

## SUMMARY RECORD

### SESSION 99-11 OF ALTERNATE REPRESENTATIVES

The Council, represented by its Alternate Representatives, met in Montreal on 18-19 November 1999. Mr. William Nitze (United States) chaired the meeting. Ms. Norine Smith and Mr. José Luis Samaniego represented Canada and Mexico respectively. Mr. Jonathan Plaut represented JPAC and Ms. Janine Ferretti, Executive Director, the Secretariat. Mr. Marc Paquin, Secretary to the Council, acted as secretary of the session. Other officials of the Parties and the Secretariat were also in attendance (see Annex A).

#### **Item 1 Adoption of the agenda**

In accordance with the Council Rules of Procedure, the Alternate Representatives 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 Executive Director**

In accordance with the Council Rules of Procedure, the Executive Director reported on Secretariat activities, including on the status of Article 14 submissions, and highlighted matters requesting the attention of the Council. The Executive Director's notes are attached as Annex C.

In response to a question raised by the Chair of JPAC, the Executive Director indicated that the Seattle host organization is sponsoring a Trade and Environment session before the WTO Ministerial and that the Secretariat will be participating in one of the panel discussions.

The Parties then discussed tentative dates for the regular session of the Council of next June.

#### **Item 3 Report by the Chair of JPAC**

Under this item the JPAC Chair provided an update to the Alternate Representatives on JPAC activities. He indicated that the election of the Chair of JPAC for 2000 was well underway and that the process should be completed by the end of November. The JPAC Chair also mentioned that JPAC forwarded to the Secretariat a letter received from the Great Lakes Fishery Commission concerning aquatic invaders. He further indicated that the *Environmental Health Coalition* had also sent a letter regarding issues of timeliness and confidentiality in the context of the Article 14 submission process related to *Metales y Derivados*. He stressed the novelty of such a letter being addressed to the JPAC. He then underlined the comments received from the public in general, and first nation groups in particular, on the Mercury NARAP. He finally reported that the US White House had recently appointed Mr. Steve Owens as a member of JPAC to fill in one of the two US vacancies on the committee.

The United States indicated that it is in the process of identifying a candidate to fill the second US vacancy.

Mexico commented on how slow, altered and controversial the Article 14 process had become compared to what the original intent was of promoting cooperation amongst the parties and having interpretative issues put before Council, for review and discussion without delay, when they arise. Mexico further indicated that the review process of the 2000-2002 program plan it conducted with its NAC led to very enriching exchanges.

#### **Item 4 Adoption of summary records**

The Alternate Representatives approved the summary records of sessions 99-09 and 99-10.

#### **Item 5 Review of 2000-2002 Program Plan**

The Alternate Representatives reviewed the Proposed 2000-2002 Program Plan and approved, in principle, various proposed projects for the year 2000. The Secretariat was tasked with redrafting some project descriptions. The Alternate Representatives agreed to continue their review at their December meeting.

#### **Item 6 Children's health and the environment**

The Alternate Representatives discussed the proposed project on children's health and the environment and agreed, subject to availability of funds, to task the Secretariat with the preparation of a report on the matter. The Alternate Representatives further agreed to provide a central point of contact for coordination and assistance to the Secretariat in the preparation of the report. The report is to be ready in time for its release at the next regular session of the Council next June.

#### **Item 7 NAAEC Articles 14 and 15**

##### **Item 7.1 Submission no 97-006: friends of the Oldman River**

The legal group was tasked by the Alternate Representatives to advance the discussion on a number of issues of interpretation of the Agreement and the Guidelines related to the development of factual records, and to report back to the Alternate Representatives. The Alternate Representatives took note of the preliminary view of the legal group and agreed that the JPAC Chair could share their report with the members of JPAC working group on Articles 14 and 15. They further agreed to task the Secretariat with analyzing the practical implications of applying the preliminary view to pending and future submissions. The Alternate Representatives further agreed that the language contained in the report reflects the preliminary view of the legal group, that it is therefore not definitive, and despite some consensus, does not yet reflect a Council decision on the matter, as the United States still needs to consult on these issues.

More specifically, with respect to submission SEM-97-006, Canada indicated that it will not be in

a position to make a decision on whether or not to instruct the Secretariat to develop a factual record before December 13 1999, because there is a related pending case before the Federal Court of Appeal for which the appeal period has not yet expired. Canada noted that this pending case is linked to the factual matters of the submission SEM-97-006. The Alternate Representatives therefore agreed to postpone their decision on the matter to their next session. Canada indicated that it will, in the meantime, draft a proposed resolution for consideration by the Alternate Representatives.

