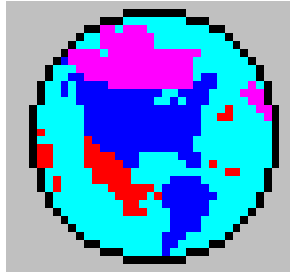


**THE LAW OF  
REGIONAL ECONOMIC INTEGRATION  
IN THE AMERICAN HEMISPHERE**



**J.H.H. Weiler**  
University Professor, NYU  
Joseph Straus Professor of Law and European Union Jean Monnet Chair,  
NYU School of Law

**AND**

**Sungjoon Cho**  
Assistant Professor of Law,  
Chicago-Kent College of Law,  
Illinois Institute of Technology

**Unit XII**

**Environmental Cooperation**

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## **Guiding Questions**

- 1. What were the objectives behind negotiation of the North American Agreement on Environmental Cooperation (NAAEC)?*
- 2. What are the distinctive legal, institutional and procedural characteristics of the NAAEC? How do they compare with other (e.g., WTO, European Union) legal designs? How do these elements serve to implement the objectives for the NAAEC?*
- 3. Do you think Article 14 regime (citizens' submission) has really made a difference in terms of environmental protection in the NAFTA countries? Could such regime be followed by other regional trade agreements or even the WTO?*

## **I. NAAEC Text (Edited Version)**

To download a full text, visit <http://www.sice.oas.org/trade/nafta/naftatce.asp#environ>

NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION  
BETWEEN  
THE GOVERNMENT OF CANADA,  
THE GOVERNMENT OF THE UNITED MEXICAN STATES AND  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA

### **PREAMBLE**

The Government of the United States of America, the Government of Canada and the Government of the United Mexican States:

CONVINCED of the importance of the conservation, protection and enhancement of the environment in their territories and the essential role of cooperation in these areas in achieving sustainable development for the well-being of present and future generations;

REAFFIRMING the sovereign right of States to exploit their own resources pursuant to their own environmental and development policies and their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

RECOGNIZING the interrelationship of their environments;

ACKNOWLEDGING the growing economic and social links between them, including the North American Free Trade Agreement (NAFTA);

RECONFIRMING the importance of the environmental goals and objectives of the NAFTA, including enhanced levels of environmental protection;

EMPHASIZING the importance of public participation in conserving, protecting and enhancing the environment;

NOTING the existence of differences in their respective natural endowments, climatic and geographical conditions, and economic, technological and infrastructural capabilities;

REAFFIRMING the Stockholm Declaration on the Human Environment of 1972 and the Rio Declaration on Environment and Development of 1992;

RECALLING their tradition of environmental cooperation and expressing their desire to support and build on international environmental agreements and existing policies and laws, in order to promote cooperation between them; and

CONVINCED of the benefits to be derived from a framework, including a Commission, to facilitate effective cooperation on the conservation, protection and enhancement of the environment in their territories;

HAVE AGREED AS FOLLOWS:

## **PART ONE**

### **OBJECTIVES**

#### **Article 1: Objectives**

The objectives of this Agreement are to:

- (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
- (b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;
- (c) increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;
- (d) support the environmental goals and objectives of the NAFTA;
- (e) avoid creating trade distortions or new trade barriers;
- (f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
- (g) enhance compliance with, and enforcement of, environmental laws and regulations;
- (h) promote transparency and public participation in the development of environmental laws, regulations and policies;
- (i) promote economically efficient and effective environmental measures; and
- (j) promote pollution prevention policies and practices.

## **PART TWO**

### **OBLIGATIONS**

#### **Article 2: General Commitments**

1. Each Party shall, with respect to its territory:

- (a) periodically prepare and make publicly available reports on the state of the environment;
- (b) develop and review environmental emergency preparedness measures;
- (c) promote education in environmental matters, including environmental law;
- (d) further scientific research and technology development in respect of environmental matters;
- (e) assess, as appropriate, environmental impacts; and
- (f) promote the use of economic instruments for the efficient achievement of environmental goals.

2. Each Party shall consider implementing in its law any recommendation developed by the Council under Article 10(5)(b).

3. Each Party shall consider prohibiting the export to the territories of the other Parties of a pesticide or toxic substance whose use is prohibited within the Party's territory. When a Party adopts a measure prohibiting or severely restricting the use of a pesticide or toxic substance in its territory, it shall notify the other Parties of the measure, either directly or through an appropriate international organization.

### **Article 3: Levels of Protection**

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations, each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.

### **Article 4: Publication**

(...)

### **Article 5: Government Enforcement Action**

1. With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action, subject to Article 37, (...)

2. Each Party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its law to sanction or remedy violations of its environmental laws and regulations.

(...)

#### **Article 6: Private Access to Remedies**

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and regulations and shall give such requests due consideration in accordance with law.

2. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws and regulations.

(...)

#### **Article 7: Procedural Guarantees**

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in Articles 5(2) and 6(2) are fair, open and equitable, and to this end shall provide that such proceedings:

(a) comply with due process of law;

(b) are open to the public, except where the administration of justice otherwise requires;

(...)

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

### **PART THREE**

#### **COMMISSION FOR ENVIRONMENTAL COOPERATION**

##### **Article 8: The Commission**

1. The Parties hereby establish the Commission for Environmental Cooperation.

2. The Commission shall comprise a Council, a Secretariat and a Joint Public Advisory Committee.

## **Section A: The Council**

### **Article 9: Council Structure and Procedures**

1. The Council shall comprise cabinet-level or equivalent representatives of the Parties, or their designees.

(...)

### **Article 10: Council Functions**

1. The Council shall be the governing body of the Commission and shall:

(a) serve as a forum for the discussion of environmental matters within the scope of this Agreement;

(b) oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience;

(c) oversee the Secretariat;

(d) address questions and differences that may arise between the Parties regarding the interpretation or application of this Agreement;

(e) approve the annual program and budget of the Commission; and

(f) promote and facilitate cooperation between the Parties with respect to environmental matters.

(...)

## **Section B: The Secretariat**

### **Article 11: Secretariat Structure and Procedures**

1. The Secretariat shall be headed by an Executive Director, who shall be chosen by the Council for a three-year term, which may be renewed by the Council for one additional three-year term. The position of Executive Director shall rotate consecutively between nationals of each Party. The Council may remove the Executive Director solely for cause.

(...)



3. The Council may decide, by a two-thirds vote, to reject any appointment that does not meet the general standards. Any such decision shall be made and held in confidence.
4. In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any government or any other authority external to the Council. Each Party shall respect the international character of the responsibilities of the Executive Director and the staff and shall not seek to influence them in the discharge of their responsibilities.
5. The Secretariat shall provide technical, administrative and operational support to the Council and to committees and groups established by the Council, and such other support as the Council may direct.
6. The Executive Director shall submit for the approval of the Council the annual program and budget of the Commission, including provision for proposed cooperative activities and for the Secretariat to respond to contingencies.
7. The Secretariat shall, as appropriate, provide the Parties and the public information on where they may receive technical advice and expertise with respect to environmental matters.
8. The Secretariat shall safeguard:
  - (a) from disclosure information it receives that could identify a non-governmental organization or person making a submission if the person or organization so requests or the Secretariat otherwise considers it appropriate; and
  - (b) from public disclosure any information it receives from any non-governmental organization or person where the information is designated by that non-governmental organization or person as confidential or proprietary.

(...)

