SESSION 99-03 OF ALTERNATE REPRESENTATIVES
Held on 8 April 1999 from 9:20 a.m. to 6:00 p.m.
at the offices of the CEC Secretariat in Montreal

SUMMARY RECORD

The Council, represented by the Alternate Representatives, met on 8 April 1999. Ms. Norine Smith (Canada) chaired the meeting. Mr. José Luis Samaniego and Mr. William Nitze represented Mexico and the United States, respectively. Mr. Jonathan Plaut, represented JPAC and Ms. Janine Ferretti, Interim Executive Director, represented the Secretariat. Mr. Marc Paquin, Council Secretary, was the session secretary. Other officials from the Parties and the Secretariat were also in attendance (Annex A).

Item 1 Adoption of the agenda
In accordance with Council Rules of Procedure (R. 9.6), the Council adopted the agenda for the session at the beginning of the session based on the provisional agenda. The agenda, as adopted, is attached as Annex B.

Item 2 Report by the Interim Executive Director
In accordance with Council Rules of Procedure (R. 5.3), the Interim Executive Director reported on Secretariat activities and highlighted matters requesting the attention of the Council. The Interim Executive Director’s written notes are attached as Appendix B.

Item 3 Statement by the Chair of JPAC
Under this item the Chair of JPAC reported on the JPAC Regular Session held on 25-26 March 1999 in Mexico City and the round table conducted by JPAC on the Three-Year Program Plan. He outlined the two JPAC advice to Council produced during that session: Advice 99-01 on the revised guidelines for citizen submissions on enforcement matters in which JPAC concluded that the current guidelines should not be revised at this time; and Advice 99-02 on the Environmental Management Systems and Compliance Report which supports the use of environmental management systems in addition to or beyond compliance requirements. Mr. Plaut also reported on JPAC’s attendance at the meeting on Green Goods and Services sponsored by NAFEC on 22-24 March 1999 in Mexico City and on the recommendations made subsequently by the participants of that meeting to JPAC members.

Mr. Plaut indicated that the next regular session of JPAC scheduled on 7-8 May 1999 in Anchorage, Alaska, will include a joint meeting with the North American Working Group on Sound Management of Chemicals which will focus on contaminants and their impact on human health and, in particular, on indigenous people. Referring to the round table discussion scheduled for 8 May on the CEC’s 1999-2001 Program Plan, he indicated that this exchange as well as the results of the JPAC’s own deliberations and interaction with the public from other roundtables will form the basis for JPAC’s annual report and advice to Council, as well as for its input in the next iteration of the Program Plan.
He also mentioned that JPAC intends to provide an advice to Council on regional solutions to global issues in the next millenium.

Concerning the JPAC membership, he acknowledged the nomination of three new Mexican members and indicated that, in light of Ms. Jean Richardson’s resignation expected in July 1999, representation from the United States will then be reduced to three members. He also noted that one vacancy remained to be filled by Canada. Referring to the representation of JPAC on the NAFEC Selection Committee, he expressed JPAC’s desire that a Mexican JPAC member be selected to replace Peter Berle who has asked to be relieved of his duties on the Selection Committee. He concluded his remarks by expressing that there is a strong consensus within JPAC to the effect that the Council should be in a position to announce the nomination of the Executive Director no later than at its June session.

Item 4 Negotiations of the North American Agreement on Transboundary Environmental Impact Assessment

The Chair reported on the status of the negotiations. The Alternate Representatives indicated that they hoped that the TEIA negotiations will be finished prior to the regular session of the Council which will be held next June. They noted that it would be desirable that the negotiations be concluded in time to ensure the three Parties would be in a position to sign or initial the draft Agreement at the Council Session. They agreed that, if this were the case, the Council could publicly release the agreement at that time.

Item 5 NAAEC Articles 14 and 15

Item 5.1 Letter from CEMDA relating to the Cozumel Factual Record

In a letter dated 16 November 1998, the Centro Mexicano de Derecho Ambiental (CEMDA) requested the Council to examine and provide an opinion and recommendation in accordance with Article 10(2)(p) of NAAEC on the factual record developed by the CEC with respect to the “Cozumel” Submission. The Alternate Representatives discussed how to respond to CEMDA’s letter and directed the GSC to prepare a draft response for their review. They also indicated that the issues raised in the letter warrant further discussions.