### **Item 7.2 Procedures for the development of factual records**

The Parties provided an update on where they are in the development of their position in relation to procedures for the development of factual records. Mexico reiterated its basic support for the concepts contained in Canada's first proposal. Canada indicated that it had recently circulated a revised proposal to the other Parties though it did not expect comments at this meeting. The United States indicated that it is close to completing its internal consultations as there was only one point for which there wasn't yet inter-agency agreement and that a written proposal would be ready shortly for distribution to the other Parties. The Alternate Representatives agreed that there was not a decision taken on the guidance requested by the Secretariat on guideline 15, so action will await until such decision is taken. Mexico reiterated the proposal of having an interpretation of treaties specialized group to deal with the outstanding matters of general application to the development of factual records.

### **Item 7.3 Assertions of confidentiality**

This issue was discussed under item 7.2.

### **Item 8 Council's response to pending public inquiries**

This item was not discussed.

### **Item 9 1998 Annual Report**

This item was not discussed.

### **Item 11 Other issues**

No other issues were discussed under this item.

### **Item 12 Next sessions of Alternate Representatives**

The Alternate Representatives confirmed their attendance to the workshop on Environment and Trade to be held on 13 December 1999 at the CEC Secretariat. The workshop will be followed in the morning of 14 December by an Environment and Trade officials' meeting pursuant to Article 10(6).

**Item 13 Meeting with PRTR National Representatives**

The Alternate Representatives met with PRTR national representatives to discuss the PRTR project. The meeting first began with presentations by the CEC Secretariat on the PRTR project. Then, the PRTR representatives from Canada, Mexico and the United States presented an overview of their domestic PRTR regimes.

These presentations were followed by a detailed discussion where it was agreed that the PRTR project would be finalized at the next session of Alternate Representatives.

**Item 14 Meeting with SMOC Working Group Representatives**

The Alternate Representatives met with representatives of the SMOC working group to discuss the SMOC project. It was agreed that further discussion on this project will take place at the next session of Alternate Representatives.

**Item 15 Closure of the session**

The Chair closed the session.

SESSION 99-11 OF ALTERNATE REPRESENTATIVES  
Montreal, Canada, 18-19 November 1999

**Delegations List**

CANADA

**Alternate Representative** Norine Smith, Environment Canada  
Christine Guay, Environment Canada  
Jenna MacKay-Alie, Environment Canada  
Rita Cerutti, Environment Canada  
Victoria Berry, Environment Canada  
Denis Langlois, DFAIT  
Renée Sauvé, DFAIT

MEXICO

**Alternate Representative** José Luis Samaniego, Semarnap  
Mario Aguilar, Semarnap  
Véronique Déli, Semarnap  
Ana María Victoria, Semarnap  
José Luis Gonzales, Secofi  
Jurgen Hoth, Embassy of Mexico

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  
Angela Somma, NOAA

JPAC

Jonathan Plaut, Chair of JPAC  
Manon, Pepin, JPAC Coordinator  
Lorraine Brooke, Consultant

**AGENDA**  
**SESSION 99-11 OF ALTERNATE REPRESENTATIVES**

To be held at the CEC Secretariat on  
Thursday, 18 November 1999 from 9:30 AM to 6:30 PM  
and Friday, 19 November from 8:30 AM to 4:00 PM

- Item 1 Adoption of the Agenda
- Item 2 Notes from the Executive Director
- Item 3 Report by the Chair of JPAC
- Item 4 Adoption of summary records
- Item 5 Review and approval of 2000-2002 Program Plan
- Item 6 Children's Health and the Environment
- Item 7 NAAEC Articles 14 and 15
- Item 8 Council's response to pending public inquiries
- Item 9 1998 Annual Report
- Item 10 Approval of Spanish version of CEC rules
- Item 11 Other issues
- Item 12 Next sessions of Alternate Representatives
- Item 13 Meeting with PRTR National Representatives
- Item 14 Meeting with SMOC Working Group Representatives
- Item 15 Closure of the session

**SESSION 99-11 OF ALTERNATE REPRESENTATIVES  
ANNOTATIONS TO THE PROVISIONAL 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) Draft preliminary annotated agenda (distributed 4-11-99) C/C.01/99-11/AGEN/01/Rev.1

**Item 2 Notes from the 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 Executive Director will report on Secretariat activities, including on the status of Article 14 submissions, and highlight matters requesting the attention of the Council.

