



Commission for Environmental Cooperation of North America

Joint Public Advisory Committee Session No. 02-04

**10 December 2002
Monterrey, Nuevo León**

Summary Record

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America held a regular session on 10 December 2002, in Monterrey, Nuevo León, in conjunction with a public workshop on *Investing in North America's Future: Innovative Financing for Sustainable Development*, which was held at the same location on 9 December 2002.

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 Advice to Council 02-12, and Annex D for Advice to Council 02-13, which also appends the summary of the financing workshop).

Previous summary records, advice from JPAC to Council and other JPAC-related documents may be obtained from the JPAC Liaison Officer's office or through the CEC's web site at <http://www.cec.org>.

DISCLAIMER: Although this summary was prepared with care, readers should be advised that it has not been reviewed nor approved by the interveners and therefore may not accurately reflect their statements.

Welcome and Overview by JPAC Chair

The chair welcomed everyone to JPAC's final session for 2002 and thanked the *Instituto Tecnológico y de Estudios Superiores* for hosting the meeting. As a first order of business, he announced that Gustavo Alanís-Ortega had been elected as JPAC chair for 2003.

Sr. Alanís-Ortega thanked his JPAC colleagues and committed continuing the strong team effort that has characterized JPAC's operations and to make every effort to engage the public and respond to their concerns.

The chair noted that Ann Bourget from Canada and Serena Wilson from the United States were unable to attend these meetings because of other commitments.

He then outlined the morning's agenda, reminding participants that the session had to conclude by 12:00. Finally he reported that the previous day's workshop on financing and sustainable development had been a tremendous success and that a draft Advice to Council had been prepared by the JPAC Working Group and would be circulated.

Approval of the provisional agenda

The agenda was approved.

Report from the CEC Secretariat and question period

Unfortunately, Mr. Victor Shantora, the Acting Executive Director, was not able to attend this JPAC meeting in Monterrey. Thus, the JPAC Liaison Officer presented the report on behalf of the Secretariat. She explained that the Acting Executive Director and the Director of Programs had traveled to the three capitals to present the proposed CEC Program Plan and Budget for 2003–2005. Most of JPAC's recommendations have been incorporated. This document should be approved by Council during the Alternate Representatives conference call, planned for 11 December 2002.

She reported that, as requested by JPAC, the Secretariat would begin to develop a communication strategy. She also said that the Acting Executive Director had taken the initiative to engage a consultant for developing a strategy to more meaningfully involve indigenous peoples in the work of the CEC over the short and long term. JPAC will be asked to review the consultant's report.

Under the leadership of the Director of Programs, a strategic plan is being developed in order to better present the objectives and goals of each project and the links between projects, as recommended by JPAC.

Regarding program evaluation, JPAC will be involved in the process. As a starting point, the programs on the Sound Management of Chemicals, Pollution Prevention and Conservation of Biodiversity will be evaluated.

The Secretariat has also prepared for Council consideration a proposal for developing a tenth anniversary review report of NAFTA and NAAEC. This task—including JPAC's cooperation—will be discussed during the next the Alternate Representatives conference call.

In addition, she noted that the Secretariat has worked over the last months on developing the Article 13 report on transgenic maize in Mexico. This will be reported on in detail later in the agenda.

Regarding Articles 14 and 15, she informed JPAC that the Council should vote tomorrow on the development of a factual record related to the Cytrar II submission.

Finally, in regard the Secretariat staff, only one position remains to be filled (other than that of the Executive Director, for which a search is being conducted by the Parties), that of Head of the

Environment, Economy and Trade. The interviews of potential candidates should start in January 2003.

On behalf of the Secretariat, she congratulated Gustavo Alanís-Ortega on his election as JPAC chair for 2003 and assured him of the Secretariat's full support and cooperation.

Questions and comments included:

- Did the expert's workshop on vehicle pollution focus only on border areas or did it also include urban experiences? The Secretariat replied that it was a meeting of government officials focused on border regions and that the record will be made available to the public.
- There has been an increase in funds available for grants through the North American Fund for Environmental Cooperation (NAFEC)—is this permanent? The Secretariat replied that no, these additional funds were made available from surplus funds from the previous year.
- The revised NAFEC Administration and Funding Guidelines should be approved by the Council on 11 December 2002. Three JPAC members (one from each country) will be asked to join the selection committee, as well as one National Advisory Committee (NAC) member or a Governmental Advisory Committee (GAC) member from each country. This should be added to JPAC's agenda in 2003, when the new US JPAC members have been named.
- With the increasing number of submissions under NAAEC Articles 14 and 15, is this affecting the capacity at the Secretariat? The reply was no—not at this point.
- Have the Parties allocated additional resources to develop an agreement on transboundary environmental impact assessment? The reply was no.

Report from the National and Governmental Advisory Committee representatives

The representative of the Canadian National Advisory Committee (NAC) began by thanking the outgoing JPAC members for their individual and collective contributions to the work of the CEC. He then reviewed their recent letter of advice focusing on the tenth anniversary of NAFTA and the NAAEC, which advocates a comprehensive review with strong public participation to evaluate how well the institution and its programs have met the original goals. He urged that a 'blue ribbon' panel be established to conduct an independent assessment and that it be properly resourced. He also urged that the Secretariat engage in a self-assessment, with JPAC and the NACs also involved. He concluded by observing that timing was critical in the face of the Free Trade of the Americas Agreement agenda and that the CEC model is at this point not even on the table for discussion—let alone replication.

The chair noted that while other representatives were not available to attend this meeting, the US NAC and GAC have written reports available.

Questions and comments included:

- JPAC and the NACs should also self-assess.
- NAFTA has proven itself to be out of balance with Chapter 11 on one side and Articles 14 and 15 on the other. The review should not be confined to the CEC but also to the environmental implications of NAFTA, including Chapter 11.

- The Mexican NAC should be constituted as soon as possible.
- The tenth anniversary review of NAFTA and NAAEC should also be forward-looking and identify what has and what has not been effective.