### **Article 13: Secretariat Reports**

1. The Secretariat may prepare a report for the Council on any matter within the scope of the annual program. Should the Secretariat wish to prepare a report on any other environmental matter related to the cooperative functions of this Agreement, it shall notify the Council and may proceed unless, within 30 days of such notification, the Council objects by a two-thirds vote to the preparation of the report. Such other environmental matters shall not include issues related to whether a Party has failed to enforce its environmental laws and regulations. Where the Secretariat does not have specific expertise in the matter under review, it shall obtain the assistance of one or more independent experts of recognized experience in the matter to assist in the preparation of the report.

(...)

3. The Secretariat shall submit its report to the Council, which shall make it publicly available, normally within 60 days following its submission, unless the Council otherwise decides.

#### **Article 14: Submissions on Enforcement Matters**

1. The Secretariat may consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law, if the Secretariat finds that the submission:

(a) is in writing in a language designated by that Party in a notification to the Secretariat;

(b) clearly identifies the person or organization making the submission;

(c) provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based;

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and

(f) is filed by a person or organization residing or established in the territory of a Party.

2. Where the Secretariat determines that a submission meets the criteria set out in paragraph 1, the Secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the Secretariat shall be guided by whether:

(a) the submission alleges harm to the person or organization making the submission;

(b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement;

(c) private remedies available under the Party's law have been pursued; and

(d) the submission is drawn exclusively from mass media reports.

Where the Secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

3. The Party shall advise the Secretariat within 30 days or, in exceptional circumstances and on notification to the Secretariat, within 60 days of delivery of the request:

(a) whether the matter is the subject of a pending judicial or administrative proceeding, in which case the Secretariat shall proceed no further; and

(b) of any other information that the Party wishes to submit, such as

(i) whether the matter was previously the subject of a judicial or administrative proceeding, and

(ii) whether private remedies in connection with the matter are available to the person or organization making the submission and whether they have been pursued.

#### **Article 15: Factual Record**

1. If the Secretariat considers that the submission, in the light of any response provided by the Party, warrants developing a factual record, the Secretariat shall so inform the Council and provide its reasons.

2. The Secretariat shall prepare a factual record if the Council, by a two-thirds vote, instructs it to do so.

3. The preparation of a factual record by the Secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information:

(a) that is publicly available;

(b) submitted by interested non-governmental organizations or persons;

(c) submitted by the Joint Public Advisory Committee; or

(d) developed by the Secretariat or by independent experts.

5. The Secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The Secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.

7. The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission.

### **Section C: Advisory Committees**

#### **Article 16: Joint Public Advisory Committee**

1. The Joint Public Advisory Committee shall comprise 15 members, unless the Council otherwise decides. Each Party or, if the Party so decides, its National Advisory Committee convened under Article 17, shall appoint an equal number of members.

(...)

4. The Joint Public Advisory Committee may provide advice to the Council on any matter within the scope of this Agreement, including on any documents provided to it under paragraph 6, and on the implementation and further elaboration of this Agreement, and may perform such other functions as the Council may direct.

(...)

Each Party may convene a governmental committee, which may comprise or include representatives of federal and state or provincial governments, to advise it on the implementation and further elaboration of this Agreement.

(...)

## **PART FOUR**

### **COOPERATION AND PROVISION OF INFORMATION**

#### **Article 20: Cooperation**

(...)

#### **Article 21: Provision of Information**

(...)

## **PART FIVE**

### **CONSULTATION AND RESOLUTION OF DISPUTES**

#### **Article 22: Consultations**

1. Any Party may request in writing consultations with any other Party regarding whether there has been a persistent pattern of failure by that other Party to effectively enforce its environmental law.

(...)

4. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

### **Article 23: Initiation of Procedures**

1. If the consulting Parties fail to resolve the matter pursuant to Article 22 within 60 days of delivery of a request for consultations, or such other period as the consulting Parties may agree, any such Party may request in writing a special session of the Council.

2. The requesting Party shall state in the request the matter complained of and shall deliver the request to the other Parties and to the Secretariat.

3. Unless it decides otherwise, the Council shall convene within 20 days of delivery of the request and shall endeavor to resolve the dispute promptly.

4. The Council may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

(c) make recommendations,

as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute. Any such recommendations shall be made public if the Council, by a two-thirds vote, so decides.

5. Where the Council decides that a matter is more properly covered by another agreement or arrangement to which the consulting Parties are party, it shall refer the matter to those Parties for appropriate action in accordance with such other agreement or arrangement.

### **Article 24: Request for an Arbitral Panel**

1. If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 23, the Council shall, on the written request of any consulting Party and by a two-thirds vote, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce

its environmental law relates to a situation involving workplaces, firms, companies or sectors that produce goods or provide services:

- (a) traded between the territories of the Parties; or
- (b) that compete, in the territory of the Party complained against, with goods or services produced or provided by persons of another Party.

2. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties and the Secretariat. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of the vote of the Council to convene a panel.

3. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

#### **Article 25: Roster**

1. The Council shall establish and maintain a roster of up to 45 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

2. Roster members shall:

- (a) have expertise or experience in environmental law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical or professional expertise or experience;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, any Party, the Secretariat or the Joint Public Advisory Committee; and
- (d) comply with a code of conduct to be established by the Council.

#### **Article 26: Qualifications of Panelists**

1. All panelists shall meet the qualifications set out in Article 25(2).

2. Individuals may not serve as panelists for a dispute in which:

- (a) they have participated pursuant to Article 23(4); or
- (b) they have, or a person or organization with which they are affiliated has, an interest, as set out in the code of conduct established under Article 25(2)(d).

## **Article 27: Panel Selection**

1. Where there are two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days after the Council votes to convene the panel. If the disputing Parties are unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days a chair who is not a citizen of that Party.

(c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.

(d) If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days after the Council votes to convene the panel. If the disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.

(c) Within 30 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.

(d) If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 30 days after the individual has been proposed.

4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

(...)

### **Article 31: Initial Report**

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 30.
2. Unless the disputing Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the disputing Parties an initial report containing:
  - (a) findings of fact;
  - (b) its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, or any other determination requested in the terms of reference; and
  - (c) in the event the panel makes an affirmative determination under subparagraph (b), its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of non-enforcement.
3. Panelists may furnish separate opinions on matters not unanimously agreed.
4. A disputing Party may submit written comments to the panel on its initial report within 30 days of presentation of the report.
5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:
  - (a) request the views of any participating Party;
  - (b) reconsider its report; and
  - (c) make any further examination that it considers appropriate.

### **Article 32: Final Report**

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the disputing Parties otherwise agree.
2. The disputing Parties shall transmit to the Council the final report of the panel, as well as any written views that a disputing Party desires to be appended, on a confidential basis within 15 days after it is presented to them.
3. The final report of the panel shall be published five days after it is transmitted to the Council.



### **Article 33: Implementation of Final Report**

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, the disputing Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel. The disputing Parties shall promptly notify the Secretariat and the Council of any agreed resolution of the dispute.

### **Article 34: Review of Implementation**

1. If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, and:

(a) the disputing Parties have not agreed on an action plan under Article 33 within 60 days of the date of the final report, or

(b) the disputing Parties cannot agree on whether the Party complained against is fully implementing

(i) an action plan agreed under Article 33,

(ii) an action plan deemed to have been established by a panel under paragraph 2, or

(iii) an action plan approved or established by a panel under paragraph 4,

any disputing Party may request that the panel be reconvened. The requesting Party shall deliver the request in writing to the other Parties and to the Secretariat. The Council shall reconvene the panel on delivery of the request to the Secretariat.