DOCUMENTS:

- a) Notes from the Executive Director (to be distributed)

**Item 3 Report by the Chair of JPAC**

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

DOCUMENTS: No document

**Item 4 Adoption of summary records**

In accordance with Council Rules of Procedure (R.11), the Executive Director prepared the summary records of Alternate Representatives sessions. Speakers have submitted corrections to the summary of their remarks (R.11). The Alternate Representatives are expected to review and approve summary records of sessions 99-09 and 99-10.

DOCUMENTS:

- a) Session 99-09 Summary Record (distributed 10-11-99) C/C.01/99-09/SR/01/Rev.5
- b) Session 99-10 Summary Record (distributed 10-11-99) C/C.01/99-10/SR/01/Rev.4

**Item 5 Review and approval of 2000-2002 Program Plan**

The Alternate Representatives are expected to review the revised 2000-2002 Program Plan and approve the 2000 Program and Budget contained therein.

DOCUMENTS:

- a) Revised 2000-2002 Program Plan for the CEC, Rev.1 (to be distributed)
- b) JPAC Advice 99-11: North American Agenda for Action: 2000-2002 Proposed Program Plan for the CEC

**Item 6 Children's Health and the Environment**

As directed by the Alternate Representatives at their last session, the Secretariat will develop, in cooperation with the Parties' experts through a conference call, a revised proposal for a report on Children's health and the environment. The Alternate Representatives are expected to review the proposal and determine next steps.

DOCUMENTS:

- a) Secretariat's concept paper on Children's Environmental Health in North America (distributed 11-11-99)

**Item 7 NAAEC Articles 14 and 15**

**Item 7.1 Submission no. 97-006: Friends of the Oldman River**

On 19 July 1999, the Secretariat informed the Council that it considered that the submission filed by the Friends of the Old Man River (SEM 97-006) relating to Canada's enforcement practices warranted the development of a factual record. As provided by Article 15(2) of the NAAEC, the Council is expected to decide, by a two-thirds vote, whether or not to instruct the Secretariat to prepare a factual record on the matter.

DOCUMENTS:

- a) Secretariat's Article 15 determination dated 19 July 1999
- b) Draft Council Resolution (distributed 12-11-99)

**Item 7.2 Guidance on the development of factual records**

The Alternate Representatives are expected to initiate their discussions on the elaboration of guidance for the development of factual records. As agreed to at the last session of Alternate Representatives, the Parties shall share their views on the contents of such guidance in writing, before then.

DOCUMENTS:

- a) Parties' discussion papers (to be distributed)
- b) Issues paper: A Policy for the CEC Secretariat with respect to the preparation of factual records under Article 15 of NAAEC (distributed by Canada on 13-10-99)
- c) Secretariat's Internal Procedures for Preparing Factual records (distributed 18-05-99)



### **Item 7.3 Assertions of confidentiality**

The Alternate Representatives are expected to discuss the issues raised in a memo from the Executive Director dated 13 October 1999 on assertions of confidentiality under the Article 14 process.

- a) Memo dated 13 October 1999 from Executive Director to Alternate Representatives re: Additional Item for Agenda (distributed 14-10-99)

### **Item 8 Council's responses to pending public inquiries**

The Alternate Representatives are expected to discuss process and/or finalize the Council's responses relating to inquiries received from the public.

#### **Item 8.1 Sierra Club of Canada, Council of Canadians, and Greenpeace Canada re: NAFTA Chapter 11 and Suspension of S.D. Myers, Sun Belt Water Inc. and Pope & Talbot Inc.**

Pursuant to their last session, the Alternate Representatives are expected to assess whether a joint response from the Council is warranted in light of the letter submitted by e-mail on 4 May 1999, addressed this time, collectively, to the members of the Council as opposed to the 22 April 1999 addressed to each Council member individually and copied to the other members.

#### **DOCUMENT(S):**

- a) 4 May 1999 electronic version of the 22 April 1999 letter from the Sierra Club of Canada, Council of Canadians, and Greenpeace Canada (faxed 18-10-99)
- b) Response from Canada's Minister for International Trade dated 14 May 1999
- c) Response from Canada's Minister of the Environment dated 9 June 1999
- d) Letter from Sierra Club of Canada, Council of Canadians, and Greenpeace Canada dated 17 September 1998
- e) Response from CEC Council dated 1 December 1998
- f) Letter from CEC Council to FTC dated 1 December 1998

#### **Item 8.2 Letter dated 28 June 1999 from Sierra Club of Canada, Council of Canadians, Greenpeace Canada et al. re: Methanex Corp NAFTA Investor Dispute concerning California's notice to ban gasoline additive MTBE to Promote Clean Water**

The Alternate Representatives are expected to discuss and finalize the Council's response in this matter, taking into account the proposed response prepared by the United States.

