



## **COMMISSION FOR ENVIRONMENTAL COOPERATION**

### **Joint Public Advisory Committee Session No. 99-01**

**25 and 26 March 1999**

#### **Summary Record**

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) held a regular session in Mexico City on 25 and 26 March 1999. This session featured a round table with the attending public, representatives from the Council, the Mexican and Canadian National Advisory Committees, the CEC Interim Executive Director and Secretariat staff.

This Summary Record reports on each agenda item, records all decisions made by the Committee and identifies action items and responsibilities. See Annex A for the agenda, Annex B for the list of participants, Annex C for a summary of the round table discussions, Annex D for Advice to Council 99-01, Annex E for Advice to Council 99-02 and Annex F for a list of recommendations which emerged from the NAFEC-hosted meeting on markets for green goods and services.

The full past summary records, advice from JPAC to Council and other documents pertaining to the Committee may be obtained from the JPAC Coordinator's office or through the CEC's Internet homepage at <<http://www.cec.org>> under the JPAC header.

Jacques Gérin, Jean Richardson, Jonathan Scarth and Mary Simon were absent from the session, having notified the Secretariat in writing as to the reasons for their absence. The Chair announced that he had just this morning received a letter from Ms. Julia Carabias, the Mexican Secretary of the Environment, Natural Resources and Fisheries, appointing three new Mexican members—Regina Barba, Blanca Torres and Daniel Basurto—to replace Guillermo Barroso, Jorge Bustamante and Iván Restrepo, who have finished their mandate.

#### **Welcome and Overview by the Chair**

The JPAC Chair for 1999, Jonathan Plaut, opened the session by welcoming the participants and expressing JPAC's enthusiasm for the impressive attendance. He introduced the JPAC members and CEC Secretariat staff. He also welcomed and introduced the three new Mexican JPAC members.

He reported that JPAC had been very active since its last session, having held a special workshop on the proposed revisions to the Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) and producing a draft Framework for Public Participation in CEC Activities, which is now out for public review.

### **Approval of the Provisional Agenda**

The matter of JPAC's recommendation to Council for an appointment of a JPAC member to the NAFEC selection committee was added to the agenda.

### **Report by the Interim Executive Director**

The Interim Executive director of the CEC, Janine Ferretti, was then asked to provide an update on the progress to date in the various program areas of the CEC.

The next Regular Session of Council will take place on 27–29 June in Banff, Alberta. The session will provide an opportunity to highlight the advancements made by the CEC since the last Council Session in Mérida and provide a forum to evaluate efforts and focus future action. Strong public participation will be critical to that process.

The Parties are close to an agreement on Transboundary Environmental Impact Assessment and it is hoped that an agreement will be finalized in June.

There has been significant progress on strengthening work in the area of biodiversity. The Council and the public will have an opportunity to look at the results of initiatives such as the Action Plan for the Conservation of North American Birds. Over 100 organizations will have participated, providing an excellent example of the benefits that can be derived from regional cooperation.

The Secretariat is finalizing its Article 13 report regarding the upper San Pedro River basin and will be forwarding it to Council.

Regarding the focus on human health within the Sound Management of Chemicals (SMOC) Program, North American Regional Action Plans will be developed for dioxins/lindane, hexachlorobenzene, and furans. JPAC has played an important role in promoting this effort. The upcoming SMOC/JPAC meeting in Anchorage, Alaska, where a Senior Arctic Officials meeting of the Arctic Council is also taking place, will be an exciting opportunity to bring forward issues of importance to indigenous peoples.

Regarding trade and environment, the CEC recently released a report, entitled *Assessing Environmental Effects of the North American Free Trade Agreement: An Analytic Framework (Phase II) and Issue Studies*, and trade and environmental officials are continuing to explore mechanisms for cooperation.

Finally, she reported that the *State of the Environment Report* is being finalized. A summary is currently being prepared and a draft will be available to the Parties and JPAC in May for review, with a target of September 1999 for release. The larger document will be presented as background information.

### **Report by National and Governmental Advisory Committee Representatives**

The representatives from the Mexican and Canadian National Advisory Committees (NACs) were in attendance and they were asked to make their comments.

The Mexican NAC Coordinator, Mateo Castillo, reported that the Mexican National Advisory Committee has taken concrete steps to organize itself by developing rules of procedure and a code of ethics. The Committee is composed of 16 members from throughout the country. The main purpose of this group is to assist the Mexican government to develop a cooperative agenda for environmental issues. It is also extremely important to coordinate activities with other Mexican sustainable development councils and to engage private citizens in this process. To date, they have produced recommendations to government on Sierra Blanca, Articles 14 and 15 and the need to appoint new JPAC members. Their current priority is to look at transgenic practices in agriculture in Mexico.

A Canadian NAC member, Chris Pierce, stated that as a new member, his participation at this meeting would be an important learning experience. The appointment of new members to the Canadian committee coincides with the new Three-Year Program Plan, which offers an opportunity to learn and contribute.

### **Round Table on the CEC Program Plan for 1999–2001**

The Chair made introductory remarks urging participants to focus on substance and provide assistance in identifying gaps and opportunities for improvement for JPAC consideration and discussion with the Secretariat and the Council. He informed the group that representatives from the Parties were in attendance. Presentations by the participants and an exchange with JPAC members and the Secretariat followed. A summary of the discussions is found in Annex C.

**Action: JPAC**

### **Presentation and Discussion on the Markets for Green Goods and Services**

A three-day meeting was hosted by the North American Fund for Environmental Cooperation (NAFEC) for grantees and other organizations involved in producing and marketing green goods and services, on 22–24 March 1999 in Oaxtepec, Morelos. Peter Berle attended for JPAC and as member of the NAFEC Selection Committee. A wide range of participants from the three countries participated and a variety of important matters discussed.

Janice Astbury, the NAFEC Coordinator, provided an overview and introduced two representatives from the meeting, Laure Waridel of Equiterre and Jesús Antonio Ramírez of the *Union de Comunidades Indigenas de la Region del Istmo* (UCIRI), who presented the recommendations. It was agreed by JPAC that these recommendations would be attached to the Summary Record as a means for further review (see Annex F).

**Action: JPAC/Secretariat**

The presentation was followed by a discussion. It was suggested that JPAC could play a role in the issue of certification, which is very problematic for most producers. The CEC could explore the notion of how to provide options to lower costs for certification. It was agreed that JPAC would study the recommendations and consider possible activities. It was further suggested that this could be done directly in relation to the shade-grown coffee initiative.

**Action: JPAC**

**Presentation and Discussion on the Strategic Directions for the Conservation of Biodiversity**

Hans Herrmann, the CEC Program Manager for Biodiversity Conservation, made a presentation, stressing the role of the CEC in facilitating the establishment of a long-term agenda for North American cooperation in this area. In response to a question, he clarified that the workshop with indigenous peoples was now planned for the year 2000.

It was also noted that this program area converged with projects on green goods and services. Matters of biodiversity are interrelated with marketing. Protecting biodiversity is not solely for the sake of conservation. Comprehensive management is required along with an understanding of the complexity of the problem.

It was proposed by the Chair that a working group be formed to ensure the necessary cooperation between JPAC and this program area, as well as a means for providing advice on how best to involve the public. The working members are Regina Barba, Jean Richardson and Mary Simon.

**Action: JPAC Working Group/Secretariat**

**Discussion on the Draft Advice to Council on the Revised Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of NAAEC**

Donna Tingley, a JPAC member, provided an overview of the public workshop hosted by JPAC on 29 January 1999 in Montreal, and reported that the majority view was that the guidelines should not be revised. She also reported that a minority of respondents were in favor of revision.

Informed by the results of the workshop, JPAC prepared draft Advice to Council 99-01. The text was reviewed, particularly for the benefit of new members and some wording changes were proposed and accepted reflecting JPAC's future role in observing the submission process and determining if and when adjustments may be required (see Annex D).

**Action: Council**

**Observers' Comments (Day 1)**

Mateo Castillo, the Mexican NAC Coordinator, brought to the attention of JPAC the funding problems experienced by the Mexican NAC, and asked if there could be a discussion of possible funding mechanisms and a joint JPAC/Mexican NAC proposal made to Council. He explained that, in practice, the NACs work for both the Council and JPAC, so costs should be shared through the creation of a special fund. He stated that the Mexican NAC shared JPAC's view on the Articles 14 & 15 citizen submission process and urged that JPAC stay involved, particularly with regard to matters such as discretionality.

A discussion took place on the matter of funding. The members of JPAC responded that while it was understood that financing had not been fully provided for in the NAAEC, it was the

responsibility of governments, not the CEC, to support the NACs. However, the Chair asked Mr. Castillo to make a proposal to JPAC on how it could help resolve this issue.

**Action: Mexican NAC/JPAC**

Chris Pierce, from the Canadian NAC, agreed with his Mexican colleague that funding was an issue. He congratulated JPAC on reaching a consensus on the matter of Articles 14 and 15 and said that JPAC's position brings comfort to the Canadian NAC. He was also very pleased to learn that strategies for short-term results will be developed in the Strategic Directions for the Conservation of Biodiversity Project.

Gustavo Alanis, from the *Centro Mexicano de Derecho Ambiental*, congratulated JPAC on having organized the workshop on Articles 14 and 15 and for the sensitive and well-balanced Advice to Council that had been prepared. He agreed that circumstances would dictate if and when it was time to make adjustments. The workshop and the resulting advice provided a clear example of transparency within the NAFTA process. He suggested it would be useful for JPAC to create a trinational group with representatives from different sectors to provide assistance in order to follow the process of the NAAEC Articles 14 and 15. He also suggested it might be time to look at amending the Agreement itself as provided for in the NAAEC Article 48 on Amendments. Finally he suggested that the turn of the millennium might be an opportunity to reverse the market-driven habits of the 20th century and create a new strategy for the 21st.

