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ADVICE TO COUNCIL: NO. 99-03

Re: Follow-up to the Four-Year Review of the North American Agreement on Environmental Cooperation: The Report of the Independent Review Committee

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

IN ACCORDANCE with its mandate to provide advice to Council;

RESPONDING to a specific request from Council to provide advice on this matter;

NOTING WITH SATISFACTION that the CEC has responded in an appropriate manner to many of the recommendations by agreeing in Mérida in June 1998 on the *Shared Agenda for Action*, and putting into motion the processes that have resulted in the three year plans as well as greater cooperation (see the attached chart of recommendations from the Independent Review Committee Report);

ACKNOWLEDGING that these processes have assisted JPAC in undertaking concrete and proactive work in many areas, including: communication and discussions with the Council, the Alternate Representatives and the Secretariat; detailed working relationships on the North American Agenda for Action 1999-2001; proposed amendments to the Revised Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 & 15; guidance on public participation, enforcement cooperation; input to the North American Fund for Environmental Cooperation (NAFEC) project screening process; involvement with Sound Management of Chemical issues; planning with respect to biodiversity conservation; and round table discussions with the public on a regular basis.

JPAC will continue to play this proactive role within the CEC and recommends that:

- The new spirit of cooperation and communication with JPAC initiated in Mérida should be maintained by the Council as well as its alternate representatives and the Secretariat in Banff and in the future, featuring greater communication and efficiency, in working toward protecting the North American environment;

- The Council move rapidly to fill key vacancies on the CEC Secretariat, particularly that of the Executive Director;

- The Government of Canada make additional efforts to engage all provinces in the NAAEC;

- The Parties should give greater priority to NAAEC, including expanded budget support, interagency coordination, appointments to JPAC and financial support of the National Advisory Committees;

- Council should continue to emphasize the importance of establishing funding links with donors and encourage the Secretariat in its efforts in this area, particularly to increase the capacity building elements of its projects;

- Council should encourage the relationship now being developed between the NAFTA Free Trade Commission and the CEC.

JPAC will continue to monitor the implementation of the recommendations of the Independent Review Committee and communicate with Council as necessary.

APPROVED BY THE JPAC MEMBERS

8 May 1999

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Four-Year Review of the North American Agreement on Environmental Cooperation: List of Recommendations of the Report of the Independent Review Committee—June 1998

Joint Public Advisory Committee Review

The North American Agreement on Environmental Cooperation (NAAEC) came into force on 1 January 1994 thereby creating the Commission for Environmental Cooperation (CEC). Article 10(1)(b) of the NAAEC requires the ministerial-level Council which governs the CEC to review its operation and effectiveness four years after its entry into force. In November 1997, the Council appointed an Independent Review Committee (IRC) to provide it with an objective assessment for this purpose. The IRC has presented its report to Council in June 1998. Following a Council request, the Joint Public Advisory Committee reviewed the implementation of the list of recommendations made by the Independent Review Committee in order to provide JPAC's views to Council.

	Recommendations	Action	Due Date
1.	The NAAEC and the CEC should be seen not as just a side deal for trade, but as a complete and vital agreement in its own right.	Permanent action *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	
2.	The Parties should pay specific attention to the needs of the others, with a view to ensuring that CEC activities are not used "against" any one of them, or to pursue the interests of any one Party.	Permanent action	
3.	Political support for the CEC within the three Parties should be built through stronger interagency involvement and internal communications. Relevant agencies of the Parties might also play a constructive role directly in CEC discussions, within their areas of responsibility, so as to broaden the education and communication between governmental and non governmental agencies concerned with environment and trade linkages. The environment ministries, however, remain the lead government agencies in the CEC.	Permanent action *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	
4.	The Parties should maintain the current level of funding of the CEC, subject to revisiting this issue if the Council's agreed upon program so justifies.	Annual Action (*See the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	Each year
5.	The Government of Canada, as one of the three Parties to this Agreement, should redouble its efforts to engage all the provinces in the NAAEC. This could, for example, be linked to further progress in the development of all or part of the Harmonization Agreement on the Environment between the two levels of government.	JPAC sent a letter to the Canadian Environment Minister Christine Stewart about this issue on September 1998.	To follow
6.	The Council of the CEC should undertake a careful process to articulate both a strategic vision of its contribution to sustainable development in North America	Permanent action *(See Shared Agenda for Action, the JPAC Advice to Council on*	

	and its process for achieving this vision. The vision should be coherent and comprehensive, and set a platform for the annual work program.	*the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	