JPAC discussion on a potential Advice to Council on sustainable development and the private sector

A representative of JPAC's working group on this matter presented the draft Advice to Council. It was stressed that recommendations for further action were being made to complement what JPAC considers to be a very vibrant program of work.

A long discussion ensued, covering matters such as support for small and medium-size enterprises (SMEs), valuing ecological services, financing for water infrastructure and building on existing innovative financing schemes to encourage expansion into other financial institutions.

Changes to the Advice were agreed to and a final draft will be circulated electronically. It was also agreed that the record of the public workshop would be attached.

The chair thanked the members for reaching consensus, noting that it is very difficult to be an ideologue and also a member of JPAC.

Action: Secretariat, JPAC members

Update related to the NAAEC Article 13 report on the potential effects of transgenic maize in Mexico, and question period

The JPAC member of the Article 13 Advisory Group and the acting head of the Environment, Economy and Trade Program both made presentations on the purpose of this Article 13 report on the effects of transgenic maize in Mexico and the progress towards constituting the Advisory Group for the initiative, developing its terms of reference, the work plan and finalizing a schedule.

Reference was made to pressures from nongovernmental organizations to ensure that affected local communities were properly represented. The Secretariat has agreed with this and is now seeking a representative to sit on the Advisory Group.

Discussion papers on this issue were being finalized as of this writing and should be released by the end of December. The acting head reported that a decision was taken to give the Parties a two-day "heads up" prior to making the papers public, to prepare for media attention.

The terms of reference for the report itself will be posted for public comment. It is hoped that these will be finalized by mid-January. Then, independent consultants will be hired to write the background papers for the report, which will be sent out for public comment. A symposium on this issue should take place in fall 2003 in Mexico. Following the symposium, the Advisory

Group will draft recommendations to Council and make the final report available in advance of the June 2004 Council Session.

The acting head informed the meeting that the Secretariat has created a special section on the CEC web site listing "Frequently Asked Questions" and will shortly make a section for public comments online.

Comments and questions included:

- Assuming that gene flow is taking place, does mitigation involve activities to reduce further flow or live with the flow?
- It was suggested that a JPAC member should send a letter to the Mexican government asking for access to any unpublished Mexican government research results on this subject. The Secretariat replied that this could compromise the independence of the process and might open the door for governments to send requests. If a letter is sent to the Mexican government, it should not be sent by JPAC, but rather by the Secretariat. JPAC should not be involved in managing this process.
- Will the original petitioners also receive the discussion paper two days in advance of its release to allow them to prepare for media attention? The acting head said she would bring this request back to the Secretariat.
- There are concerns that the Advisory Group is tilted in favor of the biotechnology industry and, if so, this might jeopardize the credibility of the Secretariat. The acting head replied that she does not agree that the group is unbalanced, and she repeated that a representative on the Advisory Group from the affected local communities is being sought and should be in place in the coming weeks.
- How exactly was balance achieved? The acting head replied that they relied on self-declaration of bias or conflict of interest.
- When the new JPAC members and Executive Director are installed, is there a risk that the process can be changed? The acting head replied no, that by mid-January the process will be underway.

JPAC follow-up

a) NAAEC Articles 14 and 15

The chair informed the meeting that the letter received from the Alternate Representatives, on 6 December 2002, provided a negative reply to all points raised by JPAC.

It was agreed that JPAC has gone as far as it could and would wait until the four factual records were completed before re-visiting the issue. It was also noted that JPAC should begin thinking about how it wants to see the review of Council Resolution 00-09 conducted.

Action: Council and JPAC

b) NAFTA Chapter 11, the Tenth anniversary of NAFTA and the NAAEC, WSSD follow-up and the search for a new CEC Executive Director

The same letter indicated, regarding the NAAEC Article 10(6) and the NAFTA Chapter 11 issue, that there are no known plans for a meeting between trade and environment ministers; that the most recent summary and all future summaries of meetings of the Article 10(6) officials group will be posted on the CEC web site; that when this group convenes it will hold a joint meeting with JPAC and another with government officials only; that once a process for carrying out the tenth anniversary review has been outlined it would be shared with JPAC; and that the search for the new Executive Director was underway.

JPAC decided that it would support the Canadian NAC's approach to the tenth anniversary review of NAFTA and the NAAEC, and the Alternate Representatives would be so informed.

Action: JPAC Chair

JPAC decided to recommend that a public session be held on the tenth anniversary review of NAFTA and the NAAEC during the June 2003 Council session.

Action: JPAC Chair

Regarding NAFTA Chapter 11, it was agreed that the Parties would be invited to attend the public workshop on Chapter 11, scheduled for 24 March 2003, in Mexico City.

Action: JPAC Chair

Regarding the search for the new Executive Director, it was agreed that JPAC would remind the Alternate Representative of its expectation to be involved in the final selection process.

Action: JPAC Chair

c) JPAC Advice to Council 02-08, 02-10 and 02-11

In separate letters from the Alternate Representatives, also dated 6 December 2002, Council provided a detailed response to the JPAC Advice 02-08 on the Sound Management of Chemicals (SMOC) and JPAC's approach to freshwater management (JPAC Advice 02-10).

The chair asked the members to carefully review the response to the Advice on SMOC to determine if any further action is required.

Action: JPAC members

Regarding Advice 02-11 on the Program Plan and Budget for 2003–2005, no reply has yet been received.

d) Joint public workshop between the CEC Enforcement Working Group and JPAC on Enforcement Cooperation Issues in June 2003

The document prepared by the JPAC Working Group presenting issues that the EWG could consider as it prepares to articulate a long-term strategic vision and potential agenda for the joint meeting in June 2003 was reviewed and approved. It will now be shared with the EWG.

Action: JPAC Chair and the EWG

e) Approval of the draft Advice to Council on Transboundary Environmental Impact Assessment

Changes were discussed. A final draft will be circulated electronically.

Action: Secretariat, JPAC members

JPAC administrative matters

a) JPAC working groups: member appointments and rotation

It was agreed that no changes could be made at this time, pending arrival of the five new members from the United States and the new member from Canada.

b) Next JPAC meetings

Regular Session 03-01: 24–27 March in Mexico City

JPAC will hold a second public workshop on NAFTA Chapter 11, on 24 March 2003, in conjunction with the second Symposium on Assessing the Environmental Effects of Trade. The first JPAC regular session of 2003 will take place on 27 March.