A JPAC member expressed concern that there was no Program Manager for the Law and Policy Program Area and urged that this vacancy should be filled as soon as possible.

**Action: Secretariat**

## **Day 2**

Before beginning the agenda for Day 2, Blanca Torres, a new Mexican JPAC member, made some introductory remarks. She stressed the need for a visionary approach when searching for solutions to environmental problems. Cooperation should be by consensus. Minorities must be given a voice in the debates, and a context that allows their concerns to develop must be created. If progress is the objective, then time must be allowed for people to participate at their own pace, while encouraging them to respond as quickly as possible.

### **Discussion on the Advice to Council on the Environmental Management Systems (EMS) and Compliance Report**

In a discussion on the use of environmental management systems, the members supported their use to achieve compliance but reiterated their concern that such voluntary management systems not be a substitute for regulation and enforcement. Rather, EMS is a tool for improvement. Draft Advice to Council 99–02 was reviewed and with some wording changes, approved (see Annex E).

**Action: Council**

It was observed that ISO 14000 certification is very comprehensive, detailed and, ultimately, expensive. However, many environmental problems, for example, discharge of toxic materials, come from enterprises not able to make their way through the certification process. JPAC should consider looking at ways to adapt existing systems to the needs of smaller enterprises. It was agreed that small and medium-size industries cannot easily comply. The CEC could have a value-

added role in training, skills upgrading and capacity building by working more closely with the private sector.

It was agreed that Raúl Tornel, member of the JPAC working group, would attend the next enforcement public workshop on 14 April in Washington, DC, to bring these issues forward and report back to JPAC.

**Action: JPAC**

#### **Discussion of the Advice to Council on NAAEC Article 28: Rules of Procedure**

It was agreed to postpone this issue as there was no text from Council available for review.

**Action: Council/JPAC**

#### **Discussion of the Advice to Council on Methods for Project Evaluation**

The communication plan being prepared by the Secretariat that will provide guidance for the evaluation process is not yet available. JPAC, through Jean Richardson, had provided documentation and consultation at an earlier session. It was agreed to form a working group of Jacques Gérin, Jean Richardson and Blanca Torres to review the communication plan when it becomes available.

**Action: Secretariat/JPAC Working Group**

#### **Discussion of Advice to Council on Regional Solutions to Global Issues for the Next Millennium**

The Chair reviewed the discussions that had taken place with the Council and their alternate representatives, who had asked JPAC for its views on using the turn of the millennium as an opportunity to draw attention to major environmental issues that will pass on into the 21st century.

A discussion took place and concerns were expressed that the whole issue had become a public relations gimmick. However, this did not detract from the fact that there are existing and emerging global issues that require serious attention.

How can the CEC participate in redirecting resources and benefits to those who need it most and address the imbalances within North American society? It was suggested that JPAC must “think outside the box.” Is the CEC a good place to do this kind of thinking? Other organizations may be better placed.

It was agreed that this topic should be combined with discussions on emerging trends and the State of the Environment report. The Chair will contact the Secretariat in early April and report back to JPAC.

**Action: JPAC Chair**

### **JPAC Recommendation to Council on the NAFEC Selection Committee**

Peter Berle will stay on through the next round of reviews until the United States nominates two new American members for the NAFEC Selection Committee. It was suggested to Council that the Mexican vacancy created by a recent resignation might be filled by a Mexican member of JPAC if possible. Regina Barba's name was put forward. It was agreed that the JPAC Coordinator would contact her before a recommendation was made to Council.

**Action: Secretariat/Council**

### **Discussion and Preparation of JPAC's Program for 2000–2002**

It was agreed that this would be finalized at the June Session. By that time, JPAC will have had the benefit of four round tables and would be in a much better position to design a program which better reflects the priorities of the public.

**Action: JPAC**

### **Next Council Session of June 1999**

The Chair reported that the Council Session was confirmed for 28–29 June in Banff, Alberta. The Agenda provides for a JPAC session with the Alternate Representatives and two sessions with Council, the second being after the JPAC round table in order to provide JPAC an opportunity to reinforce any specific points raised by the public. He urged all members to attend.

The Chair also announced that JPAC will be preparing a report for Council, in tabular form, on the status of the recommendations presented at the public workshop in Mérida on the 1999 Work Plan and the Three-Year Program Plan. This report will be made public in time for the next Council Session.

It was also agreed that a current list of substantive matters would be extracted from the first two round tables and provided to the Alternate Representatives to assist in the preparations for the Council Session.

**Action: JPAC**

### **JPAC Working Group Appointments**

The list of active working groups was updated. Those whose work has been completed were removed. The group on Emerging Trends was merged with Global Issues.

**Action: Secretariat**

### **Article 10(6) of NAAEC: NAFTA Chapter 11**

Another meeting with trade and environment officials is planned for April.



**Action: Council**

**Public Comments on the Draft Framework for Public Participation in CEC Activities**

Donna Tingley reported on the work leading to the development of the current draft. It was released for a 30-day review period on 19 March 1999. Following this, the draft, with any revisions, will be discussed by JPAC at its next session in May in order to allow for final presentation to Council in June.

**Action: Secretariat/JPAC**

**Last CEC Meeting on the *Taking Stock* Report**

Daniel Basurto and Raúl Tornel attended the pollutant release and transfer register meeting in Montreal. During the discussion at the meeting, the point was raised that the *Taking Stock* report, being released two years after the fact, loses utility as a background document. Furthermore, each country has different systems for reporting and listing substances. This also affects the value of the report. Those companies using environmental management systems are more likely to respond to requests for information of this nature.

JPAC expressed the opinion that a mechanism needs to be in place which allows for comparable data to be compiled from all three countries.

JPAC also urges that the vacancy created by the recent departure of the program manager supervising this initiative should be filled as quickly as possible.

**Action: Secretariat**

**Next CEC Meeting on Sustainable Tourism in Natural Areas**

There is a meeting scheduled for 27–28 May in Cancún, Quintana Roo, to which JPAC is invited. The Chair suggested that the new JPAC member, Regina Barba, might be the most appropriate representative. However, any member interested in attending should inform the JPAC Coordinator.

**Action: JPAC members**

**Canada/Chile Bilateral Free Trade Agreement March Meeting**

This item was covered at the last meeting on 3–4 December 1998, in a written report made by John Wirth. The next meeting was held on 26 March 1999, which overlapped with this JPAC meeting, making it impossible for any member to attend. However, there is continuing interest in having JPAC involvement in these negotiations.

**CEC Executive Director Nomination**

The Chair reiterated that this is the most important issue before the CEC at this time. He had participated in the initial screening of the candidates. The Council members are now interviewing

these candidates and it is hoped that an announcement will be made well before the June Council Session. The Chair said he will keep abreast of the dossier and involve himself again if necessary.

**Action: JPAC Chair**

### **JPAC Member Appointments and Rotation**

Mexico has made its new appointments and now has five active members. The matter of rotation, however, has not yet been clarified. The United States has not responded on the matter of rotation either, and has one vacancy to fill. Canada has clarified the rotation of its current members but still has one outstanding vacancy.

**Action: The United States/Canada**

### **Commemorative Plaques for JPAC members**

It was agreed that the estimates presented for the production of the individual plaques and the permanent plaque at the CEC Secretariat were acceptable and the JPAC Coordinator was instructed to go forward with the project.

**Action: Secretariat**

### **Next JPAC Meetings**

It was confirmed that the next JPAC Regular Session would be held on 7–8 May in Anchorage, Alaska. Part of the session will be a joint meeting with the Sound management of Chemicals working group, focusing particularly on the effects of environmental contaminants on indigenous peoples. This meeting has been organized to coincide with a Senior Arctic Officials' meeting of the newly created Arctic Council, which will permit an exchange with circumpolar officials and northern indigenous peoples.

Because of the costs associated with travel to Alaska, the meetings will be held on a Friday and Saturday. In view of cost saving efforts underway at the CEC, early departures (before Sunday) will not be approved the chair announced.

**Action: JPAC/SMOC**

### **Observers' Comments (Day 2)**

A representative from Environment Canada, Rita Cerruti, reported that there were no new developments regarding Canadian provinces signing NAAEC. She anticipated that a new Canadian JPAC member would be appointed before the next meeting. She also encouraged JPAC to remain involved with the new public advisory committee created under the Chile/Canada Bilateral Free Trade Agreement. Regarding the June Council Session, she informed JPAC that accommodation was limited and reservations at Banff should be made as soon as possible. She also reported that present agenda was driven by potential announcements. Canada was proposing themes which would make it easier for public input. She cautioned that if JPAC wanted to contribute additional matters to the agenda to do so as soon as possible.

A representative from the Secretariat of Exterior Relations in Mexico, Alberto Benítez, thanked JPAC for the enriching experience and found it very useful to see how JPAC deals with complex issues such as the Revised Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 & 15 of the NAAEC.

A representative from the US Environmental Protection Agency, Lorry Frigerio, outlined the current priorities for the United States. These include, first, the appointment of a new Executive Director. She informed the meeting that the candidates are presently being interviewed. The second priority is the development of model rules of procedure, as called for in the Agreement. Finally, she expressed regret that the United States NAC and GAC could not be present at this session and said that they very much appreciated the interaction with JPAC. The United States GAC Chair will attend the next meeting in Anchorage.