Item 5.2 Revision of Article 14 Guidelines and process for developing factual records

In preparation for the 1999 Regular Session of the Council, the Alternate Representatives discussed next steps with regard to the revision of the Article 14 Guidelines including consideration of JPAC Advice 99-01 and the results of the public consultation held by JPAC. They also discussed next steps in addressing the interpretation issues relating to the development of factual records pursuant to Article 15 of NAAEC, in view of the upcoming Council regular session. More specifically, the Alternate Representatives agreed that by the end of May they would endeavor to be in a position to share their views, on what revisions could be required to the Article 14 Guidelines.

The Alternate Representatives further agreed that the Parties, taking into account the discussion paper provided by the U.S. on issues associated with the process of preparing factual records as a starting point, will work towards developing a joint issues paper pertaining to the interpretation of specific NAAEC provisions on the development of factual records. In addition, the Secretariat will prepare
internal general procedures on the development of factual records that reflect the Secretariat’s common sense approach consistent with Articles 14 and 15 and the Guidelines for Submission on Enforcement Matters. These procedures will be distributed among the Parties.

**Item 6 1999 Regular Session of the Council**

**Item 6.1 Program**
The Alternate Representatives reviewed and finalized the provisional program (Rev. 4) for the session. The Secretariat will integrate the agreed upon changes in the next revision (Rev. 5) of the program. It was agreed that the three chairs of the NACs would be allowed to attend the joint Council/JPAC session, as observers. It was further agreed that the Chair of JPAC would be invited to join the Alternate representatives for their working lunch on 27 June.

**Item 6.2 Logistics**
The host country (Canada) highlighted various logistics considerations requiring timely action by the Parties. Specifically, Canada indicated that it requires the Parties’ complete delegation lists no later than 30 April in order to ensure room availability. For the same reason, it is important that the participants who will be receiving financial assistance to attend the Council session be selected and make their reservations in Banff no later then May 24, 1999.

Mexico and the United States were also asked to verify the availability of their Council member for an informal activity with their Canadian counterpart, which would take place either on 27 June in the morning/early afternoon, or on 29 June following the end of the Council session. Canada also indicated it would like to organize an activity for delegations on 26 June.

The Parties discussed the possibility of Internet broadcast of the public meetings at the Council session. Parties agreed in principle to the idea, and Canada indicated it will look into the feasibility of such an endeavor and report to the Alternate Representatives.

**Item 6.3 Provisional Agenda**
The Alternate Representatives reviewed the provisional annotated agenda for the session. The Secretariat will incorporate the agreed upon changes in the next revision of the provisional agenda (Rev. 5). The Secretariat will also provide additional material for the Council discussion items. The Chair of JPAC indicated that JPAC will provide the Council with a follow-up report from the public workshop held in June 1998 in Mérida.

**Item 6.4 Public portion of the Council Session**
The Alternate Representatives discussed the format of the public portion of the session and agreed that the Chair of JPAC would chair the public portion of the Council session and that the format would be the same as the one followed in Mérida. It was further agreed that the Parties provide their comments on the “general discussion” annotations of the Council in-camera agenda to the Secretariat no later than 14 April for inclusion in the summarized agenda that will be made public. It was also confirmed that, as in past Council sessions, the public can attend the press conference as observers.
Item 7    Financial Matters

Item 7.1    Financial update by the Secretariat and discussion on fluctuations in exchange rate

As requested by the Alternate Representatives at their last session, the Secretariat presented a proposed revision to the 1999 Program and Budget in light of the shortfall in the 1998-1999 carry-over. The revised budget was approved by the Alternate Representatives, who also took note that the allocations for activities that were to be financed with 1997 surplus funds had to be modified as a result of the shortfall at the close of the financial year. Since one of these allocations was to Center of Information and Communication of the Environment of North America (CICEANA), CICEANA was directed to seek funding through a proposal to the NAFEC. It was agreed that a review of the 1999 budget needs will be undertaken in July 1999 in light of any carry-over of 1998 contract obligations. The Alternate Representatives also discussed policy and practical options for avoiding future shortfalls. They requested the Secretariat to undertake a further analysis of options to minimize the impacts of currency fluctuations and decided to revisit that issue at their next session.

