



United States Council for International Business

1212 Avenue of the Americas, New York, NY 10036-1689
tel: 212-354-4480 ~ fax: 212-575-0327
e-mail: info@uscib.org ~ Internet: www.uscib.org

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

October 21, 2003

Ms. Manon Pepin
Joint Public Advisory Committee (JPAC) Liaison Officer
Commission for Environmental Cooperation of North America
393, rue St-Jacques Ouest, Bureau 200
Montréal, Québec, Canada H2Y 1N9

Dear Ms. Pepin:

I am writing in response to the JPAC request for comments on issues related to the implementation and further elaboration of Articles 14 and 15: limiting the scope of factual records and the review of the operation of CEC Council Resolution 00-09.

1) Limiting the scope of factual records:

With regard to the issue of limiting the scope of factual records, a central issue appears to be differences of opinion between the Parties and submitters in question regarding the definition of “*effectively enforce its environmental law*” as set forth in Article 45.1.

First, Article 45.1 sets out two areas where government action or inaction is not a failure to effectively enforce its environmental law, both of which appear relevant to the issues raised in the relevant submissions. Second, Article 45.1 begins with the wording “*For the purposes of this Agreement,*” which is a clear indication that the definition applies to the NAAEC as a whole, including Articles 14 and 15, and not just Part V as indicated by the Secretariat.

As the link with Article 45.1 was not explored in the preliminary report prepared for the JPAC, this issue should be addressed prior to any final JPAC recommendations to the Council. Looking forward, one option to resolve this issue is to include Article 45.1 in the Guidelines for Submissions on Enforcement Matters, which is not currently done, along with language concerning what types of enforcement functions would fall under the exceptions.

2) Review of the operation of CEC Council Resolution 00-09:

Resolution 00-09 was adopted in order to provide for the proper functioning of the Articles 14-15 process and an orderly assessment of what changes, where necessary and appropriate, should be made to that process. Where the process had always been based on the principles of transparency, fairness and due process, Resolution 00-09 was intended to add the principle of stability.

Following its adoption, some of the activities called for in the resolution have been carried out, including the JPAC's development of the Lessons Learned report. However, the process appears to have suffered from reduced communication between the Council, the JPAC and the Secretariat. Part of the value of the resolution was the open dialogue between these groups that is both explicit and implicit in the process. As increased communication between these actors would help maintain the stability and predictability of the Articles 14-15 process, the JPAC should consider recommendations toward that end.

I hope these comments are helpful. Please feel free to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read "Adam B. Greene", with a long horizontal line extending to the right.

Adam B. Greene
Director, Environmental Affairs
& Corporate Responsibility