#### **DOCUMENT(S):**

- a) Letter dated 28 June 1999 from Sierra Club of Canada, Council of Canadians, Greenpeace Canada et al.
- b) Acknowledgement of receipt from J. Ferretti dated 29 July 1999

c) Revised draft response (to be distributed by the US)

**Item 9 1998 Annual Report**

In accordance with Article 12 of NAAEC, the Secretariat will present the draft annual report of the CEC for the year 1998. The Alternate Representatives are expected to approve a timeline for the approval and release of the report to the public.

DOCUMENTS:

a) 1998 Annual Report and timeline (to be distributed at the meeting)

**Item 10 Approval of Spanish version of CEC rules**

The Alternate Representatives are expected to approve the Spanish version of the CEC rules as well as linguistic changes to the English and French versions.

DOCUMENTS:

a) Council Rules of Procedure (to be distributed at the meeting)

b) Financial Rules (to be distributed at the meeting)

c) JPAC Rules of procedure (to be distributed at the meeting)

d) Rules of Employment (to be distributed at the meeting)

**Item 11 Other issues**

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

**Item 12 Next sessions of Alternate Representatives**

As agreed to by the Alternate Representatives at Session 99-08, a workshop on Environment and Trade will be convened for 13 December 1999 at the CEC Secretariat. The workshop will be followed on 14 December by an Environment and Trade officials' meeting pursuant to Article 10(6). Parties to review schedule of meeting and confirm government participation, for both days.

In addition, in order to allow the Parties and the Secretariat to plan their activities effectively for the year 2000, the Alternate Representatives are asked to consider a proposed schedule of sessions for the year 2000.

DOCUMENTS:

a) Proposed schedule of sessions of Alternate Representatives for  
2000 (distributed 12-11-99)

C/C.01/99-11/PLAN/01

**Item 13 Meeting with PRTR National Representatives (19 November from 10:00 to 12:00 AM)**

As a follow-up on the discussions held by Council in Banff and as agreed to at session 99-08, the Alternate Representatives will meet their lead PRTR government officials in the afternoon of 19 November where PRTR officials will provide the Alternate Representatives with a full briefing on the PRTR project.

**DOCUMENTS:**

- a) Proposed agenda for joint meeting with PRTR national Representatives (distributed 8-11-99)

**Item 14 Meeting with SMOC Working Group (19 November from 1:00 to 3:00 PM)**

As agreed to at their last session, the Alternate Representatives will meet in the afternoon of 19 November with the lead representatives of the SMOC Working Group, in order to discuss the overall implementation of the SMOC project, including budget considerations and capacity-building components.

**DOCUMENTS:**

- a) Proposed agenda for joint meeting with SMOC Working Group Representatives (distributed 12-11-99)

**Item 15 Closure of the session**

The Chairperson is expected to close the session.

**Notes for Report of the Executive Director**  
**Meeting of the Alternate Representatives**  
*November 18, 1999*

FOLLOW-UP TO COUNCIL MEETING

- Secretariat prepared a revised draft of the Children's Health and Environment initiative reflecting the discussion of the Alternate Representatives in October. This version takes a broader approach while at the same time recognizing the need to be focussed and concrete. Attached please find this version. Please note that the cost estimates for this broader initiative is \$120,000. The broader approach and process outlined represent a cost increase of \$70,000 over the previous proposal.

PROGRAM

*Trade and Environment*

- Experts are confirmed for the December Trade and Environment workshop. The Secretariat will distribute a background note prior to meeting.
- Next week meeting of Wildlife trade group in Montreal to consider the Traffic report and next year's activities.
- The Seattle host organization is sponsoring a Trade and Environment Session for the WTO Ministerial. We will be participating in one of the Panel Discussion.

*Biodiversity*

- Mexico and the US both formally inaugurated their national NABCI committees with events in Monterrey and Virginia, respectively. Canada will follow shortly. Senior level representation and good CEC recognition as a catalyst for this important initiative.
- Government marine officials are currently meeting in La Paz to develop a plan of action for the creating the Marine Protected Area Network.

*Pollutants and Health*

- The Mercury action plan has generated substantial comments. The Secretariat will circulate the packet of comments to delegations prior to Friday's session. As one of the probable central announcements of the next Council meeting, the Alt Reps may want ensure that the mercury action plan provides a strong foundation for advancing SMOC work.