Note: On 27–28 March, also in Mexico City, the United Nations Environmental Program (UNEP) has organized a meeting in collaboration with the CEC on Capacity Building, Environment, Trade and Sustainable Development. JPAC members are invited to attend on 28 March if they are available.

Regular Session 03-02: 23–25 June in Washington, DC

This JPAC regular session will be held in conjunction with the Regular Session of Council and a joint public workshop with the Enforcement Working Group.

Regular Session 03-04: October (dates to be confirmed) in Halifax, Nova Scotia

A public workshop on invasive species and a plenary session on the CEC proposed program plan and budget for 2004–2006 should be organized.

Regular Session 03-04: late November–early December, Mexico (dates and location to be determined)

The session will be held in conjunction with a CEC symposium on the potential effects of transgenic corn on traditional maize varieties in Mexico.

Observers' comments

The chair then opened the floor to observers for their comments.

- As a complement JPAC's advice on financing and sustainable development, a joint session to discuss training and access to resources for certification would be very useful.
- Existing binational strategies to improve air quality could serve as useful models for TEIA.
- Just as important as the Secretariat being confident that the Article 13 Advisory Group is balanced, is for the affected local communities to be confident. Adding a representative will help, but there may be other steps required.
- There is a need to link the definition of environmental goods and services with the capacity of SMEs to access financing. Ecolabeling is biased against SMEs and producers.
- JPAC should continue to advocate for the NAAEC Articles 14 and 15 and not wait until the four factual records in question have been completed.
- The costs to governments and taxpayers of not mitigating environmental considerations leading to NAFTA Chapter 11 disputes should be evaluated. Perhaps an Article 13 report on Chapter 11 should be considered.
- The new JPAC members from the United States should be provided with an orientation session.
- Educating future generations should not be overlooked in work on financing.
- Generally, environmental education and awareness programs should be developed as part of the CEC's work.
- The second Symposium on Assessing the Environmental Effects of Trade should include legal matters and frameworks for connecting the legal systems of the three countries.
- "Green buildings" and "brownfields" are key areas with great potential and should be further developed in the CEC's program. (Note: the acting head of the Environment, Economy and Trade program invited this intervener to join a CEC working group on the matter.)

End of Session

The JPAC chair thanked all the participants, the hosts of this meeting, the staff of the CEC and the interpreters, then adjourned the session.

Below, see the summary of the farewell statements by outgoing JPAC members (Peter Berle, Steve Owens Jon Plaut, Serena Wilson and Liette Vasseur)

Farewell statements by outgoing JPAC members

Before adjourning the session, the JPAC explained that five JPAC members would be leaving on 31 December 2002. All of the US members are being replaced, along with one Canadian member. He asked each to speak, noting that Serena Wilson, a US member was not present.

Liette Vasseur, JPAC member from Canada, explained that she has been part of JPAC for almost four years and was elected JPAC chair for 2001. JPAC is a team of 15 members—15 North Americans with a common regional vision for environmental cooperation. She went on to explain that the members were volunteers and not to underestimate the time commitment—some

six weeks of work per year. It is a fascinating but sometimes frustrating experience. While sometimes it is felt that the CEC is the unwanted child of NAFTA—a three-legged stool made up of the Council, Secretariat and JPAC—sometimes it seems that JPAC is the unwanted leg of the stool. Without the public, JPAC has no existence and she thanked the public for its active support and input over the years. She also thanked the Canadian government for giving her this opportunity. She expressed appreciation for the new friends and colleagues the experience has brought her. She thanked the CEC and staff for all their support and asked everyone to continue to ‘fight the fight.’

Steve Owens, JPAC member from the US, expressed gratitude to the CEC staff and to the public. He explained that when he came to JPAC three years ago he knew nothing about the process. He has come to be enormously impressed by the caliber and quality of the JPAC members and the public who attend the session. That is what this process is all about—serving as advocates for public participation. He left with a thought: “Keep up the advocacy, keep showing up. When you think you are not being heard, that is the most important time to keep trying.” He is especially pleased and proud to have worked on developing an agenda for children’s environmental health. He also expressed frustration for the lack of progress on matters related to Articles 14 and 15. He urged the public to keep up the pressure. “There are forces out there that would exclude the public and eliminate environment from the agenda as trade issues heat up and the economy falters.”

Peter Berle, founding JPAC member, US, explained that the NAAEC and the CEC were founded on the hope that trade could be a driving force to improve the environment He said: “It was also hoped that these institutions could limit environmental ravages that can be brought about by trade. Looking backward one asks whether these hopes have been realized. To some degree they have. One success has been the reduction of some toxic chemicals in the North American continent through the Sound Management of Chemicals (SMOC) process. Other programs have not gone so far – some have not moved at all. A constant constraint has been the limited CEC budget.”

“Early on it was recognized that unless the environmental laws of our three countries are enforced, improvement of environmental quality is impossible. This led to the innovative notion embodied in Article 14 of the NAAEC. Under that provision any citizen can cause an investigation to be undertaken to ascertain whether specific environmental laws were being enforced. This is a revolutionary process – the first of its kind in international jurisprudence. Unfortunately implementation of Article 14 has led to a good deal of frustration. Governments when challenged in an Article 14 proceeding have done their best to frustrate the process. This has been true of each of our three countries.”

“The first case involved the Cozumel Pier in Mexico where it was alleged that Mexico did not follow appropriate procedures in granting environmental approval for the project. The Mexican Alternative Representative did his best to sink the matter.”

“Later a challenge was filed against BC Hydro in Canada. Here the Canadian Alternate Representative led the attack. She tried to get the rules changed so the governments had total

control over the way challenges could be filed and the manner in which they would respond. The JPAC resisted these efforts to eviscerate the Article 14 process.”

