure to enforce. We should not let Council get away with this. Nor should we increase the burden of proof for the submitters. If you have accountability, you have an incentive to cooperate. As far as mediation is concerned, the TRACT recommendation is not clear. Finally, fears of NAFTA Chapter 11 challenges have suppressed environmental initiatives.
- The CEC gets into difficulty when the Council operates in a big "P" political climate and the rest of us are a small "p" public. It is worth remembering that the CEC grew out of the NGO community – that is where it got its strength. Governments can't take credit for

the stimulus to create this institution. Now the NGO community should again be provocative to draw in other sectors. For example, we need the business sector and it won't come in unless it is worth its while. We can't wait another ten years. It is quite appropriate for the CEC to move on trade unilaterally, if done on a scholarly basis. Many of these issues are environmental in nature. JPAC could take the lead to draw together a conference, write papers, etc. Council on its own will just flap away.

- The TRAC report has provided some recommendations to reduce micromanagement by Council and these should be supported. However, it is not clear where public participation fits into the board of directors' model proposed by the TRAC. Typically, boards of directors are the antithesis of public participation.
- It is one thing to for the CEC to set up mechanisms to hear from the public, but how are public views taken into account? There is no obvious mechanism where voiced opinions are transformed into action.
- We need more courage to forge ahead. Council, JPAC and the Secretariat could move on trade issues without the trade counterparts. Trade just ranks over the environment. This represents a lack of political will and refers back to the first TRAC recommendation regarding commitment to the institution. There is a leadership vacuum. There is also the issue of how individual ministers sit as Council and how they operate as representatives of their governments. This is evidenced by suspicions on their decisions related to Articles 14 and 15. Council should be looking behind at the domestic situation and at the same time forward into the North American region. Council represents three domestic governments working at an elevated level for North America. The responsibility of Council is to be a steward of the North American environment. Yet Council shows up representing their domestic governments. This is a fundamental flaw of the institution. If Council had a broader view, we would not be having so much trouble with TEIA, for example.
- The CEC is losing its connection with what is going on out in the field. NAFEC should be reinstated. It was a wonderful program for getting results, building lessons learned and influencing new policy. Now all this analysis is done in an ivory tower, never getting back to the public.
- I am wondering why no one had brought up the matter of reforms to the NAAEC. After ten years we now have examples of where reforms could be needed. Articles 14 and 15 are an example where the Parties act as judge and jury. They manipulate the process.
- Public participation gives credibility to the CEC. It should not be limited to JPAC. How can this be improved? What more can be done? JPAC holds workshops, sends Advice to Council and sometimes we don't even know if they are replied to. We need to get feedback and improved communication. What is Council saying? What are the decisions?
- It would be very convenient for the public to get a history of JPAC and what has happened with all of your advice over the years.

The JPAC chair thanked all the participants for their important comments and adjourned the session.

Prepared by Lorraine Brooke  
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