- GEF has authorized the project proposal the CEC developed with the Pan American World Health Organization and UNEP. Technically known as the PDF Block B grant, it will enable the development of a larger project aimed at eliminating the use of DDT in Mexico and Central America. The CEC will be contributing \$100,000 to this effort. GEF, PAHO and participating organizations will be providing \$690,000. We are expecting that GEF would contribute around \$4.5 million dollars to finance the final project.
- IDRC has informed us of its decision to provide possibly up to \$220,000 in support of the implementation of the DDT action plan in Mexico.
- EPA is contributing something close to \$100,000 to complete the mercury backtrajectory split module to our roughly \$50,000 contribution. STAPALAPCO is contributing around \$38,000 to the development of the North American air management web site.

### *Law and Policy*

- The enforcement working group decided to pilot the development of compliance indicators in the area of hazardous waste and is pursuing two options: the first involves data on US-CAN transboundary shipment of hazardous waste; the second involves US-MEX data on domestic transfer, storage and disposal facilities.
- Trilingual Turtle identification guide for customs inspectors and enforcement officials being prepared in cooperation with Environment Canada for distribution in early 2000.
- Following Cheyenne Wildlife Forensics Seminar, CEC is helping develop a directory of forensic labs and services. The meeting succeeded in spinning off another endeavor as forensic labs agreed to collaborate to establish a joint DNA database

### SEM-ARTICLE 14 AND 15

The status of the twelve submissions currently under review is as follows:

- One Factual Record is being developed. The Secretariat is currently developing a factual record on submission SEM-97-001/ BC Aboriginal Fisheries Commission et al. as instructed by the Council.
- Awaiting Direction from Council concerning possible development of a factual record for two submissions. On 19 July 1999 the Secretariat informed the Council that the Secretariat considers that SEM-97-006/The Friends of the Oldman River, warrants developing a factual record. On 29 October 1999 the Secretariat informed the Council that the Secretariat considers that SEM-97-003/Centre Québécois du droit de l'environnement, warrants developing a factual record. Pursuant to Guideline 10.2, on

3 December 1999 the Secretariat will place notice in the registry and public file that it has informed the Council that the Secretariat considers that submission 98-003 warrants developing a factual record.

- Reviewing six submissions to determine whether development of a factual record is warranted. The Secretariat is currently reviewing one submission concerning Canada (SEM-98-004/ Sierra Club of British Columbia, et al.) and five concerning Mexico (SEM-97-002/Comité Pro Limpieza del Río Magdalena, SEM-97-007/Instituto de Derecho Ambiental, SEM-98-007/Environmental Health Coalition, et al., SEM-98-006/Grupo Ecológico Manglar A.C., and SEM-98-005/Academia Sonorense de Derecho Humanos) in light of the response to determine whether development of a factual record is warranted.
- Awaiting Party's Response for one submission. The United States response concerning SEM-98-003/Department of the Planet Earth et al, is due in November 1999.
- Reviewing two submissions under Article 14(1). On 18 October 1999 Methanex Corporation filed a submission (SEM-99-001) concerning the United States which is now being reviewed by the Secretariat to determine whether it meets the criteria of Article 14(1). On 15 October 1999 the submitters for SEM-98-001/Instituto de Derecho Ambiental filed a revised submission which is being reviewed by the Secretariat to determine whether it meets the criteria of Article 14(1).

The attached chart provides a status update on each submission.

#### NAFEC

- 29 grants were made in 1999 bring the total to 127 (since inception).
- Happy to report much closer synergy between grants and CEC projects as requested by the Parties. For example, in the area of shade coffee, we were able to wed our policy work in the area of biophysical criteria and market study with on the ground shade coffee producers and retailers. (Attached are the recent Globe and Mail and Gazette articles.)

#### COMMUNICATIONS

- Annual Report is being distributed today. We are looking for Council's final approval by 30 November 1999.

#### ADMINISTRATION AND FINANCE

- Erica Phipps, program manager for the PRTR program has joined the CEC staff. Jack

Person, financial comptroller has left the CEC. We are reviewing candidates with a goal of having someone in place in January.

- The third quarterly Financial Report has been sent to you earlier this week. All Parties have completed their 1999 commitments of US \$3,000,000 each. Funds on hand are US \$2,700,000, which is sufficient for three months of activities.

#### JUNE COUNCIL SESSION

To begin to address the public's frustration related to the short notice given on date and place of Council meeting, the Secretariat suggests that the dates of the next Council meeting be established by the end of December.