Item 7.2    1999 Contributions

On this issue, it was noted that Canada provided the Secretariat with its contribution agreement, which contains its schedule of payments. Mexico indicated it would forward its 1999 contribution schedule to the Secretariat shortly.

Item 7.3    External Audit for Financial Years 1997 and 1998

This item was deferred to bilateral discussions between Mexico and the Secretariat.

Item 7.4    Canada General Sales Tax (GST) – status and reimbursement

This item was deferred to bilateral discussions between Canada and the Secretariat.

Item 7.5    Quebec Provincial Sales Tax (PST) – status and reimbursement

This item was deferred to bilateral discussions between Canada and the Secretariat.

Item 7.6    US Income Tax – Status and reimbursement

This item was deferred to bilateral discussions between the United States and the Secretariat.

Item 7.7    CICEANA (North American Environment, Information and Communication Center)

This item was discussed under item 7.1.

Item 8    Approval of Summary Records

Approval of summary records of sessions 98-09, 99-01 and 99-02 was deferred to the next session.
Item 9    NAAEC Articles 10(6)

Item 9.1 Petition of Alberta Wilderness Association et al.

The Alternate Representatives agreed that this would be reviewed by the GSC and discussed by the Alternate Representatives at their next session.

Item 9.2 Environment and Trade Officials meeting

The Alternate Representatives discussed next steps at the end of the Environment and Trade officials meeting. This item was therefore not discussed during the current session.

Item 10    NAFEC Selection Committee – Appointment of new members

The Alternate Representatives acknowledged that they had to appoint members to the NAFEC selection committee as soon as possible.

Item 11    Proposal to develop a common North American position on ISO 14000

The Alternate Representatives agreed to wait for the outcome of the stakeholders’ consultation being convened by the Environmental Management Systems Task Force on 13 April 1999, which would be followed by a Task Force meeting, to obtain more details on the task force’s proposal to develop a common North American position on ISO 14000.

Item 12    Administrative Matters

Item 12.1 Spanish Version of CEC Rules

The Alternate Representatives noted that progress had been made, and agreed to defer the discussion on this item to the next session so as to allow the legal advisors to complete their review of the Spanish version of CEC rules.

Item 12.2 Agreement with the Province of Québec

This item was deferred to bilateral discussions between Canada and the Secretariat.

Item 13    Other issues

No issue was discussed under this item.

Item 14    Scheduling of next sessions of Alternate Representatives

The Alternate Representatives agreed to meet in May, ideally for a three day meeting, one of which would be devoted to a joint environment and trade officials meetings, one to discussions on the issues related to Articles 14 and 15, including the development of factual records, and one to regular Alternate Representatives business, in particular, discussion on the Council regular session.

Item 15    Closure of the session

The Chairperson closed the session.
SESSION 99-03 OF ALTERNATE REPRESENTATIVES

Montreal, Canada, 8 April 1999

Delegations List

CANADA

Alternate Representative Norine Smith, Environment Canada
Jenna Mackay-Alie, Environment Canada
Christine Guay, Environment Canada
Andy Bowcott, Environment Canada
Rita Cerutti, Environment Canada
Carol Smith-Wright, DFAIT
Denis Langlois, DFAIT

MEXICO

Alternate Representative José Luis Samaniego, SEMARNAP
Martín Díaz y Díaz, SEMARNAP
Hector Márquez, SECOFI
Mario Aguilar, SEMARNAP

UNITED STATES

Alternate Representative William Nitze, EPA Office of International Activities
Lorry Frigerio, EPA Office of International Environmental Policy
Anne Rowley, International Environmental Law Office

JOINT PUBLIC ADVISORY COMMITTEE

JPAC Chair Jonathan Plaut
Lorraine Brooks
AGENDA

SESSION 99-03 OF ALTERNATE REPRESENTATIVES

To be held on 8 April 1999 from 8:30 a.m. to 5:00 p.m.
at the offices of the CEC Secretariat in Montreal