“Most recently the U.S. government is attempting to stymie the process. It is taking the position that when a complaint of non-enforcement is filed, the factual record must consider only the specific incident set forth in the Petition. This severely limits an investigation in which the issue is the existence of a pattern of non-enforcement. So far the JPAC has been able to keep the Article 14 process alive. Do not give up.”

“If the CEC is to be effective, the independence of the Secretariat must be preserved and strengthened. Again JPAC must be the Secretariat’s strong advocate.”

“Principles of trade/environment integration are of particular importance today. A new Free Trade of the Americas Agreement is under negotiation. Unfortunately the United States does not see NAAEC as a jumping off point. Rather than seeing the NAAEC as a standard to be improved upon, the US is seeking to downgrade it, making it weaker and a less effective instrument to promote environmental quality.”

“The US JPAC members are leaving at a time when hopes we shared when we began, are threatened. But I still have hope. With Gustavo Alanís-Ortega as the new JPAC chair, and Victor Lichtinger former CEC Director and now the Mexican Environmental Secretary, the vision must be kept alive. Hopefully they can withstand the pressure to minimize the effectiveness of the CEC. Unfortunately there does not appear to be strong commitment on the part of the US at the moment.”

“Looking back on our JPAC experience I think collectively we have won a few and we have lost a few, but we have had one hell of a time along the way.”

Jon Plaut, founding JPAC member, noted that before RIO and before NAFTA the old idea of environment and trade was at loggerheads. It was fun for the combatants but not constructive. Clearly we need to work cooperatively if we are ever to make progress. This was advanced at the very imperfect Rio meetings. At Rio the north (the US and Canada) titled the meeting the World Conference on Environmental and Development. Brazil called it the World Conference on Development and Environment—reversed for southern countries. This was very instructive, indicating perhaps what people wanted out of their lives. He explained when he was appointed by former President Bill Clinton in 1994 he was a strong promoter of environmental advocacy for sustainability. He also was influenced by the late John Wirth (US JPAC member at the time of his death this fall) that we are North American advocates. We need to develop a North American attitude if we were going to be able to do our work. John Wirth gave me a pin, which he was wearing as he spoke with a red line through the words “No Whining.” He wished JPAC and the staff of the CEC the best of luck and urged everyone to “remember: no whining.”

Gustavo Alanís-Ortega (newly elected JPAC chair for 2003) bid farewell to his departing JPAC colleagues. On behalf of all the members, he offered congratulations and thanks for all the work that has enriched the JPAC experience. Even when it was 25 below Celsius or 40 above “we never whined”! He spoke of sessions that were tense, heated arguments and emotions—

sometimes interesting and sometimes tedious. We learned the importance of perseverance. He thanked the outgoing members for their energy and enthusiasm and sharing of expertise, and for the hospitality in greeting new members with a warm heart and a warm hand. To Jon Plaut and Peter Berle—“you pioneered JPAC and demonstrated the importance of team work. This would have been impossible without the team spirit; we are losing important members of our team.”

Finally, Donna Tingley was asked to say a few words of appreciation. She prepared a word to describe each of the departing members.

- For Jon Plaut – Peacemaker. He always emphasized our commonality and did so because of his love of humanity.
- For Peter Berle – Leader. On many occasions I observed Peter to seize an issue, rally support and achieve success.
- For Steve Owens – Politician; but not with capital “P.” Steve has a special ability to listen, quickly understand, synthesize and decide what needs to be done.
- For Serena Wilson - Tenacity. I observed her spirit and ability to stay with something until it was done and done right.
- For Liette Vasseur - Energy. There is no one she drives harder than herself.

This is not goodbye but Au Revoir - until we meet again. Each of the outgoing members was then presented with a plaque.

The chair thanked all the participants, the CEC staff, JPAC members and interpreters and adjourned the session.

Prepared by Lorraine Brook



Commission for Environmental Cooperation of North America

Joint Public Advisory Committee Regular Session 02-04

10 December 2002

Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM)

Campus Monterrey

Sala Mayor de Rectoría

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Monterrey, Nuevo León

Provisional Agenda

Meeting Chair: Jon Plaut

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| 7:30 – 8:00 | Registration of participants, including coffee and croissants |
| 8:00 – 8:15 | Welcome and overview by the JPAC chair, including announcement of election results for the 2003 JPAC chair*
a) Approval of the provisional agenda |
| 8:15 – 8:30 | Report from the CEC Secretariat and question period |
| 8:30 – 8:45 | Report from the National and Governmental Advisory Committee representatives* |
| 8:45 – 9:30 | JPAC discussion on a potential Advice to Council on sustainable development and the private sector* |
| 9:30 – 10:00 | Update related to the NAAEC Article 13 report on the potential effects of transgenic corn on traditional maize varieties in Mexico and question period
– Chantal Line Carpentier, acting head, CEC Environment, Economy and Trade Program
– Mindahi Crescencio Bastida-Muñoz, JPAC member and member of the Advisory Group for the NAAEC Article 13 report on the potential effects of transgenic corn on traditional maize varieties |
| 10:00 – 10:30 | JPAC follow-up*
a) NAAEC Articles 14 and 15
b) NAFTA Chapter 11, the Tenth anniversary of NAFTA and the NAAEC, WSSD Follow-up, and the CEC Executive Director
c) JPAC Advice 02-08, 02-10 and 02-11
d) Joint Public Workshop of the CEC Enforcement Working Group and the JPAC on Enforcement Cooperation Issues in June 2003
e) Approval of the draft Advice to Council on Transboundary Environmental Impact Assessment |
| 10:30 – 10:45 | JPAC administrative matters*
a) JPAC working group: member appointments and rotation
b) Next JPAC meetings |
| 10:45 – 11:00 | Observers' comments |
| 11:00 | End of the session |

* Session open to the public as observers.