Mateo Castillo, of the Mexican NAC, expressed the opinion that environmental management systems are an effective voluntary mechanism and should be encouraged. The Mexican NAC sees EMS as a system and not just a tool. He also felt that the CEC should increase its efforts to strengthen the participation of civil society. Rather than focusing on the millennium, for instance, what is the CEC doing now to integrate environment and trade issues? The rules of procedure contemplated in Article 28 of the NAAEC should be developed. Issues related to transgenic organisms in agriculture and their potential impacts on human health are of great concern to Mexico and should be included in the Three-Year Program Plan (2000–2002). The Secretariat will receive a list of the Mexican NAC members and their interest/expertise. Finally, he congratulated the Chair for a very successful meeting.

A representative from the private sector, Wayne Soper, commented that most of the CEC's efforts are concentrated on the environment. He feels it would be appropriate to “kick it up a notch” and use sustainable development as the focus to facilitate discussions on the relationship between environment, economy and society.

A representative from academia, Alejandro Gracia Gamacho, thanked the JPAC for the excellent meeting and proposed that an editorial council be created within the CEC to standardize terms such as “environment,” “ecology,” and “nature,” in order to avoid some of the confusion surrounding those terms today. Regarding the objectives of the JPAC Meeting in Anchorage, he expressed concern that it might be premature to tackle the issue of indigenous peoples' involvement within the CEC, considering the fact that there is at present no strategy within the institution on this important issue.

The Chair then thanked the participants, the JPAC members and the CEC staff and adjourned the session.

Prepared by Lorraine Brooke.

APPROVED BY JPAC MEMBERS ON 28 APRIL 1999



**Commission for Environmental Cooperation**  
**Joint Public Advisory Committee Session no. 99-01**  
**25 and 26 March 1999**

**Sevilla Palace Hotel**  
**Av. Paseo de la Reforma 105, Col. Revolución, Mexico City, Mexico**  
**Phone: 011-525-705-2800 • Fax: 011-525-535-3842**

**Agenda**

**Chair: Jon Plaut**

**Thursday, 25 March 1999**

- |                    |  |
|--------------------|--|
| 9:00 am – 9:30 am  | Welcome and Overview by the Chair<br>Approval of the Provisional Agenda<br>Report by the Interim Executive Director<br>Report by National and Governmental Advisory Committee Representatives  |
| 9:30 am – 11:00 am | Round Table on the CEC Program Plan for 1999-2001<br>Identification of Participants<br>Presentation by the Interim Executive Director<br>Exchange between the Participants<br>- Environment, Economy and Trade<br>- Conservation of Biodiversity |
| 11:00 am – 1:30 pm | Break<br>Exchange between the Participants (Cont'd)<br>- Pollutants and Health<br>- Law and Policy<br>Other Initiatives<br>Summary made by the Rapporteur  |
| 1:30 pm – 2:30 pm  | Lunch  |
| 2:30 pm – 3:30 pm  | Presentation and Discussion on the Green Goods and Services Markets  |
| 3:30 pm – 4:30 pm  | Presentation and Discussion on the Strategic Directions for the Conservation of Biodiversity   |
| 4:30 pm – 4:45 pm  | Break  |
| 4:45 pm – 6:00 pm  | Discussion on the Draft Advice to Council on the Revised Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC   |
| 6:00 pm – 6:30 pm  | Observers' Comments  |
| 6:30 pm            | Adjournment  |

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**25 and 26 March 1999**

**Sevilla Palace Hotel**  
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**Phone: 011-525-705-2800 • Fax: 011-525-535-3842**

**Agenda**

**Chair: Jon Plaut**

**Friday, 26 March 1999**

- |                     |  |
|---------------------|--|
| 9:00 am – 9:30 am   | Discussion of the Advice to Council on the Environmental Management Systems and Compliance Report  |
| 9:30 am – 10:00 am  | Discussion of the Advice to Council on NAAEC Article 28: Rules for Procedure   |
| 10:00 am – 10:30 am | Discussion of the Advice to Council on Methods for Project Evaluation  |
| 10:30 am – 11:00 am | Break / Hotel Check-out *  |
| 11:00 am – 11:30 am | Discussion of Advice to Council on Regional Solutions to Global Issues: Millennium   |
| 11:30 am – 12:00 pm | Discussion and Preparation of JPAC Program for 2000-2002   |
| 12:00 pm – 12:30 pm | Next Council Session of June 1999  |
| 12:30 pm – 12:45 pm | JPAC Working Groups Appointments   |
| 12:45 pm – 1:15 pm  | Update on Various Issues <ul style="list-style-type: none"><li>- Article 10(6) of the NAAEC: NAFTA Chapter 11</li><li>- Public Comments on the CEC Draft Public Participation Guidelines</li><li>- State of the Environment Report</li><li>- Last CEC Meeting on the <i>Taking Stock Report</i></li><li>- Next CEC Meeting on Sustainable Tourism in Natural Areas</li><li>- Canada/Chili Bilateral Free Trade Agreement March Meeting</li><li>- CEC Executive Director Nomination</li><li>- JPAC Member Appointments and Rotation</li><li>- Commemorative Plaques for JPAC Members</li><li>- Canadian Provinces Engagement to the NAAEC</li></ul> |
| 1:15 pm – 1:30 pm   | Next JPAC Meetings   |
| 1:30 pm – 2:00 pm   | Observers' Comments  |
| 2:00 pm             | End of the Session   |

**Joint Public Advisory Committee Session N° 99-01**

**25-26 March 1999  
Mexico, D.F.**

**List of Participants**

**JPAC Members:**

**Canada**

Donna Tingley

**México**

Regina Barba  
Daniel Basurto  
Jesús Druk  
Raúl Tornel  
Blanca Torres

**United States**

Peter Berle  
Jonathan Plaut (Chair)  
John Wirth

**Participants/Observers**

|                            |   |
|----------------------------|---|
| Lourdes Aduna              | <i>Cámara Nacional del Hierro y el Acero</i>                              |
| Gustavo Alanís             | <i>Centro Mexicano de Derecho Ambiental, A.C.</i>                         |
| Rocio Alatorre             | <i>Instituto Nacional de Ecología (INE)</i>                               |
| Gustavo Alexandre          | <i>Petróleos Mexicanos (PEMEX)</i>  |
| Sergio Alferez             | <i>Red Internacional de ONG's contra la desertificación<br/>Querétaro</i> |
| José Alberto Alvarado      | <i>Centro Universitario México</i>  |
| Juan Alvarez               | <i>Cámara Nacional de la Industria de Transformación<br/>(CANACINTRA)</i> |
| Jorge Anaya                | <i>Secretaría de Comercio y Fomento Industrial (SECOFI)</i>               |
| Oliva Angeles              | <i>Universidad Nacional Autónoma de México (UNAM)</i>                     |
| Martín Antonio de la Garza | <i>BASF Mexicana, S.A. de C.V.</i>  |
| María del Coro Arizmendi   | <i>Universidad Nacional Autónoma de México (UNAM)</i>                     |
| Andrés Avila               | <i>Secretaría de Comercio y Fomento Industrial (SECOFI)</i>               |
| Ernesto Bächtold           | <i>TÜV Rheinland de México, S.A. de C.V.</i>                              |
| Mario Bahena               | <i>Escuela Superior de Agricultura, Guerrero</i>                          |
| David Barkin               | <i>Universidad Autonoma Metropolitana</i>                                 |
| Julieta Barragan           | <i>Instituto Politécnico Nacional</i>                                     |

|                        |  |
|------------------------|--|
| Jorge Basave           | <i>Pronatura</i>   |
| Alberto Benítez        | <i>Secretaría de Relaciones Exteriores</i>   |
| Diana Benítez          | <i>Secretaría del Medio Ambiente, Gobierno del D.F.</i>                                    |
| Amaya Bernardez        | <i>Centro de Estudios del Sector Privado para el Desarrollo Sostenible (CESPEDES)</i>      |
| Víctor Blanco          | <i>Instituto Tecnológico Autónomo de México</i>  |
| Rodolfo Bonilla        | <i>Bechtel de México</i>   |
| Ned Brooks             | <i>Instituto Nacional de Ecología (INE)</i>  |
| Roberto Calderón       | <i>Asociación Nacional de Productores de Refrescos y Aguas Carbonatadas, A.C. (ANPRAC)</i> |
| Itzia Calixto          | <i>Centro de Estudios del Sector Privado para el Desarrollo Sostenible (CESPEDES)</i>      |
| Martin Camacho         | <i>Unión de Pajareros de Puebla</i>  |
| Alberto Camoreno       | <i>CONABIO</i>   |
| Antonio Cárdenas       | <i>Petróleos Mexicanos (PEMEX)</i>   |
| Laura Carlsen          | <i>Red Mexicana de Acción Frente al Libre Comercio</i>                                     |
| Jorge Cassaigne        | <i>Control de la Contaminación del Agua S.A. de C.V.</i>                                   |
| Mateo Castillo         | <i>Coordinadora de Cámaras y Asociaciones Empresariales del Edo. de Michoacán</i>          |
| Miguel Alonso Castillo | <i>Ecociudadanía del Futuro, A.C.</i>  |
| Ignacio Castillo       | <i>Comisión Nacional del Agua (CAN)</i>  |
| Rita Cerutti           | <i>Environment Canada</i>  |
| Irma Cobos             | <i>El Colegio de México, A.C.</i>  |
| Bertha Corte           | <i>Asociación de Lucha Metropolitana para el Mejoramiento del Medio Ambiente</i>           |
| Alejandro Cruz         | <i>Sector Empresarial Privado en el Estado de Sinaloa</i>                                  |
| Carlos de la Mora      | <i>Fundación de Apoyo Infantil, A.C.-Guanajuato</i>  |
| Elizabeth De la Rosa   | <i>Fuerza Forestal, A. C.</i>  |
| Veronique Deli         | <i>Secretaría de Medio Ambiente, Recursos Naturales y Pesca</i>                            |
| Gordon Demoskoff       | <i>Saskatchewan Wetland Conservation Corporation</i>                                       |
| José Díaz              | <i>Instituto Nacional de Ecología (INE)</i>  |
| Norberto Durán         | <i>Secretaría de Comercio y Fomento Industrial (SECOFI)</i>                                |
| Mónica Echegoyen       | <i>Instituto Nacional de Ecología (INE)</i>  |
| Sergio Escalera        | <i>Centro de Estudios del Sector Privado para el Desarrollo Sostenible (CESPEDES)</i>      |
| Francisco España       | <i>Confederación de Cámaras Industriales (CONCAMIN)</i>                                    |
| José Ignacio Félix     | <i>Universidad Autónoma de Puebla</i>  |
| Angélica Feroso        | <i>Secretaría de Agricultura, Ganadería y Desarrollo Rural</i>                             |
| José María Fernández   | <i>Consejo Nacional de Industriales Ecologistas, A.C.</i>                                  |
| Juan Flores            | <i>Secretaría de Energía</i>   |
| Didya Fong             | <i>Secretaría de Relaciones Exteriores</i>   |
| Lorry Frigerio         | <i>U.S. Environmental Protection Agency</i>  |
| Luis Fueyo             | <i>Procuraduría Federal de Protección al Ambiente (PROFEPA)</i>                            |
| Claudia Gallardo       | <i>Herrera Abogados S.C.</i>   |
| Alejandro García       | <i>Instituto Politécnico Nacional</i>  |
| Enrique García         | <i>Petróleos Mexicanos (PEMEX)</i>   |
| Manuel García          | <i>Desarrollo Agropecuario Indígena, S.S.S.</i>  |
| Reyna Gil              | <i>Ayuntamiento Benito Juárez</i>  |
| Matilde González       | <i>Cámara Regional de la Industria Textil</i>  |

