

# OTHER INTERNATIONAL DEVELOPMENTS

## NAFTA

### CEC: Decisions on Programme Plan

#### *Background*

When Canada, Mexico and the United States established the North American Free Trade Agreement

(NAFTA), they also agreed on an environmental side accord, the *North American Agreement on Environmental Cooperation* (NAAEC). The NAAEC was created

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principally out of concern over the potential environmental consequences of increased trade liberalisation, but also the long-standing recognition of the need to address environmental issues in the North American region from a continental perspective.

The *Commission for Environmental Cooperation* (CEC) was established to steward the implementation of the NAAEC through cooperative actions by the three Parties to the Agreement. The *Council* of the CEC, the governing body of the international organisation, is composed of the environment ministers (or equivalent) of each country. It meets at least once a year to review and direct the programme activities of the Commission and to receive public input and advice from the *Joint Public Advisory Committee* (JPAC) and other stakeholders. The *Secretariat* of the CEC, located in Montreal, Canada, provides technical and operational support to the Council.

Article 10(6)(d) of the NAAEC directs the CEC to consider, on an ongoing basis, the environmental effects of NAFTA. For this purpose, the CEC developed a methodology, the *Analytic Framework for Assessing the Environmental Effects of NAFTA*, designed to help improve understanding of the connections between trade and the environment, anticipate important environmental impacts in the context of trade liberalisation, and develop policy tools to mitigate negative impacts and maximize positive ones.

The Framework examines six hypotheses in guiding its assessment of NAFTA-related environmental effects:

1. Does NAFTA reinforce existing patterns of comparative advantage and specialisation to the benefit of efficiency?
2. Does NAFTA trade liberalisation lead to a regulatory/migratory "race-to-the-bottom"?
3. Does NAFTA give rise to competitive pressures for capital and technological modernisation?
4. Do liberalised rules under NAFTA serve to increase use of environmentally-friendly products?
5. Does NAFTA lead to upward convergence of environmental practice and regulation through activities of the private sector?
6. Does NAFTA lead to upward convergence of environmental practice and regulation through activities of the various levels of government and, if so, how?

#### JPAC Fourth Session

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) held its fourth regular session in Montreal, Quebec on 16–17 September 1999, in conjunction with a public consultation to discuss the *Final Analytic Framework (Draft) for Assessing the Environmental Effects of the North American Free Trade Agreement (NAFTA)*.

A plenary discussion on the CEC's proposed programme plan, the *North American Agenda for Action: 2000–2002*, was also part of the meeting and took place on the afternoon of 16 September.

The Chair of JPAC, Jon Plaut opened the meeting and acknowledged that the participants, as well as the

JPAC members, had only just received the proposed programme plan for the next three years. He reminded the participants, however, that the timing of the release was in response to calls from the public and JPAC for early involvement in the review process and, indeed, the Parties themselves had not yet conducted even a preliminary review of the document.

Janine Ferretti, Executive Director, then presented her report. She noted that the proposed programme plan reflects input from the public and JPAC as well as building on the existing projects. It identifies objectives and goals for each area and proposes initiatives to achieve them. She explained that this proposal attempts to present a more defined, integrated and strategic approach.

Highlights of CEC activities in upcoming months include: release of the North American Regional Action Plan (NARAP) on mercury; work to implement the Council's decision to develop good neighbour policies for transboundary environmental impact assessment; focusing on pesticides and the health of children; improving public participation at Council sessions; release of the framework for public participation; publication of the State of the Environment report; devising methods for project evaluation; and a December 1999 working group meeting of trade and environment officials.