CEC Public Workshop on
Investing in North America's Future:
Innovative Financing for Sustainable Development
and Joint Public Advisory Committee Regular Session 02-04

9–10 December 2002 in Monterrey, Nuevo León

Taller público de la CCA
sobre la Inversión en el Futuro de América del Norte:
Financiamiento Innovador para el Desarrollo Sustentable
y sesión ordinaria del Comité Consultivo Público Conjunto 02-04

9 y 10 de diciembre de 2002 en Monterrey, Nuevo León

Atelier public de la CCE
« Investir dans l'avenir de l'Amérique du Nord :
mode de financement novateur pour un développement durable »
et session ordinaire du Comité consultatif public mixte 02-04

9–10 décembre 2002 à Monterrey, Nuevo León

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ADVICE TO COUNCIL NO: 02-12

Re: Re-energizing the Transboundary Environmental Impact Assessment negotiations

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

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

UNDERSCORING the obligation on the Council set out in Article 10(7) of the NAAEC to develop, within three years of signature, recommendations for an agreement on the assessment of environmental impacts of proposed projects likely to cause significant adverse transboundary effects;

RECALLING the Council Resolution 95-07 and the 1997 report “Draft North American Agreement on Transboundary Environmental Impact Assessment” prepared by a group of experts mandated by Council and the resulting decision by Council that the Parties would complete a legally binding agreement on TEIA in April 1998;

MINDFUL of the high level of interest repeatedly and forcefully expressed by the public for the conclusion of such an agreement and concern over lack of progress;

NOTING the statements made by the Council in the final communiqués related to its regular session in 1997, 1998, 1999 and in particular in 2001 which stated that “[...] transboundary environmental impact assessment, an informal, productive process is continuing.”

FURTHER RECALLING that JPAC has brought this matter to the attention of Council on numerous occasions through JPAC Advice to Council 99-7, 01-01, 01-02, 01-05 and 02-10 and the JPAC report to Ministers at the landmark June 1998 Council Session in Mérida, Mexico;

In order to assist the Parties in reaching conclusion on what is increasingly becoming an urgent matter as highlighted by CEC’s recent work on electricity restructuring and freshwater management in North America,

JPAC RECOMMENDS THAT COUNCIL:

- Promptly create a North American TEIA Working Group charged with the responsibility to assist Council to move forward on its obligations under Article 10(7) of the NAAEC by drafting a model regime informed by a review of existing models developed by other institutions or organizations with transboundary mandates involving environmental matters.
- The terms of reference establishing this working group should state among others that:
 - a) The North American TEIA Working Group should have four members, consisting of one senior official from each country and a JPAC representative;
 - b) Border states and provinces should be involved;
 - c) While the discussions may be largely governmental in nature and may involve privileged information, to the extent possible, the sessions should be opened to the public and reports made publicly available; and
 - d) The North American TEIA Working Group would deliver this model to Council by December 2003.

APPROVED ON 10 DECEMBER 2002



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ORIGINAL: English

ADVICE TO COUNCIL NO: 02-13

Re: Continuing Innovations on Work in Financing for Sustainable Development

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

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

RESPONDING to Council's March 2002 request to provide further thoughts on financing for sustainable development;

HAVING PARTICIPATED IN and BUILDING ON the outcomes from the CEC Workshop on Financing and the Environment: Transparency, Disclosure and Environmental Reporting, held in New York City on 25 March 2002;

RECALLING Advice to Council 02-06 on Private Sector Cooperation and Financing, containing the following three recommendations:

1. That Council instruct the Secretariat to finalize its analytical work demonstrating how access to data and indicators can quantify environmental risk, making it relevant and accessible to financial institutions.
2. That Council further instruct the Secretariat to develop options for how best to attract the interest of leading financial institutions in introducing environmental priorities when making credit decisions.
3. That Council then consider initiating a meeting with some chief executive officers (CEOs) of financial institutions committed to and influential on environmental matters and with operations in North America, to identify new partnerships that are needed to meet the evolving environmental agenda.

MINDFUL of Council's decision, among others, in June 2002 to:

- Encourage efforts, in cooperation with the private sector and other institutions, to develop methodologies and information links to provide environmental information in a form more useful to financial institutions and to encourage the use of environmental information in credit, investment and asset risk management decisions;

- Consider how to advance work on existing requirements regarding disclosure of environmental information pertaining to financial reporting; and
- Look forward to the results of the JPAC workshop on finance and environment to be held in Monterrey, Nuevo León, Mexico in December 2002.

HAVING participated in a very informative public workshop organized in cooperation with the CEC's Environment, Economy and Trade Program on *Investing in North America's Future: Innovative Financing for Sustainable Development*, held on 9 December 2002, in Monterrey, where it was clear that many of JPAC's recommendations have been taken up as ongoing initiatives in the CEC Program Plan;

CONGRATULATING the CEC Secretariat for the high quality of the work being conducted and the plans for future initiatives;

JPAC recommends the following to complement the Secretariat's ongoing efforts:

1. Pursue the development of common and comparable measures with meaning for both the financial and environmental communities;
2. Take cognizance of the environmental externalities of in estimating the costs of goods and services;
3. Develop strategies for further evaluation on how common and comparable data from small and mid-sized enterprises (SMEs) can be collected and shared in order to assist in expanding their investment and credit opportunities;
4. Continue efforts to bring together interested parties in the financial and non-financial corporate sector and participate in events, such as the upcoming UNEP meeting in New York City with senior officials of the financial community; and
5. Encourage regulatory agencies and professional bodies to develop directives and guidelines to promote changed corporate behavior and lending practices, and encourage and promote new markets for investment.

Finally, a summary of the CEC's public workshop in Monterrey was kept and transmitted to the Parties and the Secretariat. JPAC encourages a careful review in order to canvass the many other important issues and points raised during the session.

APPROVED ON 10 JANUARY 2003



**Public Workshop on Investing in North America's Future:
Innovative Financing for Sustainable Development**

9 December 2002

Monterrey, Nuevo León, Mexico

Instituto Tecnológico y de Estudios Superiores de Monterrey (ITEM)

Co-chaired by Jon Plaut and Chantal Line Carpentier

Introduction

Jon Plaut, Chair of the Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America, opened the session. He welcomed everyone to Monterrey (ITEM), Nuevo León, Mexico and explained the day's events, including plans by JPAC to develop an Advice to Council on financing for sustainable development the following day during JPAC's Regular Session 02-04.