|                           |  |
|---------------------------|--|
| Ana Karina González       | <i>Centro Mexicano de Derecho Ambiental, (CEMDA) A.C.</i>                  |
| Carlos González Guzmán    | <i>Procuraduría Federal de Protección al Ambiente (PROFEPA)</i>            |
| Guillermina Guillén       | <i>El Universal</i>  |
| Fernando Gutiérrez        | <i>Instituto para la Protección Ambiental de Nuevo León</i>                |
| Ricardo Hernández         | <i>Secretaría de Ecología, Recursos Naturales y Pesca, Chiapas</i>         |
| Octavio Hernández         | <i>Excélsior</i>   |
| Héctor Herrera            | <i>Herrera Abogados, S.C.</i>  |
| José Luis Huaracha        | <i>Secretaría de Ecología del Gobierno del Estado de México</i>            |
| Enrique Huerta            | <i>Editorial Ecología y Medio Ambiente</i>                                 |
| Maria Eugenia Jimenez     | <i>Grupo Ecológico El Manglar A.C.</i>                                     |
| Patricia Jiménez          | <i>Secretaría del Trabajo y Previsión Social</i>                           |
| Alejandro Juárez          | <i>Cámara Nacional de la Industria de Transformación (CANACINTRA)</i>      |
| Ernesto Ladrón de Guevara | <i>UNORCA</i>  |
| Eric Léger                | <i>Corporation du Bassin Versant Ruisseau St-Esprit</i>                    |
| Gelda Lhamas              | <i>Universidad Autónoma de Puebla</i>                                      |
| Héctor López              | <i>Instituto Politécnico Nacional</i>                                      |
| Alejandro Lorea           | <i>Asociación Nacional de la Industria Química, A.C.</i>                   |
| Olga Loredó               | <i>Instituto Nacional de Ecología (INE)</i>                                |
| María Ethel Maqueda       | <i>Cámara Nacional de la Industria de Transformación (CANACINTRA)</i>      |
| Olinca Marino             | <i>Programa La Neta, S.C.</i>  |
| Laura Márquez             | <i>Consejo Internacional para la Preservación de las Aves</i>              |
| Silvia Matallana          | <i>Universidad Autónoma de Querétaro</i>                                   |
| Rocío Mejía               | <i>Secretaría de Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP)</i> |
| Sergio Mendo              | <i>Setha Ingeniería Ambiental S.A. de C.V.</i>                             |
| Juan José Mendoza         | <i>Comisión Federal de Electricidad</i>                                    |
| María Elena Mesta         | <i>Centro Mexicano de Derecho Ambiental</i>                                |
| Rafael Montoya            | <i>Secretaría de Comercio y Fomento Industrial (SECOFI)</i>                |
| Manuel Moreno             | <i>CONDUMEX</i>  |
| Ana Rosa Moreno           | <i>Centro de Información y Comunicación Ambiental de Norteamérica</i>      |
| Noé Narváez               | <i>Universidad Autónoma de Querétaro</i>                                   |
| Florencio Natura          | <i>Ecología, Desarrollo y Medio Ambiente A.C.</i>                          |
| Joaquín Nava              | <i>Asociación Nacional de Controladores de Plagas Urbanas, A.C.</i>        |
| Ramón Ojeda               | <i>Corte Internacional de Arbitraje y Conciliación Ambiental</i>           |
| Arnulfo Osuna             | <i>Petróleos PEMEX (Refinación)</i>  |
| Fernando Páez             | <i>Grupo Cydsa, S.A. de C.V.</i>   |
| Araceli Parra             | <i>Consejo Nacional de Industriales Ecologistas, A.C.</i>                  |
| Ruth Peacock              | <i>Sociedad Audubon de México</i>  |
| Chris Peirce              | <i>Canadian Association of Petroleum Producers</i>                         |
| Benigno Pérez             | <i>Asociación Nacional de Controladores de Plagas Urbanas, A.C.</i>        |
| Diana Pérez Ortíz         | <i>La Crónica</i>  |
| Luis Puig                 | <i>CEMPU</i>   |
| Jesús Ramírez             | <i>UCIRI</i>   |
| José Angel Rocher         | <i>Geo-Control, S. A. de C. V.</i>   |



Víctor Rodríguez  
Wendoleen Romero  
Jesus Rosales  
Hilda Salazar  
Paul Sanchez  
Katia Sandoval  
Manuel Servin  
Leopoldo Servin

Wayne Soper  
Lawrence Sperling  
Adriana Suárez  
Pere Sunyer  
María de Jesus Téllez  
José Tenorio  
Andrée Thibodeau

Manuel Tripp  
Ramiro Valdéz  
Victor Valle  
Sergio Varela  
Lizbette Velarde  
Adriana Vincent  
Laure Waridel

**CEC Staff:**

Leonor Alvarado  
Janice Astbury  
Rosa María Dueñas  
Janine Ferretti  
Hernando Guerrero  
Sara Hernández  
Hans Herrmann  
Manon Pepin

*Centro Universitario México*  
*Secretaría de Relaciones Exteriores*  
*Universidad de Guadalajara*  
*Red Mexicana de Acción Frente al Libre Comercio*  
*Pronatura A.C.*  
*Vida Silvestre*  
*Instituto Politécnico Nacional*  
*Asociación Nacional de Controladores de Plagas Urbanas,*  
*A.C.*  
*Westcoast Energy*  
*U.S. Environmental Protection Agency*  
*Procuraduría Federal de Protección al Ambiente,(PROFEPA)*  
*Universidad Nacional Autónoma de México (UNAM)*  
*Universidad Autónoma Metropolitana - Azcapotzalco*  
*Instituto Nacional de Ecología (INE)*  
*Centro de Información y Comunicación Ambiental de América*  
*del Norte*  
*Universidad Latina de América*  
*COPARMEX*  
*Procuraduría Federal de Protección al Ambiente,(PROFEPA)*  
*Secretaría del Medio Ambiente, Recursos Naturales y Pesca*  
*Procuraduría Federal de Protección al Ambiente,(PROFEPA)*  
*PNUD*  
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ORIGINAL: English

**REPORT TO COUNCIL: NO: 99-01**

**RE: Summary of Round Table Discussion on the Commission for Environmental Cooperation's (CEC) Three-Year Program Plan 1999–2001**

**Introduction**

The Joint Public Advisory Committee (JPAC) is pleased to present this report to the Council members of the Commission for Environmental Cooperation (CEC). It has been prepared following presentations and discussions between JPAC members and the public during a round table on the CEC's Three-Year Program Plan 1999–2001, held on 25 March 1999 in Mexico City and attended by some 150 individuals. The following comments are intended to inform and provide direction to the Program Plan as it evolves, in order that it may better respond to the needs of the three countries.

The JPAC Chair for 1999, Mr. Jonathan Plaut opened the session by welcoming the participants and expressing JPAC's enthusiasm for the impressive attendance. He asked the participants to focus on substance and to provide views, both positive and negative, identifying opportunity for improvement, and signaling gaps. He impressed upon the group the importance of these round table sessions as an opportunity to be "ahead of the curve" and noted that the Parties were present and listening to the interventions.

He then asked Ms. Janine Ferretti, the Interim Executive Director of the CEC to introduce the Program Plan.

- The 1999–2001 Program Plan combines ongoing projects from 1998 and new initiatives. It is an operational plan to pursue the dual objective of the CEC Council's "Shared Agenda for Action": promoting both environmental sustainability and also protection of the North American Environment.
- The four program areas respond thematically to these two objectives and are divided into programs as administrative units. The projects in each program are tools for implementing program work. Projects will be continually adjusted, based on results. A very important element in meeting these objectives is public participation. As well, capacity building and citizen involvement are key elements in each project. It is important to receive the public's views during these round tables on how best to strengthen these two elements.
- An annual review of the Three-Year Program Plan will take place to accommodate new regional opportunities and challenges. When formulating the 2000–2002 Program Plan, the CEC will be informed of the results of these round tables.