2. No Party may make a request under paragraph 1(a) earlier than 60 days, or later than 120 days, after the date of the final report. If the disputing Parties have not agreed to an action plan and if no request was made under paragraph 1(a), the last action plan, if any, submitted by the Party complained against to the complaining Party or Parties within 60 days of the date of the final report, or such other period as the disputing Parties may agree, shall be deemed to have been established by the panel 120 days after the date of the final report.

3. A request under paragraph 1(b) may be made no earlier than 180 days after an action plan has been:

(a) agreed under Article 33;

(b) deemed to have been established by a panel under paragraph 2; or

(c) approved or established by a panel under paragraph 4; and only during the term of any such action plan.

4. Where a panel has been reconvened under paragraph 1(a), it:

(a) shall determine whether any action plan proposed by the Party complained against is sufficient to remedy the pattern of non-enforcement and

(i) if so, shall approve the plan, or

(ii) if not, shall establish such a plan consistent with the law of the Party complained against, and

(b) may, where warranted, impose a monetary enforcement assessment in accordance with Annex 34,

within 90 days after the panel has been reconvened or such other period as the disputing Parties may agree.

5. Where a panel has been reconvened under paragraph 1(b), it shall determine either that:

(a) the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment, or

(b) the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 34,

within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

6. A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 4(a)(ii) or 5(b), and pay any monetary enforcement assessment imposed under paragraph 4(b) or 5(b), and any such provision shall be final.

### **Article 35: Further Proceeding**

A complaining Party may, at any time beginning 180 days after a panel determination under Article 34(5)(b), request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan. On delivery of the request to the other Parties and the Secretariat, the Council shall reconvene the panel. The panel shall make the determination within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

### **Article 36: Suspension of Benefits**

1. Subject to Annex 36A, where a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by a panel:

(a) under Article 34(4)(b), or

(b) under Article 34(5)(b), except where benefits may be suspended under paragraph 2(a),

any complaining Party or Parties may suspend, in accordance with Annex 36B, the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment.

2. Subject to Annex 36A, where a panel has made a determination under Article 34(5)(b) and the panel:

(a) has previously imposed a monetary enforcement assessment under Article 34(4)(b) or established an action plan under Article 34(4)(a)(ii); or

(b) has subsequently determined under Article 35 that a Party is not fully implementing an action plan;

the complaining Party or Parties may, in accordance with Annex 36B, suspend annually the application to the Party complained against of NAFTA benefits in an amount no greater than the monetary enforcement assessment imposed by the panel under Article 34(5)(b).

3. Where more than one complaining Party suspends benefits under paragraph 1 or 2, the combined suspension shall be no greater than the amount of the monetary enforcement assessment.

4. Where a Party has suspended benefits under paragraph 1 or 2, the Council shall, on the delivery of a written request by the Party complained against to the other Parties and the Secretariat, reconvene the panel to determine whether the monetary enforcement assessment has been paid or collected, or whether the Party complained against is fully implementing the action plan, as the case may be. The panel shall submit its report within 45 days after it has been reconvened. If the panel determines that the assessment has been paid or collected, or that the Party complained against is fully implementing the action plan, the suspension of benefits under paragraph 1 or 2, as the case may be, shall be terminated.

5. On the written request of the Party complained against, delivered to the other Parties and the Secretariat, the Council shall reconvene the panel to determine whether the suspension of benefits by the complaining Party or Parties pursuant to paragraph 1 or 2 is manifestly excessive. Within 45 days of the request, the panel shall present a report to the disputing Parties containing its determination.

## **PART SIX**

### **GENERAL PROVISIONS**

#### **Article 37: Enforcement Principle**

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

#### **Article 38: Private Rights**

No Party may provide for a right of action under its law against any other Party on the ground that another Party has acted in a manner inconsistent with this Agreement.

#### **Article 39: Protection of Information**

1. Nothing in this Agreement shall be construed to require a Party to make available or allow access to information:

(a) the disclosure of which would impede its environmental law enforcement; or

(b) that is protected from disclosure by its law governing business or proprietary information, personal privacy or the confidentiality of governmental decision making.

(...)

#### **Article 40: Relation to Other Environmental Agreements**

Nothing in this Agreement shall be construed to affect the existing rights and obligations of the Parties under other international environmental agreements, including conservation agreements, to which such Parties are party.

(...)

#### **Article 45: Definitions**

1. For purposes of this Agreement:

A Party has not failed to "**effectively enforce its environmental law**" or to comply with Article 5(1) in a particular case where the action or inaction in question by agencies or officials of that Party:

(a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or

(b) results from *bona fide* decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities;

"**non-governmental organization**" means any scientific, professional, business, non-profit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

"**persistent pattern**" means a sustained or recurring course of action or inaction beginning after the date of entry into force of this Agreement;

"**province**" means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors; and

"**territory**" means for a Party the territory of that Party as set out in Annex 45.

2. For purposes of Article 14(1) and Part Five:

(a) "**environmental law**" means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through

(i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,

(ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or

(iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party's territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(b) For greater certainty, the term "**environmental law**" does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

3. For purposes of Article 14(3), "**judicial or administrative proceeding**" means:

(a) a domestic judicial, quasi-judicial or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise:

mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and

(b) an international dispute resolution proceeding to which the Party is party.

(...)

## II. Perspectives on Trade and Environment

### 2-1. New Report Charts NAFTA Environmental Record (December 2002)

<http://www.cec.org/news/details/index.cfm?varlan=english&ID=2511>

**Montreal, 15 December 2002** – In anticipation of the 10<sup>th</sup> anniversary of the signing of the North American Free Trade Agreement (NAFTA) on 17 December 1992, the Commission for Environmental Cooperation (CEC) released today a report detailing some of the effects of NAFTA on the environment.

Produced with the financial support of the Ford Foundation, *Free Trade and the Environment: The Picture Becomes Clearer* summarizes the key findings of research presented at the first North American Symposium on Assessing the Linkages between Trade and Environment (October 2000). And it points to a relationship that is anything but simple.

"Contrary to some expectations, free trade has brought about advances in technology and management practices that have made positive environmental changes," said Victor Shantora, Acting Executive Director of the CEC. "On the other hand, in some circumstances, free trade since NAFTA has also been linked to environmental deterioration."

Among the findings presented in the report are:

Some border communities have suffered more air pollution. Local infrastructure improvements haven't kept pace with expanded road freight transport, leading to an increase in air pollution concentrations at US-Canada and Mexico-US border crossing points.

There is little evidence of a 'race to the bottom.' Differences in environmental regulation have not been a significant factor in determining where business investments are located. The petroleum, base metals, and transportation equipment sectors have all witnessed a marginal boost in the emissions of pollutants. By contrast, NAFTA-related contraction in Canada's base-metals industry coincides with a reduction in toxic releases from that sector.

"While there is much more to know, it is clear that trade liberalization accompanied by robust environmental policies can help achieve sustainable development--just as freer trade without adequate environmental safeguards can trigger degradation," affirmed Mr. Shantora. "The key lesson is that policy matters."

A second North American Symposium on Assessing the Environmental Effects of Trade will be held in collaboration with the United Nations Environment Programme on 25-26 March 2003, in Mexico City. Sixteen research papers will be presented and discussed on

issues ranging from energy subsidies to invasive species and intensive livestock operations.