He then invited Mr. Alberto Bustani, the Dean of the *Instituto Tecnológico y de Estudios Superiores de Monterrey* to make opening remarks. Mr. Bustani explained the Institute's strong commitment to sustainable development and how the concept was being incorporated into all aspects of campus life, from curriculum to infrastructure and administration.

The JPAC chair then continued by explaining the role of the CEC and JPAC in the issue of financing for sustainable development and how this topic has emerged as an important strategic direction. He reviewed JPAC's past Advice to Council and how JPAC was asked by the Alternate Representatives to further consider the matter. The Final Communiqué from the June 2002 Council Session provided further instructions and the issue has made its way into the CEC's 2003–2005 program plan.

He then introduced his co-chair, Chantal Line Carpentier, Acting Head of the CEC Environment, Economy and Trade program area. Ms. Carpentier concluded her welcoming statement by saying that at the end of the day, the meeting would be a success if participants understand the importance of the link between the environment and the financial sector.

Session I

Ms. Carpentier provided background information on the program, noting that there is increasing recognition of the role that financial markets can play in supporting environmental actions. The CEC is committed to contributing ideas and directions to this discussion, notably in the area of risk assessment by financial institutions and in seeking how and what environmental information should be harmonized.

She explained that one of the program's objectives is to stimulate an increase in private funding to the environmental sector, given that public financing will be insufficient to meet growing needs. An important element is to standardize disclosure rules within the three countries. Without complete and comparable information, the market cannot be efficient.

More stringent application of existing laws is a first important step, along with harmonization and increased enforcement.

The two main issues are:

1. Disclosure and
2. Investment in Environmentally Preferable Goods and Services.

She explained the three key elements of the program:

- How to improve the base of information—what is available, what is being reported, and how it could be used by financial institutions with a focus on the pulp and paper, oil and gas, utilities and mining sectors.
- A better understanding of how environmental auditing, accounting practices and data sources can assist.
- Improve and standardize mandatory and voluntary disclosure.

Comments from the public included:

- There seems to be a focus on large-scale financing. We also need to explore financing for smaller companies and projects that don't have market access. Banks will not finance small businesses, community development, community based projects.
- The experience with NADBank should be explored to see if it could be replicated in other areas.

She then introduced Mr. David Velasco from *Café de la Selva*, recipient of a special award at the World Summit on Sustainable Development and finalist in the 2002 Ecuador Initiative. He provided an overview of their fair trade coffee project, developed by indigenous communities in Chiapas, Mexico. The project began as a response to the crisis in coffee prices and the serious negative effects on producers that have led to increased poverty. Collateral consequences were also significant, such as drug trafficking, production and consumption and the increased presence of guerrillas.

The project aims to add value by expanding and controlling all levels of production and distribution, from growing, processing and marketing, to direct sales through their own coffee shops. This approach has decreased economic vulnerability—by strengthening the link between producer and consumer—and yielded environmental and financial benefits, by involving indigenous women and using profits to improve community infrastructure.

Some of the challenges are balancing attention to all stages of the project, strategic planning, and financing, and increased competition from companies such as Starbucks.

The co-chair thanked Mr. Velasco for a very stimulating presentation.

Comments from the public and JPAC included:

- The importance of environmental education and the positive effects on indigenous communities cannot be overstated. This very successful model should be expanded to other indigenous cooperatives offering different products, such as bakeries and confectionaries.
- There is a potential for collaborating with universities such as this one through the green campus program by establishing coffee shops and creating a market.
- It is the responsibility of civil society in Mexico to assist and support these projects. They are of excellent quality and have shown to relieve poverty. Small and medium-size businesses in Mexico can help.
- What are the opportunities for women to obtain financing within the CEC and how are women actually involved in this project?

Mr. Velasco replied:

- It is important to understand that the starting point of this project was social need. It was not done for the communities but by the communities themselves to reduce their dependency on global coffee markets.
- The objective is to sell coffee in the cup through our own shops. We are working with small investors so as not to lose control. We are also involved in diversifying with complementary project and marketing these in our shops such as ceramics, candy, and pastries. In fact we just received a national award for the best dessert. That is the ultimate objective. Our biggest limitation is capital.
- One of our biggest challenges is to solve the education gap. We are operating in a very marginal area where illiteracy rates are around 36 percent. We are starting our own education program. The existing education system does not work for us—where we are essentially ‘majoring in peasantry.’
- We need to cooperate and form alliances with financial, business, academic and research institutions to overcome financial and technical deficiencies. We have technical deficiencies. Forums such as this assist us greatly in networking and forming alliances.
- We lack the tools to strengthen our competitiveness. We also need to lessen migration from Chiapas to the border region.
- Finally, women have a very important role in this project and I would be happy to share the details of this with you.

The co-chair then introduced Mr. Miguel González, Corporate Director, Environmental/Security and Health, and Technology Vice President from Cemex. He shared experiences of the Eco-efficiency Program that his company has run very successfully and which can contribute to analyzing links between financing and the environment. He explained that environmental investing has to be part of long-term growth—otherwise there will be a loss of investors and customers, along with increased costs of remediation. Combining the concepts of sustainable development and environmental responsibility is the most efficient and profitable way of doing business today. Environment, social considerations and economy are all interconnected.

The challenge is to ease the tension between the objectives conservation and productivity by the efficient use of natural resources and communicating the results. Cemex responded to this challenge with the Eco-efficiency Program, launched in 1994 with investment in improved and new infrastructure, recycling, natural materials, reducing emissions, use of waste materials, and active promotion of a culture of eco-efficiency through communication and outreach.

He went on to demonstrate some very significant economic results, using an example of a decision to use wastepaper to fuel a kiln, resulting in reduced energy consumption and emissions and saving the company US\$2.3 million per year.

His final message was a call to invest in innovation and changing the corporate culture by involving the entire staff in these decisions.

Comments from the public and JPAC included:

- Cemex is to be congratulated for demonstrating that when a company takes on environmental concerns as part of its corporate strategy, strong income can be produced.
- Cemex uses natural resources and these are finite. Is that taken into consideration in your analysis of long-term results?
- Combustion of wastepaper can increase emissions of dioxins and furans as a byproduct of chlorine. Do you have data on this?
- Have details on your program been published?