The floor was then opened to the public for their comments on the Three-Year Program Plan. These follow, listed by program area.

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**Environment, Economy and Trade  
Conservation of Biodiversity**

- It is extremely important to focus on trends. Climate change, for example, needs more attention. This is a critical and emerging sustainable development issue. We have clean development mechanism as a joint implementation process related to the Kyoto Protocol, but this is not enough. NAFTA provides an opportunity for our three countries to help move this important area forward, particularly with regard to developing countries.
- There should be a move to recognize the value and benefits of natural gas in reducing carbon intensity.
- Barriers to better integration among energy producers of the three countries can be overcome with a thoughtful, global approach. This could be a role for the CEC.
- The National Polytechnic Institute (Mexico) has the capacity to participate in the development of the Program Plan. Access to information about the long-range transport of pollutants and migratory birds is required. The institute could make a valuable contribution to this work.
- The CEC should increase its effort to communicate its work to the public by better use of the media. It should not be just at the level of experts and those who are already convinced that there are problems and important issues to deal with. The general public needs more information to better understand concepts that we use daily, such as climate change and biodiversity. We need to help the public to better inform the CEC in concrete ways.
- Better linkages are required between the CEC and NAFEC projects. Why is there such a focus on shade coffee? Primary production is much broader. There is a need for an inventory of the supply and demand for sustainable products to inform the future work of the CEC.
- One of the important functions of the CEC is to build networks between specialists and non-specialists as a way to mobilize civil society. Technical documents should be produced for lay people. Environmental education should be organized with specific sectors of the public in mind.
- There should be more focus on sustainable development as a means for mobilizing civil society. It is not just a question of pollution. This is just part of the picture. This is very important in Mexico as a way of incorporating the social interests of those people affected.
- The CEC should create databases to allow the tracking of results for each project.
- There should be an investment in human capital, environmental education and training. Universities are ready to participate in environmental education. The CEC should be more active in this area. For example, with regards to the residue from Sierra Blanca, is it realistic to talk about moving radioactive materials as a means to lower risks to human beings?
- How is it possible to have a balance between three countries with such profound imbalances?

(The Interim Executive Director replied by giving the example of the Regional Action Plan on DDT which is different for each country but the overall effect is intended to improve the North American region as a whole.)

- The challenges related to trade and environment are not just geographic. There is a cultural and social dimension. There are very real attitudinal and cultural issues that must be taken into account. For example, in Mexico the mentality is to “use and dispose.” This needs to be addressed.
- The full cost of a “throw-away society” needs to be explored. The cost of disposal has to be built into any analysis.
- Other groups are working on consumption issues. The CEC’s resources are limited and it should not duplicate the work of others, but strive to add value to it.
- The issue of state support of small industries is critical. There must be support for pollution prevention, not just control. It is an issue of capacity building. Marketing support is also required. Small businesses and primary production (peasants, fishermen) are our real economic base. We should also be bringing this to the attention of the Free Trade Commission, not just addressing it within the CEC.
- There is a need to look at issues related to biotechnology, access to genetic resources, biosecurity, genetic pollution and the impacts on food production and farming. Much more information is required in this area. The negotiations for a security protocol failed (Cartagena, Columbia). Great caution is required and the risks are not well understood. However, the CEC is ideally placed to take this on. It is recommended that the CEC host a trinational workshop, in Mexico, on transgenic organisms and that it prepare for this event by assembling information on what already exists. The workshop should help give guidance on where the CEC could best focus its resources and efforts.
- Environmental education has to permeate educational curricula to help provide a new model for living in the next millennium.
- Do not forget industry when establishing linkages related to marine protected areas. Industry in Canada, for example, has developed considerable experience in integrated resource management.
- Sustainable development and children should be a central objective of the Program Plan.
- The role of indigenous peoples in work related to the conservation of biodiversity is not well developed in the work plan although it is identified as an objective. What happened to the workshop on intellectual property rights? This is extremely important to us. People have to become motivated to conserve biodiversity. If communities are not given information and resources, biodiversity will not be protected. Infrastructure support is required.
- Desert and semi-arid ecosystems need to be integrated into the work plan. It is specifically recommended that a strategy to support activities related to the protection of biodiversity in desert and semi-arid areas be developed with a focus on education of indigenous communities.

- We are very concerned about the conflicting paradigms emerging around sustainable tourism. On the one hand this rapidly growing industry is being approached as a market issue. The expanding size of these operations may lead to the destruction of the resource being promoted. On the other hand, benefits to the local communities are usually very limited and the activities risk destroying the social and cultural bases of these communities. The current CEC program should expand its horizons to look at this dilemma and make it central to the project design.

## **Pollutants and Health**

### **Law and Policy**

- It is recommended that an agency be established to train and regulate urban pest control workers.
- It is necessary to reform legislation to permit the introduction of new technology to promote alternative energy production. The present legal framework does not permit these technologies to be developed for use. The CEC could promote instruments for this purpose.
- Within the CEC program there is a need to assess the role of local governments. For example within the automotive industry, internal quality cannot be lower than export quality.
- There is a need to improve environmental education and disseminate information. Children have to be trained early to modify behavior and habits. This is a gap in the CEC's program.
- The Program Plan as it is now elaborated is way beyond the capacity of rural and indigenous communities in Mexico to participate. For example, with regards to plastic, there are no facilities or capability to recycle. It is not just a question of lack of information. There are no facilities and no investment from local authorities or state governments in recycling. State laws are not up to date. As NGOs, we are not getting through to local and state authorities. How can the CEC contribute to this effort?
- Should we be exploring trinational standards for biodegradability?
- Consideration should be given to training political advisors within government agencies to become more sensitive to environmental issues. These people usually survive changes in government. This could be facilitated by the CEC. The Mexican NAC has already begun this effort. (It was noted that this is delicate, as it is not the role of the CEC to interfere in national issues) This can also be undertaken on a trinational basis through the Western Governors Association.
- All of the CEC's program areas have legislative implications. Somehow these should be linked and integrated.
- Methodology for the enforcement of environmental legislation should include information, education and training, environmental legislation and enforcement. It has to be viewed as a whole.
- Innovation should be an overarching concept for law and policy development. The delivery of environmental performance and management has to be kept on a solid economic footing.

There should be a balance with economic realities. Industry (large, medium-size and small) must be seen as a partner.

- The CEC should look at the impacts of privatization of production systems on the health of workers and communities when local plants are turned over to managers from large corporations.
- A new area of study for the CEC should be to look at the export of water imbedded in commodities (i.e., the amount of water it takes to grow tomatoes in Mexico for export). This is leading to water being exported at a cost lower than the cost to consumers of water inside Mexico.
- The concept of natural protected areas is not only about enforcement of regulations and laws. There must also be appropriate policy instruments developed to manage these areas. There should be a trinational exchange of experience on policy development. For example, methodologies for environmental impact assessment as well as experiences with the important task of assessing social impacts can be exchanged.
- The central vision of the CEC needs to be inverted. The human being should not be the center. Nature should be the center of the vision. Ancient cultures understood this. Nature has to be protected because it has rights. It is not there just to improve the lives of human beings.
- The CEC should concern itself with environmental events it knows are coming and prepare environmental contingency plans for them—for example, future forest fires, future bird deaths, future volcanic eruptions. How can this be contemplated in the CEC's program?
- As individuals and NGOs, we have no way to follow up on how recommendations are being dealt with by the CEC.

The Chair thanked the participants for their rich and varied input and gave his assurance that JPAC would give the information due consideration as it develops its advice to Council and participates in the development of the Program Plan.

Prepared by Lorraine Brooke

APPROVED BY THE JPAC MEMBERS ON 28 APRIL 1999



**ADVICE TO COUNCIL: NO. 99-01**

**Re: Revised Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 & 15 of the North American Agreement on Environmental Cooperation (NAAEC)**

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC);

IN ACCORDANCE with its mandate to provide advice to Council;

NOTING that in its Report to Council at the 1998 Regular Session of Council, JPAC did not support a revision process and concurred with the Independent Review Committee that the present process be permitted to grow and strengthen from experience;

ACCEPTING Council's decision to release the revised guidelines for a 90-day public review and comment period through JPAC;

ISSUED a call for public comments and received a total of 34 replies from which 14 participants were selected to attend a public workshop, including National and Governmental Advisory Committee representatives, led by the JPAC Working Group on Articles 14 & 15 held 29 January 1999 in Montreal, Canada (as observed by representatives of the three governments);

INFORMED by the results of this Workshop, JPAC reiterates its past advice that, in the interests of maintaining stability and (growing) experience in the citizen submission process, the present guidelines should not be revised at this time;

FURTHERMORE it is JPAC's opinion that if Council accepts this advice, it would be a positive demonstration of how consistent and well-founded public views on a subject are taken into account in decision-making;

GIVEN the importance of this matter and the efforts the CEC has made, in good faith, to improve the citizen submission process, the following points highlight the basis for this recommendation:

- By far the majority of those members of the public who provided written comments and those who participated in the workshop held the view that the case had not been made to support the revision process. (A copy of the workshop report is attached.)



- The proposed revisions were tested by the workshop participants against an agreed upon set of criteria namely, accessibility, transparency, independence of the Secretariat, balance/parity between party and submitter, impartiality, discretionality and conformity to the NAAEC. With a few minor exceptions it was concluded that the proposed revisions detracted from these criteria, in certain cases seriously so.
- The argument for change has not been made and to do so at this time would undermine public confidence in the citizen submission process. Indeed, the proposed changes would slow the process, make it more bureaucratic and less transparent.