#### Plenary Discussion on the Draft *Final Analytic Framework for Assessing the Environmental Effect of NAFTA*

The Chair stated that JPAC strongly supports this project. The discussions were also meant to inform JPAC in its development of Advice to Council. The following were some of the questions asked and comments made by JPAC members during discussion:

- Will resources be available to assist in the development of papers? If so, then funds should be provided to those who could not otherwise participate.
- How will sectors be selected?
- What are the next steps if the methodology is successful? If a threat is demonstrated, what mechanisms exist for responding?
- Is the CEC coordinating this work with the World Trade Organisation?
- Trade in used products should be considered as a theme. Where poverty dictates the use of second-hand goods, there can be an environmental effect. A good example is the importation of used refrigerators containing Freon (CFC) from the United States to Mexico.
- Poverty is the single greatest factor in environmental degradation. The effect of investment and movement of capital should be considered in all sectors.
- Consideration should be given to how government support can be developed so that the results of this work can produce changes in policy.
- Governments should be urged to collect the data necessary to apply the methodology.
- There is a need to develop a rapid response mechanism to deal with emergency issues; for example, the

transboundary dumping of used tires from the United States in Mexico.

### Plenary Discussion on Future CEC Programme Initiatives

Issues, which received considerable emphasis, included:

- Genetically modified organisms (GMOs).
- Protecting transboundary species.
- Trinational attention to the pollutant release and transfer register.
- Increased attention to water conservation.
- Institution of a rapid response mechanism.
- Budget reductions.
- Progress on cooperation under NAAEC Article 10(6).

### Environment, Economy and Trade Programme Area

The following comments and recommendations emerged during the presentation and discussion on the above area:

- A participant recommended that within the Green Goods and Services Programme initiation a project on green power might be developed to assist in elaborating standards for certification. At present, consumers are confused by differing standards, such as Environment Canada's *EcoLogo and Green Seal* in the United States. Convening a meeting of stakeholders to discuss these issues could be a starting point.

The Chair replied that inconsistent criteria on what is "green" is an important issue and is the subject of a recent Article 13 initiative.

- A JPAC member commented, with regard to the Assessing Environment and Trade Relationships project, on the importance of moving beyond testing to affecting policy. She also acknowledged the enormity of the task and the costs associated with analysing each of the priority areas. Given limited financial resources, she recommended that assistance be allocated to those who most need it. She also urged that the framework for public participation, now before Council, should be approved.
- Another member noted the importance, within this same project, of creating partnerships with NGOs in order to avoid duplication. She recommended that the Secretariat link people from the three countries who are proposing similar analyses.
- A JPAC member reminded the session that the issue of genetically modified organisms (GMOs) had been repeatedly raised in past sessions within this programme area and that the programme plan should include work directed to achieving a better understanding of this complex issue. He suggested that as an initial step a workshop could be convened to assist in identifying an appropriate niche for the CEC.
- Data and information generated for CEC's reports, such as *Taking Stock*, would provide an interesting source for analysis within the *Assessing Environment and Trade Relationships* project. This could produce integration and synergy within CEC projects.

- Another JPAC member suggested that a mechanism for immediate evaluation of projects in relation to meeting their stated goals and objectives be developed. She went on to support an earlier suggestion concerning the need for the CEC to focus efforts on GMOs, noting the importance of labelling and certainty for both consumers and producers. She used as an example the uncertainties surrounding the effects of genetically modified corn from the United States on Mexican produce.

### Conservation of Biodiversity Programme

The programme managers for this area explained that within their respective programmes links exist with academia and special efforts are made to work with people in the regions or fields of inquiry to avoid duplication of effort. Examples given were the work on Gulf of Maine, the Bight of the Californias and the North American Biodiversity Information Network.

One member noted that Mexico has the fifth largest concentration of biodiversity in the world. She expressed the view that the protection of biodiversity must go hand-in-hand with social issues, such as the impacts of poverty. If ecosystem protection is the objective, this can only be achieved by promoting sustainable development, including human development.

