

September 5, 2003

Ms. Manon Pepin
Commission for Environmental Cooperation of North America
393, rue St-Jacques Ouest, Bureau 200
Montréal, Québec H2Y 1N9

Dear Ms. Pepin :

Submission on
Issues Related to Articles 14 and 15
Factual Records

The Forest Products Association of Canada (FPAC) is pleased to submit the following in response to the call for public comments by the Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) on issues related to Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC).

General Comments

The Canadian forest products industry is committed to continual improvement and promotes accountability in all its operations. Based on the principle that trade and environment should be mutually supportive, the industry is committed to achieving global free trade as a tool for increasing efficiency in resource use and encouraging more environmentally efficient products. Good information is essential to improving environmental performance and Canada's forest producers support respectful and informed dialogue on sustainable development by bringing information into the public domain.

Accordingly, FPAC members support the objectives of the NAAEC to resolve disputes, increase cooperation and improve the effectiveness of environmental protection. FPAC is of the view that these objectives are well served by the citizen's submission process which allows for public input to promote environmental enforcement as outlined by articles 14 and 15. Furthermore, it believes that the NAAEC could be the model for other trade agreements such as the current FTAA (Free Trade Area of the Americas) process.

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Given the recent release of the factual record for Submission SEM-00-004 (BC Logging), FPAC believes it can provide timely and specific feedback that will assist in the development of future factual records. We therefore welcome the opportunity to provide comments on issues related to the Articles 14 and 15 process and in particular the scope of factual records.

Scope of factual records

It is the intent of the Articles 14 and 15 process that factual records enable readers to draw their own conclusions as to whether environmental laws are being effectively enforced. Accordingly, it is essential that factual records be accurate in their scope and purpose. As per the guidelines outlined in the CEC document, *Bringing the Facts to Light*, a factual record should outline "...in as objective a manner as possible, the history of the issue, the obligations of the Party under the law in question, the actions of the Party in fulfilling those obligations, and the facts relevant to the assertions made in the submission of a failure to enforce environmental law effectively." Factual records should therefore include only information and language that is relevant to the investigations in question. Furthermore, the investigations themselves should focus on specific incidents of alleged non-enforcement rather than broad allegations.

Given this, FPAC is of the view that, while the recently released SEM-00-004 Factual Record deals with specific allegations and does not draw specific conclusions, it goes beyond the intended scope and includes suggestive language that is not relevant to the investigation.

In terms of **scope**, while the Secretariat was instructed by the Ministers to focus on the narrow issue of whether the Department of Fisheries and Oceans (DFO) had properly enforced the *Fisheries Act* on two private land areas, the report discusses issues outside this scope such as the *Forest Practices Code*, which does not apply to private land. In addition, the factual record appears to go beyond an objective presentation of the facts on whether environmental laws are being enforced, by including a set of "criteria" for effective enforcement, and by discussing what is not included in the report. Such information is not relevant to the instructions of the Council and should not be included.

In terms of **language**, the report includes suggestive language and commentary, which appear throughout the text, and should be avoided, as it is misleading and detracts from a clear presentation of the facts.

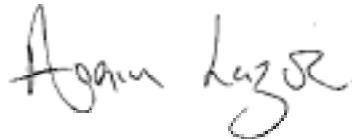
Conclusions

Based on SEM-00-004, FPAC believes that improvements can be made to factual records to ensure that they remain focused and present an objective record of the facts concerning specific allegations of non-enforcement. FPAC believes that consideration of the above concerns related to scope and language will improve the preparation of future factual records and will ensure that they respect the intent of Articles 14 and 15.

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FPAC understands that the CEC experience with factual records is relatively new. Therefore, FPAC is fully prepared to provide timely assistance to ensure that the process is fair and balanced, and results in the ultimate objective of improving the effectiveness of environmental protection.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Avrim Lazar". The signature is written in a cursive, flowing style.

Avrim Lazar
President and CEO