The CEC was established by Canada, Mexico and the United States to build cooperation among the three partners in implementing NAFTA's environmental accord, the North American Agreement on Environmental Cooperation.

The findings presented in *Free Trade and the Environment: The Picture Becomes Clearer* are those of the individual authors and do not necessarily reflect the views of the CEC or the governments of Canada, Mexico, or the United States.

\* For a full version of the report, visit  
<http://www.cec.org/files/PDF/ECONOMY/FreeTrade-en-fin.pdf>



2-2. *WTO Report: The Need for Environmental Cooperation (October 1999)*

[http://www.wto.org/english/tratop\\_e/envir\\_e/stud99\\_e.htm#introduction](http://www.wto.org/english/tratop_e/envir_e/stud99_e.htm#introduction)

A new WTO Secretariat report argues that international economic integration and growth reinforce the need for sound environmental policies at the national and international level. International cooperation is particularly important in addressing transboundary and global environmental challenges beyond the control of any individual nation. This would be true even if nations did not trade with one another.

The WTO Secretariat's Trade and Environment report, to be released on 14 October 1999, addresses the economic and political economy dimensions of the interface between trade and environment. The report argues that there is no basis for the sweeping generalizations that are often heard in the public debate, arguing that trade is either good for the environment, or bad for the environment. The real world linkages are a little bit of both, or a shade of grey. "Win-win" outcomes can be assured through well designed policies in both the trade and environmental fields.

"Every WTO Member Government supports open trade because it leads to higher living standards for working families which in turn leads to a cleaner environment. This report underscores that trade and environment need not be contradictory but can indeed be complementary," said WTO Director-General, Mike Moore.

Among the questions the report seeks to answer are the following: is economic integration a threat to the environment? Does trade undermine the regulatory efforts of governments to control pollution and resource degradation? How can we ensure that economic growth driven by trade will help us to move towards a sustainable use of the world's environmental resources?

Some of the main findings of the report include the following:

- Most environmental problems result from polluting production processes, certain kinds of consumption, and the disposal of waste products — trade as such is rarely the root cause of environmental degradation, except for the pollution associated with transportation of goods;
- Environmental degradation occurs because producers and consumers are not always required to pay for the costs of their actions;
- Environmental degradation is sometimes accentuated by policy failures, including subsidies to polluting and resource-degrading activities — such as subsidies to agriculture, fishing and energy;
- Trade would unambiguously raise welfare if proper environmental policies were in place;
- Trade barriers generally make for poor environmental policy;

- Not all environmental standards should necessarily be harmonized across countries;
- The competitiveness effects of environmental regulations are minor for most industries;
- A good environmental profile is often more of an asset for a firm than a liability in the international market-place, notwithstanding somewhat higher production costs;
- Little evidence bears out the claim that polluting industries tend to migrate from developed to developing countries to reduce environmental compliance costs;
- Yet, environmental measures are sometime defeated because of concerns about competitiveness, suggesting a need for improved international cooperation on environmental issues;
- Economic growth, driven by trade, may be part of the solution to environmental degradation, but it is not sufficient by itself to improve environmental quality — higher incomes must be translated into higher environmental standards;
- And not all kinds of economic growth are equally benign for the environment;
- Public accountability and good governance are essential to good environmental policy, including at the international level;
- Effective international cooperation is essential to protect the environment, especially in respect of transboundary and global environmental challenges.
- The cooperative model of the WTO, based on legal rights and obligations, could potentially serve as a model for a new global architecture of environmental cooperation.

Meanwhile, even within its current mandate, the WTO could do a few important things for the environment. The most obvious contribution would be to address remaining trade barriers on environmental goods and services in order to reduce the costs of investing in clean production technologies and environmental management systems. Another contribution would be to seek reductions in government subsidies that harm the environment, including energy, agriculture and fishing subsidies.

2-3. *Trade and Environment Principles by the NGOs*

<http://www.publiccitizen.org/trade/about/articles.cfm?ID=5555>

[American Lands Alliance](#) · [Center for International Environmental Law](#) · [Consumer's Choice Council](#) · [Defenders of Wildlife](#) · [Earthjustice Legal Defense Fund](#) · [Friends of the Earth](#) · [Institute for Agriculture & Trade Policy](#) · [National Wildlife Federation](#) · [Natural Resources Defense Council](#) · [Sierra Club](#) · [World Wildlife Fund](#)

**Trade agreements should support, not undermine, environmental protection. To that end, the organizations believe that the following principles should inform all aspects of United States trade policy.**

**I. Do Not Undermine Environmental Standards. Trade agreements should not be used to weaken national or international health and environmental standards. In particular, trade rules must:**

§ ensure that domestic environmental laws and regulations cannot be challenged by private investors before international tribunals;

§ allow distinctions between products if they are produced, for example, in a way that harms endangered species, ecosystems, or the global commons;

§ respect the right of governments to adopt precautionary standards to protect health and the environment;

§ ensure deference to multilateral environmental agreements (MEAs) when there are conflicts between trade rules and trade-related provisions of MEAs; and

§ ensure the availability of strong and clear environmental exceptions to trade and investment rules for laws and regulations that protect health, the environment, and natural resources.

**II. Encourage Environmental Progress. In order to ensure sustainable development, trade agreements should encourage environmental progress and discourage harmful environmental impacts. In particular, trade policymakers should:**

§ ensure that market opening agreements are accompanied by strong environmental initiatives to evaluate and raise environmental performance in countries to protect natural resources that would be vulnerable to increased exploitation;

§ provide for binding, enforceable measures in trade agreements to maintain and effectively enforce environmental laws and regulations and prohibit the lowering of environmental standards to attract investment or gain trade advantages;

§ ensure that environmental provisions in trade agreements are subject to the same dispute resolution and enforcement mechanisms that apply to all other aspects of the agreements;

§ provide a mechanism for citizens to seek review of failures to enforce health and environmental laws (e.g., see NAFTA);

§ require that foreign direct investors disclose basic information on their environmental practices;

§ develop a systematic program to improve environmental performance through capacity-building assistance, technology transfer, and corporate accountability;

§ work to develop cooperative, multilateral solutions to trade and environment conflicts; and

§ encourage the elimination of environmentally-harmful subsidies and economic incentives.

### **III. Require Democratic Procedures. Trade agreements must be developed and implemented through open and fully democratic procedures. In particular:**

§ trade agreements under negotiation should be subject to comprehensive environmental reviews involving public participation throughout the process, the results of which should be taken into account in the final agreement;

§ trade agreements should provide for meaningful public participation in a trade dispute, including review and comment on the written record, access to hearings, and submission of friend-of-the-court briefs.

§ the public should have access to negotiations and the working texts of trade agreements, and have a permanent role in trade advisory committees and trade institutions;

§ trade disputes and informal interventions should be initiated only after public notice and comment; and

§ consistent with Congress constitutional authority to regulate foreign commerce, Congress should provide new mechanisms to hold trade negotiators and policymakers accountable to implement the above trade and environment principles, including mandatory negotiating objectives.

### III. Citizen Submissions on Enforcement Matters (NAAEC Articles 14, 15)

<http://www.cec.org/citizen/index.cfm?varlan=english>

The Citizen Submissions on Enforcement Matters mechanism enables the public to play an active whistle-blower role when a government appears to be failing to enforce its environmental laws effectively. Members of the public trigger the process by submitting to NACEC a claim alleging such a failure on the part of any of the NAFTA partners. Following a review of the submission, the CEC may investigate the matter and publish a factual record of its findings, subject to approval by the CEC Council.