CHAIR: Canada

Item 1  Adoption of the Agenda
Item 2  Report by the Interim Executive Director
Item 3  Statement by the Chair of JPAC
Item 4  Negotiations of the North American Agreement on Transboundary Environmental Impact Assessment (TEIA)
Item 5  NAAEC Articles 14 and 15
Item 6  1999 Regular Session of the Council
Item 7  Financial Matters
Item 8  Approval of summary records
Item 9  NAAEC Article 10(6)
Item 10 NAFEC Selection Committee – appointment of new members
Item 11 Proposal to develop a common North American position on ISO 14000
Item 12 Administrative Matters
Item 13 Other issues
Item 14 Scheduling of next sessions of Alternate Representatives
Item 15 Closure of the session
SESSION 99-03 OF ALTERNATE REPRESENTATIVES
ANNOTATIONS TO THE AGENDA

Item 1 Adoption of the agenda

In accordance with Council Rules of Procedure (R. 9.6), the Council shall adopt the agenda for the session at the beginning of the session based on the provisional agenda.

The Alternate Representatives are expected to adopt the agenda for the session.

DOCUMENTS:
  a) Provisional annotated agenda (distributed 01-04-99) C/C.01/99-03/AGEN/01/Rev.3

Item 2 Report by the Interim Executive Director

In accordance with Council Rules of Procedure (R. 5.3), the Executive Director may make oral and written statements to the Council. The Interim Executive Director will report on Secretariat activities and highlight matters requesting the attention of the Council.

DOCUMENTS:
  a) Record of Council decisions and their status as of 26 March 1999 (distributed 31-03-99) C.C.02/98-11/DISC/01/Rev.9

Item 3 Statement by the Chair of JPAC

Under this item the Chair of JPAC will provide an update to the Alternate Representatives on JPAC activities.

DOCUMENTS:
  a) JPAC Advice 99-01: Revised Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 (distributed 30-3-99)
  b) JPAC Advice 99-02: Environmental Management Systems and Compliance Report (distributed 30-3-99)

Item 4 Negotiations of the North American Agreement on Transboundary Environmental Impact Assessment

The Alternate Representatives are expected to discuss the status of the negotiations of the Agreement.

DOCUMENTS: No documents

Item 5 NAAEC Articles 14 and 15

Item 5.1 Letter from CEMDA relating to the Cozumel Factual Record

In a letter dated 16 November 1998, Centro Mexicano de Derecho Ambiental (CEMDA) requests the Council to examine and provide an opinion and recommendation in accordance with Article 10(2)(p) of NAAEC on the factual record developed by the CEC with respect to the “Cozumel” Submission. The Alternate Representatives are expected to discuss the legal and policy issues raised by that letter.

DOCUMENTS:
  a) Letter from CEMDA addressed to the Interim Executive Director on 10 November 1998 (distributed 25-11-98)
  b) Draft response (to be distributed by Canada)

Item 5.2 Revision of Article 14 Guidelines and Process for developing Factual Records

In preparation for the 1999 Regular Session of the Council, the Alternate Representatives are expected to discuss next steps with regard to the revision of the Article 14 Guidelines in light of JPAC Advice 99-01. They are also expected to discuss next steps in addressing the issues relating to the development of factual records under Article 15 of NAAEC, for the Council’s discussion in June.

DOCUMENTS:
  a) Draft discussion paper on issues associated with the process of preparing factual records (distributed by the US on 19-
b) JPAC Advice 99-01: Revised Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 (distributed 30-03-99)

**Item 6 1999 Regular Session of the Council**

The Parties are expected to review the provisional program and agenda for the Regular Session of the Council to be held 28 and 29 June 1999 in Banff, Canada. They are also expected to discuss the format of the public portion of the session. The host country (Canada) and the Secretariat will update the Council on logistical preparations.

**Item 6.1 Program**

The Alternate Representatives are expected to review and finalize the provisional program for the session.

**DOCUMENTS:**

a) Provisional program (distributed 01-04-99) C/99-00/PROG/01/Rev.4

**Item 6.2 Provisional Agenda**

In order to ensure the timely preparation of session documents by the Secretariat, for review by the Alternate Representatives at their May session, the Alternate Representatives are expected to review and finalize the provisional annotated agenda for the session.

**DOCUMENTS:**

a) Draft provisional agenda (distributed 01-04-99) C/99-00/AGEN/01/Rev.3

b) Background information relating to agenda items and announcements (distributed 01-4-99) C/99-00/BACK/00/Rev.3

**Item 6.3 Public portion of the Council Session**

The Alternate Representatives are expected to discuss the format of the public portion of the session.

