



United States Council for International Business

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Serving American Business as U.S. Affiliate of:

International Chamber of Commerce (ICC)
International Organisation of Employers (IOE)
Business and Industry Advisory Committee (BIAC) to the OECD
ATA Carnet System

September 22, 2000

Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques West
Suite 200
Montreal, Quebec H2Y 1N9

The United States Council for International Business (USCIB) welcomes the opportunity to comment on the *Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15*.

First, the USCIB considers Council Resolution 00-09 on Matters Related to Articles 15 and 15 of the Agreement an appropriate and reasoned response to the needs to the Parties to address outstanding issues regarding the management of the citizen submission process. As stated in our earlier comments on this subject, the USCIB supports the expanded role of the JPAC in the submission process while maintaining the Council's decision-making authority.

Second, the USCIB believes that the *Draft JPAC Public Review* document accurately reflects the scope and objectives set forth in the Council Resolution 00-09, and supports the JPAC in moving ahead with its review along the lines suggested in the document.

Last, concerning lessons learned from the history of the submissions process, as the USCIB has not been directly involved in any submissions to the CEC under Articles 14 and 15, we offer no specific comments on the process. However, a copy of our earlier comments regarding the submission process is attached for your reference.

Feel free to contact me with any questions or comments that you may have.

Yours sincerely,

Adam B. Greene
Director of Environmental Affairs



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December 8, 1998

Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques West
Suite 200
Montreal, Quebec H2Y 1N9

The United States Council for International Business (USCIB) is pleased to submit the following comments on the September 4, 1998 revision of the *Guidelines for Submissions on Enforcement Matters under Article 14 and 15 of the North American Agreement on Environmental Cooperation* (NAAEC), which have been disseminated by the Joint Public Advisory Committee (JPAC) for public comment.

Maintain Objective Process for Submissions on Enforcement Matters:

On balance, the USCIB believes that the process for submissions on enforcement matters developed by the CEC Secretariat in 1995 has worked effectively, and that it has adhered to the scope and intent of Articles 14 and 15 of the NAAEC. Indeed, the existing Guidelines have fostered an objective, transparent, and timely assessment of the submissions received by the Secretariat, effectively managing a broad range of issues across three federal jurisdictions. Thus, the USCIB recommends that any revisions of the Guidelines do not alter its existing framework of being a "fair, impartial, and transparent" process.

General Comments:

In its August 3, 1995 comments on the CEC *Draft Procedures for Submissions on Enforcement Matters* (attached), the USCIB made four general comments that remain applicable to the Guidelines and the current revision:

- **Objectives of Article 14 and 15:** The primary objectives of these articles is to bring out the facts of a relevant issue and contribute to its resolution through cooperative dialogue, thereby

assisting the regulatory agency in improving its effectiveness. To date, the submission process has conformed with this objective.

- **Transparency:** The entire process should remain as transparent as possible without breaching confidentiality requirements.
- **Due Process:** The process should remain one based on the concept of due process, as well as support and uphold due process in the Parties' three national jurisdictions. Commendably, the Secretariat has, through the existing Guidelines, remained focused on the primacy of national laws under the NAAEC.
- **Role of the JPAC:** While the JPAC's role in the review and revision of the Guidelines is essential, the Committee should also be used as a source of expertise and judgment on the factual issues of the submissions, as it is distinct from the Parties, the Secretariat, and the submitters.

Specific Comments:

Insofar as the revised Guidelines for public comment appear to maintain the objective, transparent, and timely procedures of the existing Guidelines, the USCIB would again recommend that as little as possible be modified, focusing on procedural issues that warrant improvement. However, a number of issues may be usefully raised in this review of the Guidelines. The numbering below follows the Revised Text:

- **Section 4.5:** The Guidelines should also allow for notification of any third parties referenced in the submission.
- **Section 7.2:** The Guidelines should directly reference Article 45.1 of the NAAEC regarding the definition of "effectively enforce its environmental law".

Conclusions:

As stated above, the goals of the submission process are to effectively and efficiently resolve disputes between a private group and an environmental regulatory agency, to increase cooperation among the Parties to the Agreement on such issues, and to ultimately improve the effectiveness of environmental protection. The existing Guidelines and the submission process has served those objectives well to date, and the revision process should in no way alter its general framework.

The USCIB would welcome the opportunity to continue to participate in the Guidelines revision process, particularly at the JPAC roundtable on the Guidelines to be held next January in Montreal.

Sincerely,

Adam B. Greene
Director of Environmental
Affairs