Based on the above, JPAC will be closely observing this process so as to establish the advisability of adjusting the guidelines, as required.

APPROVED BY THE JPAC MEMBERS

25 March 1999



## **Commission for Environmental Cooperation**

### **Joint Public Advisory Committee Report**

#### **JPAC Workshop on the Revised Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation**

**29 January 1999**

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### **Background**

During the last Regular Session of the Commission for Environmental Cooperation's (CEC) Council in June in Mérida, Yucatán, the Joint Public Advisory Committee (JPAC) received the mandate from Council to conduct a public review of the Revised Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC).

A public call for comments was issued by JPAC on 10 September 1998 and some 5000 individuals or organizations were contacted by electronic mail or fax and two reminders were sent. A total of 34 replies were received by the end of the 90-day review period. A consultant engaged by JPAC reviewed all of these and prepared an Executive Summary of Comments along with a detailed matrix clearly showing the proposed revisions in relation to the current text and the public comments in relation to each of these proposed revisions.

JPAC's working group then selected five representatives from each country, based on the replies, to attend a public workshop on 29 January 1999 in Montréal, Canada. The purpose of this workshop was twofold: First, it provided a representative group an opportunity to engage in a more detailed discussion of the proposed revisions and, through the workshop report, communicate directly to Council. Second, the exchange would inform JPAC and assist the committee in preparing its own Advice to Council on the matter.

In addition to the invited participants, the JPAC Working Group on Articles 14 and 15, the JPAC Chair and representatives of the National and Governmental Advisory Committees also attended as participants. Representatives from the Parties and staff of the CEC Secretariat attended as observers. A list of participants is attached.

### **Introductory Remarks**

The Workshop Chair, Ms. Donna Tingley of JPAC, introduced the session by welcoming everyone, and underscored the importance of the day's work by reminding them of the responsibility of the participating experts on behalf of all others not present but affected by the outcome.

Mr. Peter Berle, member of the JPAC working group, then gave a brief history of the process now under review and scrutiny. The unique nature of this process has provided a model for other international organizations. The decision of the Parties to establish this process was groundbreaking in that there now exists a forum that enables citizens to challenge governments on enforcement of their environmental laws. The principles that the Parties wanted applied to the process, from the beginning, were accessibility, simplicity, and transparency. The process does not contemplate sanctions or punitive action, but rather the cleansing effect of “sunlight” which can have a tremendous impact.

He went on to suggest that in his judgement by and large the process had worked so far and it is clear that it can function and produce positive effects. It provides an opportunity for legitimate interests to be discussed in an open process that can serve to inspire confidence by government and citizens.

He concluded by reiterating the groundbreaking nature of this process and cautioning not to lose sight, when reviewing the guidelines, of the larger goal: to improve them, if necessary, from the perspective of applying the original principles of accessibility, simplicity and transparency.

Ms Tingley then described the day’s challenge as the need to go beyond the written comments and reflect together in order to contribute to JPAC’s advice, and, very importantly, as an opportunity to speak directly to Council. She requested that participants focus on criteria to assess the revised guidelines. She suggested that general comments be made before moving into a section-by-section review of the proposed revisions.

### **Introductory Comments by Participants**

- Why are we doing this when the Independent Review Committee has already recommended that the guidelines not be amended?
- We should consider the purpose of the revised text as a whole, rather than going through individual comments, otherwise we will get bogged down by all comments on each proposed revision.
- What are we trying to fix here? We have tried to understand the purpose of this exercise. Maybe it is not broken. If citizens were having trouble with the process and the objective was to clarify things, this new text does not meet the objective. It is impenetrable, even by a trained lawyer. Has the Secretariat identified a need to make the internal rules more efficient and workable? If so, again the new text fails. Finally, we cannot go beyond the NAAEC, and this present text does in several important ways.

**Note: A clarification was made at this point by JPAC that this process is Party-driven, not Secretariat-driven.**

- Just because these revisions are on the table doesn't mean that changes have to be made.
- The text should contain a preamble and glossary of terms to make it comprehensive to the public. There should be a clear statement about what end this process is meant to serve.

Whose interests are being served? The guidelines should be a tool for access and a means to communicate with government.

- Our experience so far with the process is not sufficient to support the need for reform. The text limits the discretion of the Secretariat. This will reduce the autonomy and credibility of the Secretariat and put it at risk of becoming an accused party. The text reduces the possibility of submissions by being too onerous. It gives more power to the Council and less to petitioners.
- Many of the written comments reveal a lack of understanding and reflect a lack of knowledge about what is really going on here. Be careful about taking all these comments into account.
- JPAC should not try to validate its own advice with our discussion.
- JPAC went on record, in its last Advice to Council, that it was premature to make changes. JPAC may re-examine its advice in light of these discussions, but we will have to have compelling reasons to do so.
- Go back to Council and tell them no. The only part that needs adjusting is the timeline. There has to be public disclosure of a factual record.
- The credibility of the CEC will be negatively impacted by these revisions. The process should be allowed to evolve. The revisions make it more onerous on the Secretariat and limit its independence.
- This is a very important part of the NAAEC. The process works well now. It reflects a balance between a party and a submitter. It is not too legalistic, and therefore accessible. The Secretariat must maintain an independent role. While the Secretariat has certain administrative duties as directed by Council, in this matter it is the guardian of a process and has the responsibility to make certain decisions, independent from the Council.
- Proceed with caution. Balance exists now. Status quo is preferable to the proposed revisions. The revisions affect the independence of the Secretariat and create hurdles for submitters.
- If it is not broken do not fix it. Environmental stewardship requires openness and transparency.
- The process is working. There is insufficient experience to justify the scope of these changes. We are happy with the present guidelines. One improvement that does not require changing the guidelines could be to develop materials to enhance access; for example, to create forms/checklists to assist submitters in completing the requirements for a submission.
- The most important purpose of this process is to provide equal access to the citizens of our three countries in a way that takes into account the differences in our legal systems and cultures. In this sense, there should be no discretion. There has to be objectivity so that the rules are applicable to all citizens and there must be clarity and certainty for citizens within each country. Mechanisms must be set in place to avoid additional discretionality.
- What prompted Council to require these reforms? Why is JPAC responding to them and participating in the reform? We need to look carefully at matters of impartiality, equity and

transparency and decide if these are applied equally in each country. Mexico inaugurated the process with Cozumel. Look at these experiences before deciding if reform is required.

- Because of the environmental situation in Mexico, is it more at risk in this process than Canada and the United States? Should we explore this?
- This is a process that has to do with enforcement of national laws. Laws may be different, but the process applies to all.
- The burden on the submitter has been increased. If credibility is diminished, so will the process be diminished. There have been 20 submissions in 4 years. Why make it even more difficult. If revisions are not sound, why legitimize them with a review?
- We must preserve the principles stemming from the Agreement: transparency, efficiency, and clarity. Has the process to date promoted those principles? The fact that we are engaged in this review suggests that not everyone is comfortable. We should hear from those people. The burden will be increased on the submitter. It was already hard enough. Where do they get help? The credibility of the Secretariat has to be protected. Do not touch the guidelines.
- We need an objective evaluation of the experiences to date analyzed against a set of agreed upon criteria before we can just say “it works.”
- The existing guidelines run the risk of concentrating the responsibility for environmental management in the hands of a limited number of actors. The Secretariat has certain public characteristics, but is this enough to ensure equity? Is there a move towards privatization which will result in serving only a limited number of interests in each of our countries?
- In general, the public does not have access because they do not even know about this process. How can we be more proactive?
- The review would be enriched by a broader NGO participation.
- Consideration should be given to provisions for preliminary determination in the case of emergency, for example the recent waterfowl die-off in Mexico.

### **Specific Comments by Participants**

The workshop then proceeded to discuss how best to review the text of the proposed revisions. The Chair suggested a clause-by-clause review. This led to a discussion on the process.

- Many people are saying “leave it alone”—if we change the guidelines, it could just get worse. There is acknowledgment that some provisions may need to be changed, but people are very worried about opening up the whole document. Therefore, we should be more proactive and look at improving the situation, rather than limiting damage. Look at the revisions from the perspective of: where are we backsliding? Where do changes need to be made?
- We have an opportunity to improve the guidelines. Is there justification not to recommend some changes? We should establish indicators and criteria to evaluate the performance which could cast light on the revision process.

- If someone comments on a part of the text, as was just done with the Preamble, does this mean we have a consensus because only one person commented?



- Perhaps we could use a “strongly favor, strongly oppose or neutral” approach.
- We are not representative enough to inform JPAC of the full range of public opinion on this matter. We can indicate where the problems are, but we cannot pronounce on parts or the whole by way of consensus.
- It is very important that we cover the most controversial points and explain our concerns.
- If we go paragraph by paragraph we will never finish and we will all leave frustrated. We should make a list of important points which would result in identifying areas of main concern.

It was agreed then to begin a section-by-section review.

### **Preamble**

- It goes too far and exceeds the Agreement. The Preamble should orient the submitter but now it is creating guidelines for the Parties and Secretariat. This will create fear. The public sees Council as part of this orientation and that it can exert influence on the Secretariat.

### **Purpose of the Guidelines**

- The new text makes it more difficult for the submitter. It is not necessary.
- I agree with the proposed change. It helps guarantee the impartiality and independence of the Secretariat.
- I also agree. Otherwise the Secretariat would be the judge of its own work. It correctly warns submitters that they are on their own. Make other mechanisms available to assist submitters, such as copies of other submissions, outlines, checklists, etc.
- The revisions imply a lack of confidence by limiting the Secretariat’s activities. They contradict other sections of the text regarding impartiality and equity. There are many such examples throughout the text.
- Independence and objectivity are key elements. Submitters should be “kept away” from the Secretariat to ensure independence and impartiality.
- Second sentence is misplaced. This should not be in the Purpose section. Not just a drafting issue. It was put there for a reason—as a symbol. It implies that the Secretariat would be inappropriately assisting if this restraint were not there. Many people feel that since this was put up front it reflects Council’s thinking and gives us an indication as to why Council wants to change the guidelines. It should be moved to the role section.