#### 2-1. Status

<http://www.cec.org/citizen/status/index.cfm?varlan=english>

The CEC Secretariat reviews Submissions on Enforcement Matters under Article 14 of the NAAEC. 36 submissions have been received since 1995.

#### Factual records (3)

##### [BC Hydro \(SEM-97-001\)](#)

Date filed: **2 April 1997**

Party concerned: **Canada**

Latest update: The final factual record was publicly released. (11 June 2000)

##### [Cozumel \(SEM-96-001\)](#)

Date filed: **17 January 1996**

Party concerned: **Mexico**

Latest update: The final factual record was publicly released. (24 October 1997)

##### [Metales y Derivados \(SEM-98-007\)](#)

Date filed: **23 October 1998**

Party concerned: **Mexico**

Latest update: The final factual record was publicly released. (11 February 2002)

#### Active files (12)

##### [Alca-Iztapalapa \(SEM-02-005\)](#)

Date filed: **25 November 2002**

Party concerned: **Mexico**

Latest update: The Secretariat notified the submitter(s) that the submission did not meet the Article 14(1) criteria and the submitter(s) had 30 days to provide the Secretariat with a revised submission that conforms with Article 14(1). (17

December 2002)

[Aquanova \(SEM-98-006\)](#)

Date filed: **20 October 1998**

Party concerned: **Mexico**

Latest update: The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders. (14 December 2001)

[BC Logging \(SEM-00-004\)](#)

Date filed: **15 March 2000**

Party concerned: **Canada**

Latest update: The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders. (14 December 2001)

[BC Mining \(SEM-98-004\)](#)

Date filed: **29 June 1998**

Party concerned: **Canada**

Latest update: The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders. (14 December 2001)

[El Boludo Project \(SEM-02-004\)](#)

Date filed: **23 August 2002**

Party concerned: **Mexico**

Latest update: The Secretariat determined that the submission met the criteria of Article 14(1) and requested a response from the concerned government Party in accordance with Article 14(2). (26 November 2002)

[Migratory Birds \(SEM-99-002\)](#)

Date filed: **19 November 1999**

Party concerned: **United States**

Latest update: The Secretariat submitted a draft factual record to Council, for a 45-day comment period on the accuracy of the draft. (28 November 2002)

[Molymex II \(SEM-00-005\)](#)

Date filed: **6 April 2000**

Party concerned: **Mexico**

Latest update: The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders. (28 May 2002)

[Oldman River II \(SEM-97-006\)](#)

Date filed: **4 October 1997**

Party concerned: **Canada**

Latest update: The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders. (14 December 2001)

**[Ontario Logging \(SEM-02-001\)](#)**

Date filed: **6 February 2002**

Party concerned: **Canada**

Latest update: The Secretariat informed Council that the Secretariat considers that the submission warrants development of a factual record. (12 November 2002)

**[Pulp and Paper \(SEM-02-003\)](#)**

Date filed: **8 May 2002**

Party concerned: **Canada**

Latest update: The Secretariat received a response from the concerned government Party and began considering whether to recommend a factual record. (6 August 2002)

**[Río Magdalena \(SEM-97-002\)](#)**

Date filed: **15 March 1997**

Party concerned: **Mexico**

Latest update: The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders. (22 March 2002)

**[Tarahumara \(SEM-00-006\)](#)**

Date filed: **6 September 2000**

Party concerned: **Mexico**

Latest update: The Secretariat informed Council that the Secretariat considers that the submission warrants development of a factual record. (29 August 2002)

**Closed files (24)**

**[AAA Packaging \(SEM-01-002\)](#)**

Date filed: 12 April 2001

Party concerned: Canada

**[Aage Tottrup \(SEM-96-002\)](#)**

Date filed: 20 March 1996

Party concerned: Canada

**[BC Hydro \(SEM-97-001\)](#)**

Date filed: 2 April 1997

Party concerned: Canada

**[Biodiversity \(SEM-97-005\)](#)**

Date filed: 21 July 1997

Party concerned: Canada

**[CEDF \(SEM-97-004\)](#)**

Date filed: 26 May 1997

Party concerned: Canada

**[Cozumel \(SEM-96-001\)](#)**

Date filed: 17 January 1996

Party concerned: Mexico

[Cytrar I \(SEM-98-005\)](#)  
Date filed: 11 August 1998  
Party concerned: Mexico

[Cytrar II \(SEM-01-001\)](#)  
Date filed: 14 February 2001  
Party concerned: Mexico

[Dermet \(SEM-01-003\)](#)  
Date filed: 14 June 2001  
Party concerned: Mexico

[Fort Huachuca \(SEM-96-004\)](#)  
Date filed: 14 November 1996  
Party concerned: United States

[Great Lakes \(SEM-98-003\)](#)  
Date filed: 28 May 1998  
Party concerned: United States

[Guadalajara \(SEM-98-001\)](#)  
Date filed: 9 January 1998  
Party concerned: Mexico

[Jamaica Bay \(SEM-00-003\)](#)  
Date filed: 2 March 2000  
Party concerned: United States

[Lake Chapala \(SEM-97-007\)](#)  
Date filed: 10 October 1997  
Party concerned: Mexico

[Logging Rider \(SEM-95-002\)](#)  
Date filed: 30 August 1995  
Party concerned: United States

[Metales y Derivados \(SEM-98-007\)](#)  
Date filed: 23 October 1998  
Party concerned: Mexico

[Methanex \(SEM-99-001\)](#)  
Date filed: 18 October 1999  
Party concerned: United States

[Mexico City Airport \(SEM-02-002\)](#)  
Date filed: 7 February 2002  
Party concerned: Mexico

[Molymex I \(SEM-00-001\)](#)  
Date filed: 27 January 2000  
Party concerned: Mexico

[Neste Canada \(SEM-00-002\)](#)  
Date filed: 21 January 2000  
Party concerned: United States

[Oldman River I \(SEM-96-003\)](#)  
Date filed: 9 September 1996  
Party concerned: Canada

[Ortiz Martínez \(SEM-98-002\)](#)  
Date filed: 14 October 1997  
Party concerned: Mexico

[Quebec Hog Farms \(SEM-97-003\)](#)  
Date filed: 9 April 1997  
Party concerned: Canada

[Spotted Owl \(SEM-95-001\)](#)  
Date filed: 30 June 1995  
Party concerned: United States



2-2. *Guidelines for Submissions*

[http://www.cec.org/citizen/guide\\_submit/index.cfm?varlan=english](http://www.cec.org/citizen/guide_submit/index.cfm?varlan=english)

Banff, 28 June 1999

COUNCIL RESOLUTION: 99-06

**Adoption of the Revised Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation**

THE COUNCIL:

HAVING adopted in Oaxaca, on 13 October 1995, the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the "guidelines");

GIVEN that Section 19.1 of the guidelines states that the Council would initiate a review process of the operation of these guidelines;

CONSIDERING the draft revisions to the guidelines approved by Council in Mérida, on 26 June 1998, and their release for public review and comment through the Joint Public Advisory Committee (the "JPAC");

MINDFUL of the public comments received, and of JPAC Advice 99-01 of 25 March 1999, in relation to the text of the revised guidelines;

RECOGNIZING that the revisions are designed to improve transparency and fairness of the public submissions process and are consistent with Article 11(4) of the North American Agreement on Environmental Cooperation (the "Agreement") and the Council's commitment to a process that honors the Secretariat's decision-making role under Article 14 of the Agreement;

NOTING the continuing importance of also concluding work on "Part V Model Rules" and the decision of Council, taken 25 June 1998, in Mérida, that the Model Rules provided for in Article 28 of the Agreement (the "Part V Model Rules") would be finalized within the same time frame as the revision of the guidelines;

HEREBY APPROVES the attached revised guidelines in anticipation of diligent finalization of Part V Model Rules.

***Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation***

### ***1. What is a submission on enforcement matters?***

1.1 A "submission on enforcement matters" ("submission") is a documented assertion that a Party to the North American Agreement on Environmental Cooperation ("Agreement") is failing to effectively enforce its environmental law. The relevant Articles of the Agreement are annexed to these guidelines.

### ***2. Who can make submissions on enforcement matters?***

2.1 Any nongovernmental organization or person established or residing in the territory of a Party to the Agreement may make a submission on enforcement matters for consideration by the Secretariat of the Commission for Environmental Cooperation ("Secretariat"). The term "nongovernmental organization" is defined in Article 45(1) of the Agreement.

2.2 The submission must clearly identify the person(s) or organization(s) making the submission ("Submitter").

### ***3. How are they to be submitted?***

3.1 A written copy of the submission must be received by the Secretariat at the following address:

Commission for Environmental Cooperation  
393, rue St-Jacques Ouest, Bureau 200  
Montréal (Québec)  
Canada H2Y 1N9

3.2 Submissions may be made in English, French or Spanish, which are the languages currently designated by the Parties for submissions.

3.3 Submissions should not exceed 15 pages of typed, letter-sized paper, excluding supporting information. Submissions will not be accepted by fax or any other electronic means. Where possible, a copy of the submission on computer diskette should also be provided.

3.4 Submissions must include the complete mailing address of the Submitter.

3.5 The Secretariat will promptly acknowledge the receipt of any correspondence or written document(s) relating to the initiation of the submission process.

3.6 Any correspondence or written document(s) will be considered a submission by the Secretariat if it contains the supporting information necessary to enable the Secretariat, at the proper time, to assess the submission based on the criteria listed in Article 14(1) of the Agreement.

3.7 Formal notifications by the Secretariat to a Submitter will be made in writing and sent by any reliable means of notification which provides a record of the notification having been sent and received.

3.8 The Secretariat will inform the Council of the initiation and progress of all submissions.

3.9 The Secretariat will inform the Submitter of the progress of its submission, as provided for in these guidelines.

3.10 The Secretariat may at any time notify the Submitter of any minor errors of form in the submission in order for the Submitter to rectify them.

3.11 The Secretariat will make its best efforts to take all actions necessary to process a submission in a timely manner.

#### ***4. What should be included in a submission?***

4.1 The Secretariat may only consider a submission on enforcement matters if that submission meets the criteria set forth in Article 14(1) of the Agreement, as specified in these guidelines.

### **INITIAL CONSIDERATION OF A SUBMISSION BY THE SECRETARIAT**

#### ***5. What criteria must a submission address?***

5.1 The submission must assert that a Party is failing to effectively enforce its environmental law and should focus on any acts or omissions of the Party asserted to demonstrate such failure. For purposes of determining if a submission meets the criteria of Article 14(1) of the Agreement, the term "environmental law" is defined in Article 45(2) of the Agreement.

5.2 The Submitter must identify the applicable statute or regulation, or provision thereof, as defined in Article 45(2) of the Agreement. In the case of the General Ecological Equilibrium and Environmental Protection Law of Mexico, the Submitter must identify the applicable chapter or provision of the Law.

5.3 Submissions must contain a succinct account of the facts on which such an assertion is based and must provide sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based.

5.4 A submission must appear to be aimed at promoting enforcement rather than at harassing industry. In making that determination, the Secretariat will consider such factors as whether or not:

(a) the submission is focused on the acts or omissions of a Party rather than on compliance by a particular company or business; especially if the Submitter is a competitor that may stand to benefit economically from the submission;

(b) the submission appears frivolous.

5.5 The submission must indicate that the matter has been communicated in writing to the relevant authorities of the Party in question and indicate the Party's response, if any. The Submitter must include, with the submission, copies of any relevant correspondence with the relevant authorities. The relevant authorities are the agencies of the government responsible under the law of the Party for the enforcement of the environmental law in question.

5.6 The Submission should address the factors for consideration identified in Article 14(2) to assist the Secretariat in its review under this provision. Thus, the Submission should address:

(a) The issue of harm (Article 14(2)(a));

(b) Whether further study of the matters raised would advance the goals of the Agreement (Article 14(2)(b));

(c) The actions, including private remedies, available under the Party's law that have been pursued (Article 14(2)(c));

(d) The extent to which the Submission is drawn exclusively from mass media reports (Article 14(2)(d)).

## ***6. What if the submission does not meet these criteria?***

6.1 Where the Secretariat determines that a submission does not meet the criteria set out in Article 14(1) of the Agreement or any other requirement set out in these guidelines, with the exception of minor errors of form contemplated in section 3.10 of these guidelines, the Secretariat will promptly notify the Submitter of the reason(s) why it has determined not to consider the submission.

6.2 After receipt of such notification from the Secretariat, the Submitter will have 30 days to provide the Secretariat with a submission that conforms to the criteria of Article 14(1) of the Agreement and to the requirements set out in these guidelines.

6.3 If the Secretariat again determines that the Submitter has not met the criteria of Article 14(1) of the Agreement or the requirements set out in these guidelines, the Secretariat will promptly inform the Submitter of its reason(s), and inform the Submitter that the process is terminated with respect to that submission.

***DETERMINING WHETHER A SUBMISSION ON ENFORCEMENT MATTERS  
WARRANTS PREPARATION OF A FACTUAL RECORD***

***7. When is a response from the Party to the submission merited?***

7.1 Where the Secretariat determines that the submission meets the criteria set out in Article 14(1) of the Agreement, the Secretariat will determine whether the submission merits requesting a response from the Party concerned. The Secretariat will accordingly notify the Council and the Submitter.

7.2 The notification to the Council and the Submitter of the Secretariat's determination concerning whether or not a submission meets the criteria in Article 14(1) will include, as appropriate, an explanation of how the submission meets or fails to meet each of those criteria. The notification to the Council and the Submitter of the Secretariat's determination concerning whether or not the submission merits requesting a response from the Party concerned will include an explanation of the factors that guided the Secretariat in making the determination, including each consideration set forth in Article 14(2) of the Agreement, if applicable. These notifications will be available on the registry referred to in section 15 of these guidelines and in the public file referred to in section 16 of these guidelines at the same time they are provided to the Council and the Submitter.

7.3 As set forth in Article 14(2) of the Agreement, the Secretariat will, in making that determination, be guided by whether:

- (a) the submission alleges harm to the person or organization making the submission;
- (b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of the Agreement;
- (c) private remedies available under the Party's law have been pursued; and
- (d) the submission is drawn exclusively from mass media reports.

7.4 In considering whether the submission alleges harm to the person or organization making the submission, the Secretariat will consider such factors as whether:

- (a) the alleged harm is due to the asserted failure to effectively enforce environmental law; and
  - a. the alleged harm relates to the protection of the environment or the prevention of danger to human life or health (but not directly related to worker safety or health), as stated in Article 45(2) of the Agreement.