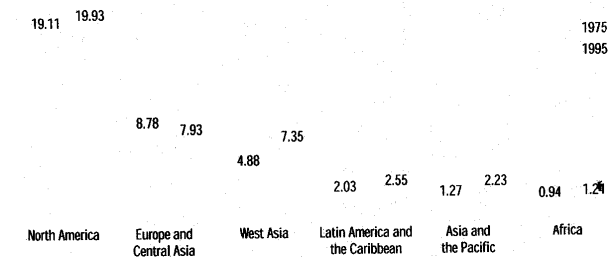
Members agreed that there is a need to decimate information to the grass roots level in all three countries. Environmental education will enable people to become more aware and involved in protecting and conserving biodiversity. There should be efforts to work with the schools and other local organisations.

One speaker supported the importance of environmental education as the basis for informed action. A caution was raised concerning the difficulties in conducting marine and coastal projects in Mexico as no controls are currently being applied. The need for the CEC to involve itself in the issue of GMOs was also strongly supported, citing impacts on trade, biodiversity and intellectual property rights.

### Pollutants and Health Programme Area

The following comments and recommendations emerged during the presentations and discussion on this area:

- A question was raised whether there was coordination between the CEC and intergovernmental negotiations, such as those currently underway with the United Nations Economic Commission for Europe to conclude a protocol on persistent organic pollutants (POPs) to the 1979 Convention on Long-range Transboundary Air Pollution.
- It was noted that within the Pollutant Release and Transfer Register project, important data from small businesses is missing, *i.e.*, dry cleaning operations and construction sites. It was also noted that there is an inherent limitation in voluntary reporting systems. Compliance mechanisms and incentives for companies to provide data also need to be developed.
- A JPAC member commented that Mexico still does not have a registry and that many companies do not



*The North American region is the largest per capita contributor to greenhouse gases, mainly due to high energy consumption.*  
*Courtesy: UNEP*

track chemical use and emissions unless they are very large or foreign-owned. He expressed concern that until Mexico participates in the registry, it will be deficient. He noted the importance of supporting the development, implementation and outreach of the Mexican *Registro de Emisiones y Transferencia de Contaminantes (RETC)*.

- A member raised the air issues related to carbon flow and power plants along the Texas/Mexican border as an example of the need for Mexican involvement.
- Another JPAC member explained that Mexico is making efforts to motivate industry to provide the relevant information. Given the different legal contexts in the NAFTA countries, developing integrated and voluntary reporting systems that may ultimately lead to voluntary compliance takes place at a differing pace.
- There was a recommendation for work on identification of health risks associated with farm workers' exposure to pesticides. It was explained, for example, that NAFTA has caused realignment in the tobacco industry. Labour standards, however, have not improved and workers continue to be exposed to pesticides. Currently, efforts to promote capacity building are too limited and monitoring is inadequate.

#### *Law and Policy Programme Area*

A speaker asked if the database on comparative law would be continued. The Chair informed the session that this database, plus a compendium of binational and trilateral agreements, is in the process of being transferred to a partner organisation. It was necessary to do this, as the database is very expensive to maintain. Among the conditions for the transfer is that the database remains free to the public and be regularly updated.

Another speaker asked if the CEC model would be expanded to include other countries of the Western Hemisphere. This point elicited support from other speakers.

The Programme manager explained that the CEC is already part of the world wide International Network on Environmental Compliance and Enforcement (INECE) and is exploring cooperation with a new enforcement group being set up by the Organisation of American States (OAS). JPAC members further explained the efforts thus far to create a JPAC and Secretariat structure with Chile, noting the current lack of political will in the

United States to conclude further trade and environment agreements.

It was recommended that the CEC consider ways and means to institute explicit, consistent standards and processes for dispute resolution that could apply to all its activities. The programme plan should include promotion for minimum standards for environmental audits.

A JPAC member recommended that the CEC develop a rapid-response mechanism to handle emergencies arising from trade-related activities that are not necessarily the result of a failure to enforce environmental laws.

Another member recommended that a process be developed, perhaps built into the existing CEC project, by which small and medium-size industries and businesses can gain access to the environmental management systems (EMS) accreditation process.

One member noted with satisfaction, progress toward integrating the Law and Policy programme area with the other CEC programmes and encouraged that this be continued.