### **Submissions on Enforcement Matters**

#### **Article 2.1**

- Implication that if the supporting information is incomplete, then the submission is considered incomplete.

- This is a procedural point, but important: Is it a submission that was rejected, or a submission that never was?
- Look at the language of Article 14.1. A submission is whatever is received. The criteria relate to whether it merits consideration, but it is a submission.

#### **Article 4.1**

- Remove address and talk about the headquarters, wherever they may be.

#### **Article 4.3**

- Should remove prohibition on fax of electronic transmission. It is too limiting.

#### **Article 4.5**

- I do not agree with the change. It sends a negative signal regarding the Secretariat.
- I agree with the change. It makes the function of the Secretariat more transparent. It does not infringe on the independence of the Secretariat.
- Coordination with the Council is essential.
- Just distracts Council when it is not yet determined whether the submission complies with 14.1 of the NAAEC.
- Have a submission placed on the public registry rather than sent to Council, then Council will monitor the registry.
- Acknowledgment of receipt by the Secretariat should be made in writing.
- In a process aimed at enhancing credibility, there should be no surprises. Everyone should know at the same time. If put on the public registry, this could mean that the first that industry, for example, hears of a submission would be by a phone call from a journalist.
- Early notification allows the state to research a proposal and recommend a remedy before the process is launched.

#### **Article 4.8**

- Best effort. What does this mean? Why 90 calendar days? Should be based on past experience.
- The 90 days should be flexible.

At this point the discussion turned general again, reflecting uneasiness on the part of some participants.

- The comments I am making are not to imply that I feel the guidelines should be changed, and certainly if they are to be changed we should not be doing it here.
- I am in a real dilemma. The group I represent supports the existing guidelines. I am being forced to go down a road of looking at change. By participating am I validating the amendment process? I am very uncomfortable.
- I have not heard much argument to compel me to open this text. Some issues were purposefully left unclear to allow us to develop experience. This new wording is prematurely prescriptive. We have had no analysis of experience with the process thus far to inform a review process.

**Note:** The Chair proposed the following: “Understanding that most of the participants do not favor changing the guidelines, can we continue the review by evaluating the proposed changes in function of whether they detract from or enhance the following seven criteria which were derived from the participants. accessibility, transparency, independence of the Secretariat, balance/parity between the party and submitter, impartiality, discretionality, conformity to the NAAEC?” The participants agreed.

### **Initial Consideration of a Submission by the Secretariat**

#### **Article 7.1**

- The new text is more legalistic. Reduced access.
- “Should provide sufficient...” This should be a “must”. The Secretariat must have certain things in the submission otherwise it creates a trap for submitters.

#### **Article 7.2**

- I oppose the entire text. It increases the burden on the submitter. Moving away from a fair process.
- Delete the second sentence. Goes beyond the Agreement and, in any case, is not clearly drafted.
- Delete the second sentence. There is a link being established that goes far beyond the Agreement. The burden of proof is now on the submitter to prove environmental harm.
- All the criteria are compromised here. Unfairly raises the bar for a submitter and compromises the independence of the Secretariat.
- There does need to be a link created between the activity and environmental harm. This is a legitimate requirement. Perhaps it does not have to be demonstrated in strict technical terms, but if there is not environmental impact, then this is not the appropriate recourse. NAAEC is an environmental agreement, so this is in conformity.

- A submission has to do more than allege harm. Environmental harm has to have been caused. It is not just a theoretical question of lack of application of environmental laws.

#### **Article 7.4**

- Requirement to provide all documentary evidence goes beyond the NAAEC.

#### **Article 7.5**

- It is not only industry that can cause environmental harm. Should be expanded to cover any procedure or activity that causes harm.

#### **Article 7.6**

- Changes access, makes more difficult. It adds new language which does not conform to the NAAEC.
- All the criteria are compromised.
- “In accordance with applicable laws” implies that a submitter would have had to exhaust all other options which is not the intention of the Agreement.
- What does “demonstrate” add here other than to make it more unworkable.
- Terminology is important here (law, legislation, regulation). The language has to be consistent with the Agreement.

### **Determination Whether a Response from the Party Concerned is Merited**

#### **Article 9.1**

- Wording is unclear. Does it restrict consideration only to that information and prohibit consideration of other information. Too ambiguous.
- A link should be made between the alleged harm and lack of enforcement of environmental laws.
- The revised text is acceptable and should be retained. All other remedies available to the submitter should be exhausted.

#### **Article 9.3**

- This goes beyond the Agreement. It draws the Secretariat into the role of independent fact-finder.

#### **Article 9.5**

- The whole provision is unclear. Private remedies are difficult to define particularly in and between our countries. This takes the Secretariat way beyond its expertise. Should be deleted.

- This is one of the main concerns of the group I represent. The submission process is unique. It cannot duplicate private remedies. For the Secretariat to interfere in these matters would be very dangerous. Should be deleted.
- A submitter should demonstrate that all other remedies have been exhausted.
- The proposed changes are acceptable. Must take into account whether or not all other remedies have been exhausted. It is the right of each of our countries to demand this standard. The submission process is not meant to be a means to circumvent national laws and to create a super-national body which would interfere with national laws and sovereign matters.
- The word in the text is not “exhausted”, it is “pursued” We are going down a slippery slope. Already, the text is being misinterpreted.
- Where is this notion of exhaustion coming from? The word is “pursue”. Forcing exhaustion of all other remedies would make it impossible for most everyone to make a submission.

#### **Article 10.1**

- Goes beyond 14.2 of the NAAEC and contravenes criteria of access and transparency, especially since other factors are not enumerated. It creates a “star chamber” for submitters.
- The proposed text is much too vague.

#### **Article 10.2**

- Means of notification required.
- Ambiguous. Determinations should be made in writing, stating reasons.
- The original text was preferable with regards to consolidating submissions. Could be more efficient to do so.

#### **Article 11.1**

- Puts an additional burden on the Secretariat. Should be limited to simply a notification without having to provide an explanation.

#### **Article 11.2**

- This compromises balance and parity. It also goes beyond the Agreement. For the sake of impartiality the submitter should also be allowed to respond. Gives unfair consideration to the interests of a party.
- All of the criteria are compromised by this provision.
- The proposed text should be deleted.

**Article 11.3 (b) – (i)**

- Have to identify the nature of the disposition of these past proceedings, as this could influence next steps.

**Article 11.4**

- Proposed wording is acceptable. It improves balance.

**Article 11.5**

- This gives unfair advantage to a party. Submitter should also have an opportunity for rebuttal.
- A party should not have the ability to cut off the process by just stating that another process is pending. They must show that this is the case. Also, submitters must also have an opportunity to rebut.

**Article 11.6**

- Submitter should also have an opportunity to argue the case.

**Article 11.8**

- A submitter is limited to 15 pages, while a party is directed to be as concise as possible. This is not equitable.

**Determining Whether a Submission on Enforcement Matters Warrants Preparation of a Factual Record.**

**Article 12.2**

- The new wording “in accordance with those instructions” gives Council too much discretion.
- This is a public process. The proposed wording gives the Council too much power.
- Compromises the independence of the Secretariat. The Council cannot determine parameters for this the preparation of a factual record.
- First sentence should be deleted entirely. It detracts from the independence of the Secretariat, gives too much discretion to the Council and is not in conformity with the Agreement. The implication is unacceptable.
- This is another example of an attempt to tie the hands of the Secretariat. It is in direct conflict with the Agreement.
- The independence of the Secretariat should not be subject to interpretation; however, it should not be fully independent from Council. There needs to be a close association with the Council.

- These changes insert government, via the Council, regarding the preparation of a factual record. The language is very broad. The instructions could include anything.
- Any changes to the guidelines (and all of part 12 is troublesome for that reason) should not shift the delicate balance which we feel now exists between the Secretariat and the Council. In some areas there may need to be some limits on independence, and others may require discretion.
- The last sentence increases transparency by requiring Council to explain its reasons to the public
- The last sentence is acceptable. The requirement to provide reasons improves transparency.

### **Article 12.3**

- Detracts from balance. A press release should equally be shown to the submitter. It is not fair if a party can vet a press release and not the submitter.
- In full agreement that the press release also be made available to the submitter.
- This is very important. Full autonomy of the Secretariat will reduce its credibility. It should be limited in its functions with the media.
- This is an example of Council micro-managing the process.

### **Article 12.4**

- This is misplaced. It limits consideration to particular factors. It is better to rely on reference points found in the Agreement.

## **Preparation of a Factual Record**

### **Article 13.2.**

- The requirement to consult with all the experts named in a submission is too onerous.
- This is too onerous and at the same time too restrictive. Secretariat should not be limited to those expert names. Should have more latitude.

### **Article 13.5**

- A visual timeline is required. This should be made public and be a standing decision.
- Being able only to submit at a Council session, and then only if on the agenda, is a procedural trick. The Council controls the agenda.
- The requirement that the submission be on a Council agenda is totally unacceptable. Too much power to the Council to control the process.



- Does “at a Council session” mean only once a year at the Annual Regular Session of Council?

#### **Article 14.1 (a)**

- The requirement to prepare an executive summary is an improvement.
- Should add a requirement that the reasoning of the Secretariat also be made explicit and available.