7.5 In considering whether private remedies available under the Party's law have been pursued, the Secretariat will be guided by whether:

- (a) requesting a response to the submission is appropriate if the preparation of a factual record on the submission could duplicate or interfere with private remedies that are being pursued or have been pursued by the Submitter; and
- (b) reasonable actions have been taken to pursue such remedies prior to initiating a submission, bearing in mind that barriers to the pursuit of such remedies may exist in some cases.

7.6 In considering whether a response from the Party concerned should be requested when the submission is drawn exclusively from mass media reports, the Secretariat will determine if other sources of information relevant to the assertion in the submission were reasonably available to the Submitter.

***8. What if it is determined that no response from the Party is merited?***

8.1 The Secretariat may consider new or supplemental information from the Submitter within 30 days following receipt by the Submitter of notification that the Secretariat has determined that no response from the Party is necessary. If no new or supplemental information is received by the Secretariat within this time period, or if the Secretariat determines that no response from the Party is merited in light of the new or supplemental information provided by the Submitter, the process will be terminated with respect to that submission, and the Secretariat will so notify the Submitter.

***9. How is a response from the Party requested?***

9.1 Where the Secretariat determines that a submission merits a response from the Party concerned, the Secretariat will forward to the Party a copy of the submission and any supporting information provided by the Submitter. The Secretariat will translate the submission and supporting information into the official language(s) of the Party from which a response is requested, unless that Party directs otherwise.

9.2 The Party will advise the Secretariat within 30 days, or in exceptional circumstances and on notification to the Secretariat within 60 days, of delivery of the request for a response:

- (a) whether the matter is the subject of a pending judicial or administrative proceeding, and
- (b) of any other information that the Party wishes to submit such as
  - i) whether the matter was previously the subject of a judicial or administrative proceeding, and
  - ii) whether private remedies in connection with the matter are available to the Submitter, and whether such remedies have been pursued.

9.3 The Party may include in its response whether environmental policies have been defined or actions have been taken in connection with the matter in question.

9.4 If the Party informs the Secretariat that the matter raised in the submission is the subject of a pending judicial or administrative proceeding, as defined in Article 45(3) of the Agreement, the Secretariat will proceed no further with the submission, and will notify the Submitter and the Council of its reason(s) and that the submission process is terminated.

9.5 Upon receipt of a response from the Party or following the expiration of the response period, the Secretariat may begin its consideration of whether it will inform the Council that the submission warrants developing a factual record.

9.6 If the Secretariat considers that the submission, in light of any response provided by the Party, does not warrant development of a factual record, the Secretariat will notify the Submitter and the Council of its reason(s) in accordance with section 7.2 of these guidelines, and that the submission process is terminated with respect to that submission.

#### ***10. How is a decision on whether or not to prepare a factual record taken?***

10.1 If the Secretariat considers that the submission, in light of any response provided by the Party or after the response period has expired, warrants developing a factual record, the Secretariat will so inform the Council. When the Secretariat informs the Council that it considers that a factual record is warranted, the Secretariat will provide sufficient explanation of its reasoning to allow the Council to make an informed decision. In addition, it will provide a copy of the submission, the supporting information provided with the submission, and any other relevant information, when these items have not been provided to the Council. The Council may request further explanation of the Secretariat's reasons, which the Council will receive prior to taking its decision under Article 15(2) of the Agreement concerning whether or not a factual record will be prepared.

10.2 Thirty days after the Council has been informed by the Secretariat that the Secretariat considers that the submission warrants developing a factual record, notice that the Council has been so informed will be placed by the Secretariat in the registry referred to in section 15 of these guidelines and in the public file referred to in section 16 of these guidelines. The explanation of the Secretariat's reasoning as to why it has informed the Council that it considers that a factual record is warranted will be placed on the registry and in the public file by the Secretariat as soon as practicable after the Council has reached its decision under Article 15(2) of the Agreement.

10.3 The Secretariat may consolidate two or more submissions that relate to the same facts and the same asserted failure to effectively enforce an environmental law. In other situations where two or more submissions relate essentially to the same facts and enforcement matter and the Secretariat considers that it would be more efficient or cost-effective to consolidate them, it may so propose to the Council.

10.4 The Secretariat will prepare a factual record if the Council, by a two-thirds vote, instructs it to do so. If the Council votes to instruct the Secretariat not to prepare a factual record, the Secretariat will so inform the Submitter and will inform the Submitter that the submission process is terminated. Unless the Council decides otherwise, any such decision will be noted in the registry and in the public file described in these guidelines.

#### ***11. How is a factual record prepared?***

11.1 In preparing draft and final factual records, the Secretariat will consider any information furnished by a Party, including information developed by experts and furnished by a Party. The Secretariat may consider any relevant technical, scientific or other information:

- (a) that is publicly available;
- (b) submitted by interested nongovernmental organizations or persons;
- (c) submitted by the Joint Public Advisory Committee (JPAC); or
- (d) developed by the Secretariat or by independent experts.

11.2 If the JPAC provides relevant technical, scientific or other information to the Secretariat relating to the development of a factual record, the Secretariat will forward copies of the information to the Council.

11.3 All contributors to the factual record process are encouraged to submit only relevant information, reducing wherever possible the volume of material submitted.

11.4 The Secretariat will submit the draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days. The Secretariat will then prepare the final factual record for the Council, incorporating any such comments as appropriate.

## ***12. What is included in a factual record?***

12.1 Draft and final factual records prepared by the Secretariat will contain:

- (a) a summary of the submission that initiated the process;
- (b) a summary of the response, if any, provided by the concerned Party;
- (c) a summary of any other relevant factual information; and
- (d) the facts presented by the Secretariat with respect to the matters raised in the submission.

12.2 The final factual record will incorporate, as appropriate, the comments of any Party. If a Party so desires, its comments on the draft factual record will be posted on the registry referred to in section 15 of these guidelines.

## ***13. Will the final factual record be made public?***

13.1 After receiving the final factual record, the Council may decide, by a two-thirds vote, to make it public. If it so decides, the final factual record will be made public as soon as it is available in the three official languages of the Commission and a copy will be provided to the Submitter. This should normally be within 60 days of the submission of the final factual record to the Council.



13.2 If the Council decides not to make a factual record available to the public, the Secretariat will inform the Submitter that the factual record will not be made public.

13.3 Independent of any Council decision with respect to the public availability of a factual record, the Council may, by a two-thirds vote, make a factual record available to the JPAC for their information in accordance with Article 16(7) of the Agreement and the JPAC Rules of Procedure.

***14. Can a submission under consideration be withdrawn?***

14.1 If a Submitter informs the Secretariat in writing before the response from the Party is received by the Secretariat that it no longer wishes to have the submission process continue with respect to its submission, the Secretariat will proceed no further with the submission and so inform the Council. If two or more submitters have made a joint submission, all of the Submitters must inform the Secretariat in writing that they no longer wish to have the submission process continue, before the submission may be withdrawn.

14.2 If the Submitter informs the Secretariat in writing that it wishes to withdraw its submission after the response from the Party is received by the Secretariat, the Secretariat will proceed no further unless the Party concerned informs it that consideration of the Submission should continue. The Secretariat shall inform the Council of any such notice of withdrawal and of whether or not the Party concerned wants consideration of the submission to continue.

14.3 If the Submitter withdraws its submission after the Secretariat is instructed by the Council to prepare a factual record, the Secretariat will so inform the Council. The withdrawal of the submission will be without prejudice to any further steps that may be taken with respect to the factual record, as stated in Article 15(3) of the Agreement.