Mr. González replied:

- Community awareness is an important part of our strategic thinking. Eco-efficiency can be introduced in any sector.
- It is our corporate policy to encourage our suppliers to adopt these eco-efficiency measures.
- Regarding the value of extracted resources, we are transforming these materials. The extracted resource becomes a school highway, etc., and we can remediate the area at the end of its lifecycle.
- We will apply eco-efficiency to new facilities that are acquired. Governments are now facilitating our involvement.
- Regarding alternative fuels, this is a very interesting question. We do not want chlorine in our process and are very careful about this.
- We have joined a global action plan so all our information (and that of other cement companies) is available.

The co-chair then introduced Mr. John Ganzi, Executive Director, Finance Institute for Global Sustainability.

He began by explaining that it was important to start this workshop from the industry perspective. The world of finance does not “do produce.” The “fuel” that supports those activities is capital and that is the focus of his presentation.

He explained that there are essentially three categories of capital: government, developmental institutions (export/import banks that are often government-driven), foreign-direct investments

(such as Starbucks in Mexico), and private financial institutions (commercial banks, pension funds, etc.).

He went on to explain that, within private financial institutions, there are three types of services provided: securities trading, credit with interest (most common) and insurance (the biggest risk taker in the financial service market place). Each are driven by risk—how much money will I make versus how much risk will that take? Private financial institutions have a significant impact on development and human sustainability because they can move money freely and quickly.

He gave examples of where the financial sector and environment are already intertwined:

- Securities markets—eco-funds, sustainably responsible investments and shareholder engagement; here, he suggested that the last has great potential.
- Credit—real estate, environmental technology, infrastructure projects.
- Insurance underwriting for such environmental and climate-change risks as asbestos, pollution, rising sea levels, windstorms draught, and floods (where environment and finance first interface).

He suggested that the greatest common challenge is to find financing for aging infrastructure, especially that involving water. The private sector will have to cooperate with governments.

Another area of financing potential is pension funds. This is an area where more regulation is being introduced and some countries are now screening for environmental considerations (Switzerland, for example). He concluded with several suggestions for consideration by the participants:

Where do we go from here?

- There is a need for transparency and access to information. The Enron and WorldCom financial scandals have demonstrated this.
- We need models, tools and case studies. A case study on small and medium-size enterprises to document the process and lessons learned would be very useful.
- Standardizing the regulatory reporting framework. For example, the current environmental reports of Dow and Dupont cannot be used by financiers—the data are not comparable.

What is needed?

- Environment-oriented firms and technologies are not great investments. We need to integrate sustainability into business.
- Financiers follow; they do not lead. The viability of small and medium-size businesses needs to be proved to assist them in getting funding. This can only be accomplished with information being made available in a way that is useful to financiers.

Governments can:

- Facilitate corporate transparency
- Improve standards for reporting and indicators

- Promote new models
- Facilitate dialogue
- Adopt free market pricing to assist the financing of potable and wastewater infrastructure
- Devise protocols for the involvement of pension funds
- Handle credit extensions at market rates (he noted here that restrictions on the NADBank resulted in 90 percent of the fund not being invested)
- Harness the power of government purchasing to favor green goods and services

Possible roles for the CEC:

- Training entrepreneurs
- Function as broker of capital flows
- Work with all national governmental agencies on establishing comparable reporting requirements across all NAFTA countries—across all sectors that touch the environment.

Comments from the public and JPAC included:

- Have you looked at the energy services companies and what they do in providing energy performance contracts?
- The link between private finance and infrastructure is problematic. What do we really mean by sustainability—sustaining financial capital or the environment?
- Have we witnessed changed behavior as a result of things being done differently in countries where pension fund regulation has been introduced?
- Is there any concrete evidence that foreign direct investments have a positive effect on environmental sustainability? Are there any case studies?

Mr. Ganzi replied:

- Infrastructure projects are inherently private/public initiatives.
- From a financier's perspective, sustainability means getting your money back with a dividend. The challenge for us is to break down the wall between environmental considerations and financing. We are now tackling that question in relation to infrastructure projects.
- There are strict domestic controls but essentially no international rules.
- Regarding the regulating of pension funds, it is essentially too early to tell. We need three years of data before we can predict anything.
- Regarding foreign direct investments, he suggested consulting work done at Yale University. This is not his personal area of expertise.

The co-chair then introduced Kaj Jensen, Assistant Vice President, Corporate Environmental Risk Management from FleetBoston Financial (a large financial holding company), who began by observing that sustainable investments are occurring, but not yet as a mainstream effort. What does occur is a secondary benefit as a result of careful risk review. He went on to explain the two sides of risk. The first is risk capitalization—understand the environmental risk and work with it.

The second is risk aversion—in a down-economy, investors are more likely to invest in companies taking less risk. The latter means they are less likely to look at innovative ideas and ways of managing risk.

He continued by describing some of the current realities in lending at his institution. The first was “brownfields,” which are abandoned, contaminated or under-utilized industrial properties. With a good risk review team, such sites can be profitably redeveloped. Now Fleet attracts these developers because of its internal expertise.

The second is the area of “green buildings” that are eco-efficient and eco-designed, or existing buildings that are ecologically renovated. The problem with green building investment again comes back to risk. It is a relatively new area so there is no proven track record.

He went on to discuss some financing initiatives developed by the United Nations Environment Programme (UNEP) to assist stimulating private and public partnerships. FleetBoston is participating in a North American task force.

He concluded by saying that, along with oversight on the long-term sustainability of investments, regulators need to consider other risks like climate change, develop triple bottom-line reporting, and provide clear guidance regarding risk reporting for environmental liabilities. He encouraged NGOs to continue pressure for change and to help ‘tip the scale’ to make innovative products or investments more attractive.