#### **Article 14.2**

- Changing to the word “shall” is yet another example of how everything is becoming compulsory. Also, the new wording gives the party full discretion whether to post on the registry or not. Detracts from transparency.
- There should be no discretion allowed regarding posting of the party's comments.
- The factual record should equally include submitter comments to assure balance and impartiality.
- Remove “as appropriate”. All comments should be incorporated and made available.
- All players should have the same opportunities and the same obligations.

#### **Article 15.2**

- There should be very clear reasons for not making a factual record public. If the Council decides otherwise, that is acceptable, but reasons must be given.

#### **Article 15.3**

- Why is there a possibility for JPAC to receive a factual record once it has been denied to the public?

#### **Withdrawal of a Submission**

- A balance is required. Withdrawal should not be the result of unfair treatment.

#### **Article 16.4**

- Contradicts the Agreement. The Secretariat has to be permitted to “connect the dots”. If on the one hand a submitter has to first pursue other remedies, why should the Secretariat be restricted in giving advice to a submitter on this matter?

#### **Public Access to Information**

- This section has to conform to national laws on access to information and the nature of privileged and confidential information. Clarification is also required on how information will be managed.
- The registry should be available on the Internet. The Internet has revolutionized access to information. Obviously not everyone has access to the Internet, but even fewer people have access to hard copy.

### **Confidential Information**

- The Alternate Representatives are the real rulers of the confidentiality issue and we should be very concerned about this.
- The old 19.1 should not be deleted.

### **Article 19.2**

- The proposed changes detract from transparency and go beyond the Agreement. They allow a party to make a blanket declaration of confidentiality. This does not comply with the Agreement.
- This matter needs very careful review and attention.

### **Article 19.3**

- The word “encouraged” should be changed to “required.”

### **Concluding Remarks**

All of the concluding remarks were prefaced by an expression of appreciation for the opportunity this workshop created.

- The case has not been made to warrant revision at this time. Some important cultural issues have emerged in this discussion, for example the nature of confidentiality rules with governments, and also the different concept that each country attributes to the word “discretionality.” Council should continue to involve JPAC as this evolves.
- It was important that we had an opportunity to hear differing views about some important matters. Diversity is to be expected since we all represent difference constituencies. Perhaps what is required is that the Agreement be reformed. There were several examples today where perhaps the revisions go beyond the Agreement but this may point to a need for it to be amended. The Parties have the power to do this.
- Any guidelines have to reflect a process that is clear, balanced and not open to interpretation.
- Aside from some very minor adjustments that could be made to improve the process, the guidelines should be left alone. As they are now proposed, the revisions make the process much more difficult for both submitter and the Secretariat.



- We are exploring a very complex area. We are trying to create and integrate a multi-national process to manage common property while at the same time representing civil society. This is a major challenge. We have to remain alert to national sovereignty while at the same time taking decisions in the name of civil society. This is very risky indeed. Nevertheless, this was a rewarding experience and we have constructively agreed to disagree.
- The proposed revisions add six new steps in the process making it more onerous and cumbersome, therefore linking accessibility and transparency.
- The openness and accessibility of the submission process is the CEC's biggest strength and gives the organization its legitimacy. Do not compromise this.
- We never got an answer to the first question that was asked today: Why are we doing this? The case for revision is not made. I only hope that this exchange will contribute to increased transparency.
- The rapporteur informed the participants that she would prepare a detailed summary of all comments made but would not undertake an analysis. That having been said, however, she noted that there was “general” agreement that the guidelines not be changed at this time, although in a few specific cases the changes were improvements.

### **JPAC Session of Working Group**

The JPAC working group then met to agree on a draft position on the proposed advice to Council, which will be shared with JPAC members and then prepared for Council.

Prepared by Lorraine Brooke



**ADVICE TO COUNCIL: NO. 99-02**

**Re: Environmental Management Systems and Compliance Report**

The Joint Public Advisory Committee (JPAC) compliments the North American Working Group on Environmental Enforcement and Compliance Cooperation and the Secretariat of the CEC for the publication in 1998 of the Environmental Management Systems (EMS) and Compliance Report. The publication adds to the knowledge on this subject and on the International Organization on Standardization's Specification Standard 14001 (ISO 14001). The report also contributes to sustaining cooperation as encouraged by the Council and JPAC.

IN ACCORDANCE with its mandate to provide advice to the Council of the Commission for Environmental Cooperation (CEC), JPAC is concerned that some still urge that the EMS could replace regulation and enforcement. Responsible stakeholders on all sides of the issue have indicated disapproval of such an outcome. Indeed, JPAC strongly supports the present trend of employing such environmental management systems in addition to or beyond compliance requirements and under Council leadership, and that should continue to be an area of cooperative focus of the CEC, the Parties, NGOs, and the industrial sector.

APPROVED BY THE JPAC MEMBERS

26 March 1999

**Presentation and Discussion on Green Goods and Services  
JPAC Session no. 99-01**

**Recommendations from participants in NAFEC Sustainable Production Meeting in  
Oaxtepec, Morelos on March 22-24, 1999**

**Part I -- Presented by Laure Waridel, Equiterre (Canada)**

**1. Trade Policy and International Agreements**

We are aware of the discussions currently taking place at the international level (e.g. World Trade Organization) regarding whether the production process or only the final product can be considered in the context of international trade regulations. A refusal to consider the production process poses dangers to sustainable production and to the certification processes that provide incentives. We think that the CEC should play an active role in these discussions in order to protect sustainable production in North America.

To promote trade in green goods and services, the governments of North America should ensure that NAFTA does not promote trade in goods that are not environmentally sound and even contravene environmental laws in member countries. CEC should play an active role in ensuring that trade rules do not supersede environmental regulations.

Trade policy should not encourage export at the expense of meeting the local needs; the latter is an important aspect of sustainability.

We are concerned about government initiatives (such as that presently being undertaken by the US Food and Drug Administration) to limit the information that appears in large print on product labels. We agree that products should be recognized for the extent of their efforts towards sustainability and consumers should receive complete information about the products that they purchase.

We are also concerned about the increasing presence of genetically-modified organisms and believe that at the very least these products should be clearly labeled to allow consumers to make informed choices.

The Convention on Biodiversity Conservation offers an important tool for promoting production and trade in green goods and services. We are asking that the US sign the convention and that the CEC play an active role in implementing the Convention at a North American level, including through support of community based efforts.

**2. Certification**

A lot of the discussions at our meeting centered on certification of green goods and services. The issue is complex. There was general agreement that certification should be carried out by local, non-governmental, third-party (independent) certifiers. We agreed on the need to obtain support to strengthen national certification initiatives (which both reduce costs and allow for better-adapted procedures). In the Mexican case we specified support for ECOMEX, CERTIMEX and

AMIO. We also agreed on the need to find ways to help reduce the cost of certification for small producers.

In other areas it was more difficult to come to agreement. We are concerned about the proliferation of labeling schemes and the difficulty this poses for the consumers. We feel that there should be some sort of integration of labeling schemes but also fear efforts at harmonization that result in approaches that are less adapted to local conditions. Producers want recognition of their efforts to achieve sustainability in their local context and find that they are often required to undertake complex procedures and meet inappropriate criteria and regulations defined by various certification organizations and government agencies, which often conflict with one another. At the same time, we understand the need for rigorous standards. Our proposal is that CEC should facilitate discussion among producer organizations, standard-setting and certifying organizations and relevant government officials to develop mechanisms that are more effective and efficient in promoting production and trade in green goods and services and that these mechanisms should be tested through pilot projects.

One NAFEC project presented at our meeting concerned a joint inspection of coffee production by different certifying agencies to see to what extent their criteria could be integrated. We think the same could be done involving producers and government as well and that this would lead to very practical solutions. One area where we identified a lot of conflict was that of non-timber forest products and this is a particular case where government regulation and certification procedures should be reviewed.

Finally, a more specific recommendation related to certification: government procurement policies should emphasize purchase of certified products such as wood.

We must remember that a fair return to the producer is at the base of sustainable production; fair trade is an essential part of green trade.

## **Second part - Presented by Jesús Antonio Ramírez, UCIRI (Mexico)**

### **3. Information**

The CEC should play a more active role in information dissemination. On the one hand, it could facilitate or coordinate a network for small producer organizations to access and exchange information on markets, prices, certification, technical assistance and training. This could be done by using directories, catalogues and a Web page. On the other hand, the consumption of sustainable products by the general public can be encouraged through campaigns to increase consumer awareness. In the specific case of Mexico, this could be done by using part of the government's available airtime in the mass media to promote the consumption of environment-friendly products.

### **4. Financing**

The CEC should encourage the establishment of a program to pay organizations undertaking environmentally sound practices for environmental services. This would be a way of providing additional incentives which are currently not available.

Another option might be to earmark a percentage of taxes collected on gasoline sales, vehicle purchase and ownership for these payments.



The CEC should encourage member governments to adopt national development policies that include comprehensive financing programs which take into account all project phases, from the management plan to increasing consumer awareness, as a way of guaranteeing sustainability. In this case, the NAFEC could support one of these initiatives, which could serve as a model.

## **5. Training**

The CEC should direct training processes towards organizations that develop or initiate sustainable development projects. It should encourage the creation and strengthening of organizations offering consulting and training services for sustainable agriculture and management of natural resources.

## **6. Participation**

The CEC should include representatives of community organizations involved in sustainable production processes in working or advisory groups related to CEC programs. The CEC should define clear and transparent criteria for the election of these individuals.

The CEC should continue to hold this kind of meeting, as these processes make exchanges between organizations and the communication of proposals and recommendations to the JPAC possible, as well as creating significant opportunities for public participation. For these reasons, we wish to express our thanks for the opportunity that has been given us in Oaxtepec and at this meeting.