	Recommendations	Action	Due Date
7.	The strategic vision must be a shared one, based on the consensus of the Council. This flows directly from the first, second, and third recommendations, above.	Permanent action *(See Shared Agenda for Action and the Three-Year Program Plan for 1999-2001.*)	
8.	The Alternate Representatives and the General Standing Committee should continue to assist the Council in its oversight of the CEC operations, but this should be done in an efficient manner that avoids duplication and displays internally consistent direction.	Permanent action JPAC meet the Council members during the Annual Regular Session and meet the Alternate Representatives at least twice a year. The JPAC Chair assists the Alternate Representatives directly by participating in each of their meetings.	
9.	It should be recognized that the Secretariat acts independently of any one of the Parties, but that it also acts as an integral part of the CEC as a whole. In its traditional functions, the Secretariat serves to assist, advise and inform the Council.	Permanent action	
10.	The Secretariat, in developing its proposed annual work program and budget, should be mindful of the strategic vision to be established by the Council and work within its spirit and its constraints.	Annual action *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	Each year
11.	The citizen submission process should continue as presently designed, based on a scrupulous application of the Agreement and the Guidelines, respecting the limits of actions they contain as well as the discretion provided to the respective decision-makers at the different points in the process. The existing review of the operation of this process should be completed after more submissions have been processed, including factual records when appropriate, in order to provide a greater body of experience to draw upon. The Secretariat should be expeditious in dealing with the public submissions.	Following the proposed revision of the Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC made by the Parties, the JPAC received the mandate from Council to conduct a public review on the Revised Guidelines. *(See JPAC Advice to Council on Revised Guidelines for Citizen Submissions on Enforcement Matters under Articles 14 & 15 of the North American Agreement on Environmental Cooperation.)* Two professionals joined the CEC Staff in summer 1998, a Head of the Submissions on Enforcement Matters Unit, and a legal officer of the unit.	Done Done
12.	Clear divisions should be developed between the staff responsible for the submissions process and those responsible for other work. When some dual functions are required, they should be minimized, using the concept of "Chinese walls"—maintaining strict working divisions between these functions.	The only responsibility of the two persons referred above is the citizen submissions process.	Done
13.	The practice of having two "national" director positions should be ended as soon as possible after the new Executive Director is selected, in favor of a more broadly based approach to equitable representation of senior-level functional staff.	"The Council agreed that the senior management positions should be associated with functions rather than nationalities. The Executive Director will provide to the Council a proposal regarding the personnel structure of the Secretariat."	To follow

		(See Council Summary Record 98-00 of 25-26 June 1998.)	

	Recommendations	Action	Due Date
14.	The JPAC should refocus its efforts on its original mandate: to provide trilateral independent advice to the Council. This advice should concentrate on what the Council requires to do its work effectively. Achieving this goal should be facilitated by the establishment of a strategic vision and three-year work program by the Council, which should provide a substantive focus for any JPAC public consultations.	Permanent action: JPAC organizes on their work plan round table discussions with the public from different locations in the three countries on the evolving CEC Program Plan and works closely with the Secretariat to provide technical and policy advice to Council including the development of the Program Plan and the specific work program for the three next three-year period. *(See Shared Agenda for Action, the JPAC Section on the Three-Year Program Plan for 1999-2001 and the JPAC Reports to Council 98-01, 98-02 and 99-01 on Summary of Round Table Discussion on the Commission for Environmental Cooperation's Three-Year Program Plan 1999–2001.)*	
15.	Considering the quality of the contributions from the existing NACs and GACs that the Committee has seen, the IRC recommends that Mexico advance its development of these bodies, perhaps working through the Mexican Sustainable Development Council for its NAC. Without restricting the discretion of the NACs, the IRC hopes that a longer planning cycle for the CEC will help their assessments of the CEC work program and of other matters on the Council's agenda.	Mexican NAC members have been nominated in June 1998. Permanent action: The NACs and GAC hold on a regular basis meetings in their country and provide advice to their respective government. The NAC and GAC are invited to make a presentation to each JPAC Regular Session.	Done
16.	The resources and energy devoted to public consultation should be efficiently used and productive. This requires focused and well-prepared consultation processes, on concrete matters. If a three-year work program is adopted, public consultations can be better timed to provide the most support to informed decision-making.	The Three-Year Program Plan for 1999-2001 attempts to integrate public participation activities directly into the project descriptions, adopting a holistic, crosscutting approach to program development and planning. *(See the Three-Year Program Plan for 1999-2001.)* JPAC has linked some of its public participation responsibilities to the consultation activities planned with the CEC program areas and projects. *(See JPAC Section on the Three-Year Program Plan for 1999-2001.)* The Council requested that the Secretariat, in cooperation with the JPAC, to develop a mechanism for informing, educating and consulting the North American public that would be applicable to all of the CEC's public participation activities. A draft document is out for public comment and will be presented to Council for its approval. *(See JPAC Advice to Council 98-06 on the Draft Public Participation Guidelines of the CEC.)*	Done Done June 1999