Comments from the public and JPAC included:

- Concerning green buildings, there is a rating system in the United States. Are financial institutions using this rating system? He noted that Pennsylvania in fact has a record of accomplishment, that green buildings are not always more expensive, and cited several examples.
- It is important to define what we mean by sustainable development and sustainable investment. Financiers are oriented towards profit. It is very important to decide if we are saying that profit is not the main consideration, or is making the environment a consideration more profitable?
- Is the consensus that was reached at the Global Forum: Financing the Right to Sustainable and Equitable Development, in Monterrey in March 2002, linked to this session?
- What would be the basic requirement for companies to implement policies that benefit sustainable investment?
- Having agencies create directives for environmental auditing and providing evidence of due diligence can go a long way to promoting change in corporate behavior, and thus furthering sustainable development.

Mr. Jensen replied:

- Regarding green buildings, FleetBoston is involved in lending but there is a higher risk. We need good solid data over an acceptable amount of time. We are working to get case studies out into the community to promote investment in this area.

- Yes, sustainable development means profitability for the company—in our case. This allows FleetBoston to provide financing for programs such as brown buildings. We see this as investing in the community and being social responsible—the triple bottom line.
- No, there is no direct relationship with the March meeting in Monterrey; however, the Declaration and related materials were made available to JPAC and the presenters prior to the meeting.
- Developing guidelines and educating investors on the risks of not incorporating environmental considerations can be a very effective technique.

The co-chair then opened the floor to general questions and comments:

- The place to begin changing the culture and rules is with the professions that have the largest influence. Guidelines or directives for the accounting profession would thus also be very helpful.
- Economic decision-making for environmental protection is offered as a working definition of sustainability.
- We have to ‘think out of the box’ and push the definition of sustainability. Are we incorporating profit into sustainability or sustainability into profit? There are examples in other parts of the world—Australia, for example—of providing capital flow to communities.
- Public institutions can do two things to promote financing and risk management for green buildings: adopt energy performance contracts or buy insurance.
- JPAC was invited to consider the risks to Mexico of opening the border to agricultural products.
- Do not neglect small and medium-size enterprises in these discussions. In Mexico, there is little opportunity for these businesses. Is there more opportunity in the US and Canada?
- JPAC should also begin to look at acknowledging and valuing other ecological services—such as regulation of the hydrological cycle, biological disease and pest control, protection from disturbances, nutrient cycles, waste treatment, pollution control and detoxification, pollenisation, soil formation, erosion control, genetic information banks, regulation of atmospheric gases, etc.—then establish mechanisms to assign payment requirements for people who benefit from these services.
- A lot has been said about financial profitability but not much has been said about social benefits as part of profitability.
- An important result of this meeting is highlighting the need for business and the CEC (or other environmental organizations) to work together if progress is to be achieved.
- Creating directives for the accounting profession is a very good idea. We rely heavily on this profession. When working as auditors, accountants never talk about sustainability issues. Create a “Chinese wall,” because the same accounting firm consults on the issue of sustainability. NGOs could help lobby for the development of rules. Governing guidelines would go a very long way to regulate the profession.
- Bankers will never care about social issues. We need to make it part of their business. We have to talk their language and accounting is a very good entry point.
- There is very little documentation available on SMEs and it is hard to get funding to do the necessary research.

- Until we figure out how to value ecosystems, we will continue to destroy them and then build environmental theme parks, because the latter creates jobs. Capitalism is the overriding system. We have to “price it” if we want to change it.
- We need to focus on the needs of SMEs, not change the rules or excuse them. Perhaps someone could take up the challenge of formalizing the *Café de la Selva* project into an SME case study.

Session II

Chantal Line Carpentier explained that this morning's session had focused on increasing awareness of environmental considerations in the practices of financial institutions. This afternoon the discussion would be on how to increase the flow of capital to environmentally preferable goods and services. She then provided a review of the attached CEC draft discussion paper on private sector financing and the environment that had been distributed to participants prior to the meeting to stimulate discussion.

Comments from the public and JPAC included:

- This is a very difficult topic and the discussion has been enlightening. The discussion paper mentions some risk management actions, for example, the recent sinking of an oil tanker off the coast of Spain. Would the use of environmental due diligence during risk assessment reduce availability of credit if environmental standards are not met?
 - Reply: A very interesting question. Normally an institution would investigate before providing credit if the fleet were used as collateral, along with the ability to service the debt or repay the loan. The transportation sector is very complex. Tankers are usually leased—in fact, sometimes they are owned by financial institutions themselves with the shipping and maintenance responsibility shifted back to the transporter. It becomes very difficult to perform due diligence and ascertain who ran the ship at any point in time.
- The EU just established standards for double-hulled tankers. But these are much more expensive. Retiring the single-hulled tankers has a negative effect on the smaller operator. It might be the ‘right thing to do’ environmentally, but it will have implications for SMEs.
- How are green goods and services defined? Also, labeling and certification are voluntary. A better route may be to require companies to disclose fully what is in a product.
- With current interest rates, Mexico cannot compete, therefore, its firms are forming joint ventures with foreign companies.
- Conservation of species and areas (such as forests) should be included in these assessments. Groups and individuals operating these programs should be able to access credits.
 - Reply: Kyoto is not in operation, nor is the carbon credit system. The only available source at this time is a World Bank pilot fund.
- Foreign direct investments, with their ability to take money in and out quickly, are the antithesis to environmental sustainability.
- Some of us think that carbon sequestration is not the solution and will never absorb annual emissions. It merely distracts from the true solution, which is to reduce emissions. We need more work on valuing the benefits of ecological systems—payment for this service by a watershed, for example. There are methodologies available.

Next steps and closing remarks

The co-chair explained that JPAC would be developing an Advice to Council. He noted that this is a very important project for the CEC Secretariat. UNEP is organizing a meeting in New York City with the financial community on 28 February 2002. The CEC and a JPAC representative will attend.

He concluded with a thought from the great social philosopher, John Stuart Mill, on the dichotomy of the way we look at nature: on the one hand it is something we are part of; on the other something we seek to control. There is a long history and both ideas are very much alive. "We have had a very rich day discussing both of those paths."

Chantal Line Carpentier warmly thanked all the participants for their thoughtful and thought-providing comments.