



Mexico, Federal District
14 May 2001

To: Joint Public Advisory Committee (JPAC)

From: Centro Mexicano de Derecho Ambiental, A.C. (CEMDA)

Re: Comments on the draft report on the NACEC citizen submission process

Further to the public invitation extended by JPAC for citizens to submit comments and observations on the draft report on the organization of the citizen submission process being prepared for submission to the Council of Ministers of the North American Commission for Environmental Cooperation (NACEC), the entity created under the environmental side agreement to the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico, we hereby submit our comments and observations in this matter.

General Comment

In general, the document reflects the concerns expressed by citizens in regard to the process, and some reforms pertinent to the process as a whole are suggested. However, as discussed below, nowhere does the document specifically indicate which instruments should be the object of reform. Some of the proposed reforms relate to administrative adjustments, while others would imply the need for amendments to Articles 14 and 15—the provisions governing the process—or to the Guidelines document. We suggest that the types of changes implied by each reform suggestion be made explicit and detailed, in the manner that JPAC deems most suitable.

Specific Comments

1) Several paragraphs of the document mention the need to make reforms and improvements so as to render the Article 14–15 process more effective. Examples include: a) the first paragraph on page 2, where it is stated that “[w]e have

therefore attempted[...] to suggest[...] practical reforms to make the Articles 14 and 15 process more timely, open, accountable and effective"; b) the fifth line of the second paragraph on page 2, which states that "the Articles 14 and 15 process can and should be improved through the reforms suggested in Section 5 below in order to make it more timely, open, accountable and effective."

In light of the foregoing, two comments are germane. First, we agree that the process should be more timely, open and effective, but **suggest that the words "fair", "transparent" and "equitable" be added and that the word "accountable" be deleted**, since it would be difficult to determine whether a process such as this one is accountable or not. That is, we feel that the word "accountable" is not appropriate in the context.

Second, although reforms and improvements to the process are indeed proposed, and we are in agreement with this, **nowhere in the document is it precisely stated what should be amended—whether the Guidelines or Articles 14 and 15 themselves. For this reason, we feel** that it would be appropriate for JPAC to take a clear position on this matter, specifying the documents to which the amendments should apply. It is important to keep in mind that the **Guidelines**, if reformed, **cannot go beyond the provisions of Articles 14 and 15**; that would be like attempting to draft a regulation whose scope is broader than the law pursuant to which it was created.

Furthermore, it should be noted that **the Guidelines were intended to guide and orient the public on how to access the mechanism. That being the case, the Guidelines should not in any event be amended, as was attempted in the past, in such a way as to impose greater requirements on submitters or a heavier burden on the Secretariat in order for submissions to be heard.**

Moreover, on page 4 it is stated that "[a]fter the preparation of the Factual Record, the Council may, by a two-third majority vote, make the Factual Record publicly available". In the summary explanation of the Article 14 and 15 process in this part of the document, an important matter was omitted relating to Article 15, logically prior to the subject of the above citation and having to do with the **transparency, openness and fairness of the process itself**. That is, **the Ministers are allowed to review and comment on the draft factual record, an opportunity not afforded to the submitter at any point of the process**. As we stated earlier, we feel that this situation should be changed in order to make the process equitable for both the submitter and the Party against which the submission is filed.

Since reforms and improvements to the process are being proposed, and deadlines are an appropriate object of such reform, we propose that a time period be established (maximum 60 days) in which the Secretariat must advance from the

Article 14–1 to the Article 14–2 part of the process. The requirements of Article 14–1 are very simple, and it is easy to verify whether or not they are met. In practice, the only thing that was done in a large number of cases was to vitiate the effectiveness and efficiency of the process by delaying the transition from the first part to the second part without justification.

In the document, it is mentioned (page 15) that the Secretariat will need additional resources to fulfil its mission in relation to Articles 14 and 15. Although this is true and necessary, it should never be used as an excuse or pretext for the excessive delays affecting certain submissions, which have remained at the Article 14–1 or 14–2 stage for months. It is more correct to assert that in these cases, there was a lack of political will and sensitivity on the part of the Secretariat and the Council of Ministers to expedite the process.

It is stated in the third paragraph on page 15 that “[t]he overall goal, we believe, should be for the entire Articles 14 and 15 process to be completed within two years from the filing of a Submission.” We completely disagree with and reject this statement, since if there is one thing submitters have complained of, it is the excessive period of time taken by the Secretariat to process a case. There is no justification whatsoever for the assertion that two years is a reasonable period of time; therefore, we respectfully suggest that JPAC rethink and redraft this statement.

Should you require any clarification or comment on this letter, we would be pleased to provide it.

Sincerely,