	Recommendations	Action	Due Date
17.	NAFEC should continue to be a source of community funding, but with a mandate more related to the programs of the CEC. Building on the three-year program cycle, NAFEC should seek to fund projects so as to develop a critical mass of community-based experience on key topics in the CEC work program, in order to help inform the Secretariat and Council in their respective program and decision-making functions.	The next NAFEC grant awards will focus on projects that support the CEC's Three-Year Program Plan. *(See JPAC Advice to Council 98-05 on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	Done
18.	The CEC should deal with the relationship between environment and trade in an open and constructive manner. Existing projects confirm the ability of the CEC to address practical aspects of this relationship in a manner that demonstrates the positive links between them. This should be creatively built upon, when possible, in other projects.	Two priority areas will be the focus of the CEC's workplan over the next several years: Pursuing Environmental Sustainability in Open Markets and Stewardship of the North American Environment. *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	Done
19.	The CEC should continue to pursue its NAFTA effects work. This should be done in an inclusive manner, bringing in experts from environmental and trade backgrounds, and looking at both the positive contributions of trade liberalization to environmental protection and potential negative impacts. This will be an evolving process as the ability to assess these impacts is developed and mutual trust is gained.	Under the Three-Year Program Plan for 1999-2001 the NAFTA Environmental Effects Project will aid the Council in fulfilling its obligations to consider on an ongoing basis the environmental effects of NAFTA. Its goal is to develop an analytical approach to assess ways in which trade liberalization under NAFTA affects the North American environment. *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001 and the CEC Report on the Assessing Environmental Effects of the North American Free Trade Agreement (NAFTA): An Analytic Framework (Phase II)– Fall 1998.)*	Done
20.	The CEC should immediately initiate contacts with the NAFTA Free Trade Commission and its subsidiary bodies, with a view to establishing routine contacts for information purposes. Where a NAFTA body is undertaking work with an environmental dimension or impact, appropriate Secretariat liaison should be developed as a conduit to the Council. The goal should be to facilitate a full consideration of the potential impacts in a coordinated and effective manner. In addition, senior environment and trade officials should plan a meeting of the environment and trade ministers as early as possible in order to confirm this relationship.	Permanent action: The CEC will work with other NAFTA bodies and appropriate international institutions to ensure that trade and environment policies are mutually reinforcing. *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)* Permanent action: Meetings held in December 1998 and April 1999 in Washington D.C and others meetings should hold in 1999.	Done

	Recommendations	Action	Due Date
21.	The CEC should adopt a rolling three-year program and budget cycle, updated each year and revised as necessary. The overall program should focus upon a smaller number of clear and meaningful deliverables rather than a large number of less significant ones. Project quality, not coverage of project categories, should be the key factor in program development.	Permanent Action *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	
22.	The IRC recommends that a process be put in place, in time for the end of the first year of the longer program period, to provide systematic measurement and evaluation of the annual results of each project. This should include a "lessons learned" analysis for both successes and failures in the project. A similar review process following the conclusion of a project should be undertaken.	Permanent action: Projects will be designed to include milestones, and an internal mechanism to ensure their achievement. This will also entail regular project evaluation. The Secretariat will provide guidance for the evaluation process. *(See the Shared Agenda for Action and the Three-Year Program Plan for 1999-2001.)* Based on the document to be provided by the Secretariat, JPAC will prepare an advice to Council on this issue.	June 1999 June 1999
23.	The program contents should reflect the key priorities of the Parties, based on the three-year rolling program already recommended. This will be facilitated through discussions between the Secretariat and the Council prior to drafting the budget, a summer meeting of the Parties and the Secretariat to consider the Parties' priorities, and a clear timetable established by the Council for completion of the process.	Permanent action *(See the Shared Agenda for Action and the Three-Year Program Plan for 1999-2001.)*	
24.	Program decisions should be based on criteria that reflect the strategic vision and purpose of the CEC. The range of criteria include: the regional nature of the issue being addressed; the ability of projects to build on elements of other projects; the incorporation of key features of sustainable development in the project (e.g., capacity building, scientific information and public participation); the ability to make environment and trade part of the living program; the comparative advantage of the CEC to address the issue; and the need to ensure adequate resources for the CEC's mandatory program items.	Permanent action *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	
25.	The CEC should seek to develop funding links with donors as well as the major development banks, such as the World Bank and Inter-American Development Bank, in order to better develop the capacity building elements of its projects.	Permanent action Specific actions and funding are being targeted on capacity building and SMOC projects. *(See Shared Agenda for Action, the JPAC Advice to Council on the North American Agenda for Action: 1999-2001 and the Three-Year Program Plan for 1999-2001.)*	

	Recommendations	Action	Due Date
26.	The development of the substantive elements of the work program (outside of the special responsibilities of the Secretariat) are subject to the general oversight of the Council as a whole. At the same time, the Secretariat must act independently of the control of any one Party. This requires a two-way commitment to the neutral position of the Secretariat in its role of supporting, advising and informing the Council. It should also be understood that the reports of the Secretariat or the CEC do not necessarily represent the views of any individual	Permanent action	