#### **Other Initiatives of the CEC**

The Chair provided an overview of this section of the proposed Programme Plan. He highlighted with regret the proposed reduction of US\$500,000 to the North American Fund for Environmental Cooperation (NAFEC).

Concern was expressed, in general, about budget reductions and restrictions. It was recommended that budgets be restored to the US\$15 million contemplated at the first Council session in 1994.

A JPAC member, who was concerned about the proposed reduction to NAFEC, felt that the applications to the Fund were getting stronger and more directly related to the CEC Programme, providing leverage for citizen participation. Another member commented that if NAFEC falters, it would be very disappointing.

Another member noted the importance of communication and need to expand the "family" so that more people can become active in the work of the CEC. In Mexico, for example, a very small percentage of the population has access to that Commission. Alternatives to electronic information are required in order to reach remote communities and newsletters and other written materials, prepared in plain language, are required.

A question was raised on methods for active, public participation and how these will be achieved. The speaker noted the importance of providing the public with timely and unrestricted access to information.

#### **Advice to Council**

The JPAC, in accordance with its mandate to provide advice to Council, provided the following views on the proposed programme plan for 2000–2002:

#### *Proposed Programme Plan*

Members noted that the proposed plan reflects a more focused and strategic approach than last year's document. It was felt, however, that more effort is

required to identify partners and activities that could be supported by other organisations. Mechanisms are required to evaluate whether concrete results are being realised, whether public policy is being adjusted in consequence and what lessons are being learned. Members recommended that:

- Understanding that the issue is very complex and that the legal context within the three NAFTA countries varies, the Council should consider and advise how the CEC will address Genetically Modified Organisms. An appropriate niche for the CEC is required. It is not clear whether the topic is best addressed as a trade issue under the current Environment, Economy and Trade programme area or as a biodiversity and human health issue under the Conservation of Biodiversity programme area.
- Water conservation and forestry issues are areas where increased focus and effort are required.
- Work is needed to develop new techniques and methods for wider dissemination of information generated by CEC activities and projects to the North American public. Particular attention needs to be paid to individuals and groups who do not have access through electronic communication, *i.e.*, remote communities and many Indigenous Peoples. This could be part of a commitment to environmental education as an enabling activity. Otherwise the CEC "family" will be too narrow and redundant. The Council should complete work on the draft Framework for Public Participation in CEC Activities, which includes important guidance on financial support for public participation.

#### *Environment, Economy and Trade*

- Regarding the Call for Papers\* for the first North American Symposium on Understanding the Linkages between Trade and Environment, the Parties should consider identifying a list of priority issues to help focus the work. The Experts Group has produced a working version of such a list and it is recommended that the Secretariat work with JPAC in further developing it. Papers should be encouraged to recognise the legal and jurisdictional differences existing in the three NAFTA countries.

#### *Conservation of Biodiversity*

- The protection of transboundary species and working on common border issues should be a key focus of the CEC's work. This is precisely the mandate and *raison d'être* of the CEC. Such species include the monarch butterfly and the Pacific grey whale.

#### *Pollutants and Health*

- The pollutant release transfer register (PRTR) is considered to be an extremely important and potentially effective tool to assist industry, governments and the public in the development of methods to reduce pollutants. Every effort should be made for the three national PRTR programmes to become fully comparative trinationally and to encourage production of data from small and medium-size businesses and industries. It is also

important to recognise that the pace at which PRTR programmes can be developed varies between the three NAFTA countries.

- In the event of environmental problems or emergencies arising from trade-related activities that are not a result of failure to enforce environmental laws, the CEC needs to be in a position to respond quickly. An example of such a circumstance is the flow from the United States to Mexico of used refrigerators containing chlorofluorocarbons. Council may wish to consider developing a rapid response mechanism to deal with these situations.