**DOCUMENTS:**

a) Program of activities open to the public (distributed 4-01-99) C/99-00/PROG/02/Rev.1

**Item 6.4 Logistics**

Under this item, the host country and the Secretariat will highlight logistics considerations requiring timely action by the Parties (financial assistance, delegation lists)

**DOCUMENTS**

a) Critical path (distributed 17-2-99) C/99-00/PLAN/01/Rev.2

**Item 7 Financial Matters**

**Item 7.1 Financial update by the Secretariat and discussion on fluctuations in exchange rate**

As requested by the Alternate Representatives at their last session, the Secretariat will present a proposed revised 1999 budget taking into account the shortfall in prior year revenues. The Alternate Representatives are also expected to discuss possible approaches to limit the impact of fluctuations in exchange rates on the budget of the CEC.

**Item 7.2 1999 Contributions**

The Parties are expected to present their schedule of payments for their remaining 1999 contributions. At the time of writing, Canada and the United States had contributed US$750,000 each.

Canada is expected to indicate when it will be in a position to present its fiscal year 1999 Contribution Agreement to the Secretariat for signature.

Mexico is expected to indicate its budgeted peso amounts for each of its 1999 contribution payments. This would help the Secretariat to assess the impact of any fluctuation in the peso exchange rate on its budget.
Item 7.3  **External Audit for Financial Years 1997 and 1998**

Each year, as part of the external audit of CEC’s financial statements, the Parties are requested to confirm to CEC’s auditors their contribution for the year being audited. This year again, a letter to that effect was sent to the Alternate Representatives on 25 January 1999. At the time of writing, Mexico had yet to provide its confirmation to our auditors. Mexico is expected to indicate when it will be able to transmit its response to our auditors.

Mexico is also expected to indicate same with regard to its 1997 contribution as per a letter to that effect sent to the Alternate Representatives on 25 February 1998.

**DOCUMENTS:**

a) Memo dated 1 April 1999 from the Interim Executive Director re: Follow-up to Session 99-02 of Alternate Representatives (distributed 01-04-99)


a) Letter from Interim Executive Director to SEMARNAP, dated 25 February 1998

b) Letter from the Interim Executive Director to SEMARNAP, dated 25 January 1999

**Item 7.4  Canada General Sales Tax (GST) – status and reimbursement**

Canada is expected to report on the actions it has undertaken to ensure the timely reimbursement of C$715,000 for GST paid by the CEC prior to the entry into force of CEC’s headquarters agreement. This expected reimbursement has a bearing on CEC’s cash flow and could be noted by the external auditors in their review of the 1998 financial statements.

**DOCUMENTS:**

No document

**Item 7.5  Quebec Provincial Sales Tax (PST) – status and reimbursement**

Canada is expected to report on the actions it has undertaken to ensure the timely reimbursement of C$873,000 (as of February 1999) for PST paid by the CEC to the Government of Québec. This expected reimbursement has a bearing on CEC’s cash flow and could be noted by the external auditors in their review of the 1998 financial statements. This matter is related to item 12.2 below.

**DOCUMENTS:**

No document

**Item 7.6  US Income Tax – Status and reimbursement**

The United States is expected to report on the actions it has undertaken to ensure the timely reimbursement of C$41,781 to the CEC by the United States. This amount represents income tax paid on behalf of US citizens employed by the CEC. This expected reimbursement has a bearing on CEC’s cash flow and could be noted by the external auditors in their review of the 1998 financial statements.

**DOCUMENTS:**

No document

**Item 7.7  CICEANA (North American Environment, Information and Communication Center)**

The Alternate Representatives are expected to clarify the situation with regard to the allocation of surplus funds to CICEANA.

**DOCUMENTS:**

a) Letter from José Luis Samaniego to Janine Ferretti dated 5 March 1999

**Item 8  Approval of summary records**

In accordance with Council Rules of Procedure (R. 11), the Executive Director prepared the summary records of Alternate Representatives sessions. Speakers may submit corrections to the summary records of their remarks before they are finally approved by the Council (R.11). The Alternate Representatives are expected to review and approve summary records of sessions 98-09, 99-01 and 99-02.
DOCUMENTS:
a) Session 98-09 Summary Record (distributed 1-04-99) C/C.01/98-09/SR/01/Rev.2
b) Session 99-01 Summary Record (distributed 1-04-99) C/C.01/99-01/SR/01/Rev.2
c) Session 99-02 Summary Record (distributed 1-04-99) C/C.01/99-02/SR/01/Rev.1

Item 9  NAAEC Articles 10(6)

Item 9.1  Petition of Alberta Wilderness Association et al.