#### *Other Initiatives*

- JPAC and the public both stress urgency and continuing efforts by Council to develop the institutional cooperation between the Free Trade Commission and the CEC contemplated in Article 19(6) of NAAEC. Such cooperation would assist in the development of related agreements such as methodologies for transboundary environmental impact assessment.
- Finally, JPAC and the public are concerned about the effect of budget restrictions on the programme plan. The proposal to reduce the North American Fund for Environmental Cooperation, for example, was not well received. As a further example, budget restrictions have caused JPAC to restrict its activities. Budgets for the CEC should be restored to the levels contemplated at the first Council Session in 1994.

#### **Promoting the Involvement of Indigenous Peoples in the Work of the Commission for Environmental Cooperation**

In its 1998 report to Ministers, the Joint Public Advisory Committee highlighted the need for the CEC to involve better Indigenous Peoples in its programme of work and undertook to provide advice on this matter. In May, JPAC held a joint meeting with the Sound Management of Chemicals Working Group (SMOC) in Anchorage, Alaska, which Indigenous representatives from Canada, Mexico and the United States attended. This venue was selected because environmental contaminants and associated impacts for human health are of common concern to Indigenous Peoples in the three countries.

The representatives present from indigenous groups called for two clear actions. First, they felt their involvement in the work of SMOC could contribute in very tangible ways to a broader understanding of the nature and effects of contaminants on both humans and ecosystems. Second, involvement of Indigenous Peoples should not be limited to SMOC – ways and means should be found to broaden their involvement in the work programme of the CEC and in the national advisory committees.

In its Advice to Council 99-05, which emerged from the meeting in Anchorage, JPAC signalled that it would prepare an Advice to Council on this subject for consideration at the 1999 Regular Session.

JPAC noted that the legal and political context varies among the three countries. It stated that:

- It is not JPAC's role to comment on those aspects. It is JPAC's view, however, that Indigenous Peoples are crucial actors in conservation and that promoting their involvement in the work programme of the CEC is necessary.

JPAC, therefore, recommends that:

- Council acknowledge the value and importance of involving Indigenous Peoples in the work of the CEC on the basis that working with Indigenous Peoples of the North American region and their communities is an important step in building local capacity for the conservation and protection of biodiversity. This could be accomplished by instructing the CEC Secretariat to build into the three-year programme plan(s) practical and culturally sensitive ways and means for the direct involvement of Indigenous Peoples in project planning and implementation with particular attention to developing new methods for facilitating communication among Indigenous Peoples in (our) three countries.

### **Methods to Improve the Public Portion of the Council Session**

The Committee noted in its advice, that after listening to the public and participating in discussions with the JPAC members, National Advisory Committees and the United States Government Advisory Committee, it was clear that the public wanted increased interaction with the Ministers.

"JPAC has listened carefully to the public's comments. In summary, the deficiencies of the methods used thus far are that the speaking time is too short, there are

too many speakers and topics, and there is minimal exchange and no feedback."

"After having considered various possible options, the following outline is recommended:

- The draft *Framework for Public Participation in the CEC's Activities* will be of assistance and should be released and implemented as soon as possible.

- The Parties will select a theme or themes for the Regular Session of Council. The public meeting with Council at the Regular Session could be divided into two portions. On Day 1, workshop(s) would be organised to assist the participants in preparing for the public meeting with Council where they would present their views. This first, public portion of the Council session would then follow later the same day, allowing the Ministers to hear contributions from the attendees, first on the selected theme(s), then from individual speakers on any matter within the scope of the North American Agreement on Environmental Cooperation. On the second day, in the second public portion of the Regular Session, Council would respond to the most important topics or contributions, leaving time for an exchange of views."

JPAC further recommended that the Parties begin their planning very soon for the next Regular Session of Council, to be hosted by the United States in June 2000. □

### **Note**

\* The CEC is soliciting abstracts (maximum 300 words) that include a general description of the issue the paper will address and summary of its treatment in the study. Papers will be considered for presentation in several areas. For more information contact CEC in Canada: +1 (514) 350-4302.