The Alternate Representatives are expected to exchange views on how to address the petition to Council received from Alberta Wilderness Association et al. on 8 March 1999 regarding Articles 10(6)(a), 20(3) and 21(1)(2) of the NAAEC.

DOCUMENTS:
a) Petition filed on 8 March 1999 by Alberta Wilderness Association et al. (distributed 10-3-99)

Item 9.2  Environment and Trade Officials meeting

The Parties are expected to discuss next steps following the Environment and Trade officials meeting of 7 April 1999.

DOCUMENTS:
a) JPAC Advice 98-08: Article 10(6) of the North American Agreement on Environmental Cooperation (distributed 10-12-98) J/98-08/ADV

Item 10  NAFEC Selection Committee – Appointment of new members

Further to the Memoranda from the NAFEC Coordinator addressed to the Alternate Representatives on 22 September 1998 and 15 February 1999, Mexico is expected to report on the nomination of new members on the NAFEC Selection Committee. Canada and the United States are expected to provide an update on the appointment of new members on the NAFEC Selection Committee.

DOCUMENTS:
a) Memo to Alternate Representatives from NAFEC Coordinator dated 22 September 1998
b) Memo to Alternate Representatives from NAFEC Coordinator dated 15 February 1999
c) NAFEC Administration and Funding Guidelines
d) 1999 Call for Pre Proposals (distributed 20 January 1999)

Item 11  Proposal to develop a common North American position on ISO 14000

The Alternate Representatives are expected to decide on the opportunity to develop a common North American position on ISO 14000 in accordance with the Informational Memo from the Environmental Management Systems Task Force to the Alternate Representatives dated 9 March 1999

DOCUMENTS:
a) Informational memo from the Environmental Management Systems Task Force to the Alternate Representatives dated 9 March 1999 (distributed 9-3-99)
b) JPAC Advice 99-02: Environmental Management Systems and Compliance Report (distributed 30-3-99)

Item 12  Administrative Matters

Item 12.1  Spanish Version of CEC Rules

During their Session 99-01 held in January, the Alternate Representatives instructed their legal officials to meet and finalize the Spanish version of the rules for adoption at their next session. Accordingly, the Alternate Representatives are expected to review and adopt the final Spanish version of the CEC rules.

DOCUMENTS:
a) Reglamento del Consejo (to be distributed) C/C.01/96-06/DISC/01/Rev.1
b) Reglamento del CCPC (to be distributed) C/C.01/96-06/DISC/02/Rev.1
Item 12.2  Agreement with the Province of Québec

Pursuant to Resolution 95-04 and Summary Records of sessions 95-02, on 29 July 1998 the Secretariat forwarded to the Parties a copy of the Agreement between the CEC and the Government of Québec, for their review and approval. The Parties are expected to clear the signature by the Secretariat of the Agreement on behalf of the CEC in accordance with the above-mentioned resolution.

The Government of Québec is awaiting the signature of the above-mentioned agreement in order to formalize the current ad-hoc arrangements regarding provincial health insurance, drivers licenses, English education rights, etc. It is also awaiting such signature to proceed with the reimbursement of sales tax paid by the CEC.

DOCUMENTS:

a) Proposed Understanding between the Government of Québec and the CEC concerning immunities, tax privileges and courtesies (distributed 29-7-98)

Item 13  Other issues

At the time of writing the Secretariat had no other issue to include under this item.

DOCUMENTS:  No document

Item 14  Scheduling of next sessions of Alternate Representatives

In accordance with their calendar of sessions for 1999, the Alternate Representatives are expected to schedule their next session aimed at finalizing the arrangements for the 1999 Regular Session of the Council.

DOCUMENTS:

a) Proposed schedule of sessions for 1999 (distributed 31-3-99)

Item 15  Closure of the session

The Chairperson is expected to close the session.

DOCUMENTS:  No document