***15. How will information on the status of submissions and factual records be made publicly available?***

15.1 The Secretariat will establish a registry to provide summary information so that any interested nongovernmental organization or person, as well as the JPAC, may follow the status of any given submission during the submission process envisaged under Articles 14 and 15 of the Agreement. The registry will be accessible to the public. The Secretariat will provide periodically a copy of the registry to the Council. Subject to the confidentiality provisions of the Agreement and of these guidelines, the registry will include the following information unless decided otherwise by the Council:

- (a) a list of all the submissions including:
  - i) the name of the Submitter and the name of the Party addressed in each submission;

ii) a summary of the matter addressed in the submission that initiated the process, including a brief description of the asserted failure(s) to effectively enforce environmental law;

iii) the name and citation of the environmental law(s) in question;

(b) a summary of the response provided by the Party, if any;

(c) a summary of the following notifications, as applicable:

i) a given submission does not meet the criteria set forth in Article 14(1) of the Agreement;

ii) a response is requested from the Party concerned;

iii) the Secretariat has determined that no response from the Party concerned is merited;

iv) as specified in section 10.2 of these guidelines, the Secretariat considers that, in its view, a preparation of a factual record is warranted;

v) the Council has instructed the Secretariat not to prepare a factual record;

vi) the final factual record has been provided to the Council;

vii) the Council has decided not to make the factual record available to the public;

(d) as specified in section 10.2 of these guidelines, the explanation of the Secretariat's reasoning as to why it has informed the Council that it considers that a factual record is warranted;

(e) the Council's decision on the preparation of a factual record; and

(f) the Council's decision regarding whether the factual record will be made publicly available.

15.2 Any summary will contain information sufficient to enable interested nongovernmental organizations or persons or the JPAC to provide relevant information to the Secretariat for the development of a factual record.

### ***16. Does the public have access to documents relating to individual submissions?***

16.1 The Secretariat will maintain a file on each submission at its headquarters in a manner suitable for public access, inspection and photocopying. A reasonable cost may be requested for photocopying. Photocopies may also be obtained by mail at a reasonable cost to the public. Subject to confidentiality provisions of the Agreement and of these guidelines, the file will contain:

a) the submission and supporting information, including any documentary evidence on which the submission may be based;

b) any response by a Party, developed under Article 14(2) of the Agreement;

c) any notifications placed on the registry by the Secretariat in accordance with section 15.1(c) of these guidelines; and

d) the final factual record, where the Council has decided to make it publicly available pursuant to Article 15(7) of the Agreement and, any other information considered by the Secretariat under Article 15(4) of the Agreement.

16.2 These documents will be placed in the public file in a timely manner.

16.3 As specified in section 10.2 of these guidelines, the explanation of the Secretariat's reasoning as to why it has informed the Council that it considers that a factual record is warranted.

16.4 When a submission received by the Secretariat names an individual or entity, the Party concerned may notify that individual or entity of the existence of that submission.

***17. How will privacy and confidentiality be safeguarded?***

17.1 In accordance with Article 11(8)(a) of the Agreement, the Secretariat will safeguard from disclosure any information it receives that could identify a Submitter if the Submitter so requests, or the Secretariat otherwise considers it appropriate. In accordance with Article 11(8)(b) of the Agreement, the Secretariat will safeguard from disclosure to the public any information received from a nongovernmental organization or person where the information is designated by that nongovernmental organization or person as confidential or proprietary. The Parties will have access to this confidential or proprietary information, except information that could identify the Submitter pursuant to Article 11(8)(a) of the Agreement.

17.2 The Secretariat will safeguard from disclosure any information provided by the Council or a Party and designated as confidential.

17.3 Given the fact that confidential or proprietary information provided by a Party, a nongovernmental organization or a person may substantially contribute to the opinion of the Secretariat that a factual record is, or is not, warranted, contributors are encouraged to furnish a summary of such information or a general explanation of why the information is considered confidential or proprietary.

17.4 If a Party provides information relating to a submission on enforcement matters to the Secretariat, the Council, the JPAC or another Party, that is confidential or proprietary, the recipient will treat the information on the same basis as the Party providing the information.

***18. What is the relationship between these guidelines and the Agreement?***

18.1 These guidelines are not intended to modify the Agreement. If there is a conflict between any provision of these guidelines and any provision of the Agreement, the provision of the Agreement will prevail to the extent of the inconsistency.

2-3. Registry and Public Files of Submissions

<http://www.cec.org/citizen/status/index.cfm?varlan=english>

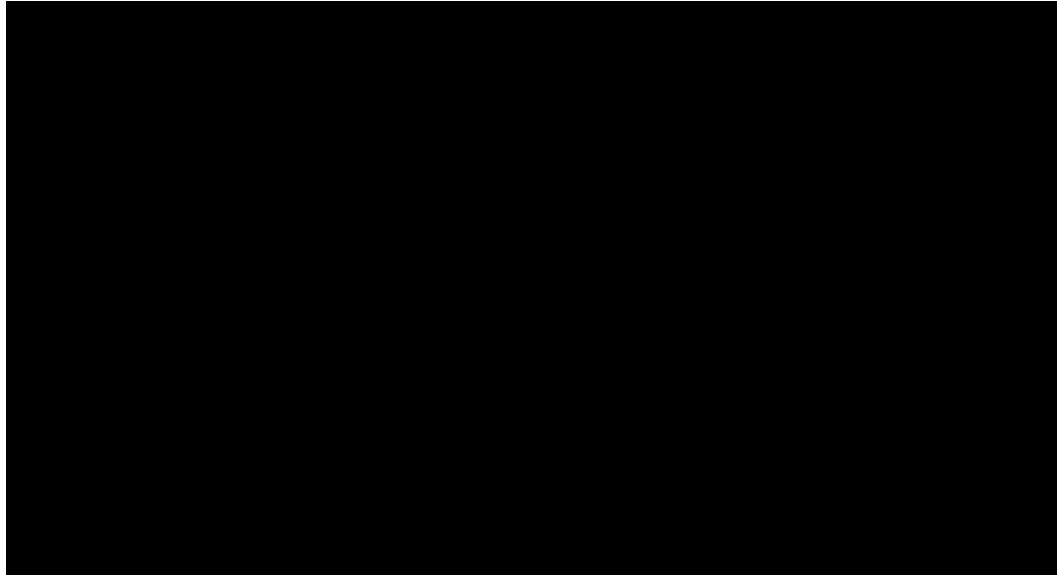
(From the CEC Website)

**Citizen Submissions on Enforcement Matters**

**Current Status of Filed Submissions**

The CEC Secretariat reviews Submissions on Enforcement Matters under Article 14 of the NAAEC. 55 submissions have been received since 1995.

**Factual records (11)**



**[Aquanova \(SEM-98-006\)](#)**

Date filed: **20/10/1998**

Party concerned: **Mexico**

Latest update: The final factual record was publicly released. (23/06/2003)

**[BC Hydro \(SEM-97-001\)](#)**

Date filed: **2/04/1997**

Party concerned: **Canada**

Latest update: The final factual record was publicly released. (11/06/2000)

**[BC Logging \(SEM-00-004\)](#)**

Date filed: **15/03/2000**

Party concerned: **Canada**

Latest update: The final factual record was publicly released. (11/08/2003)

**[BC Mining \(SEM-98-004\)](#)**

Date filed: **29/06/1998**

Party concerned: **Canada**

Latest update: The final factual record was publicly released. (12/08/2003)

[Cozumel \(SEM-96-001\)](#)

Date filed: **17/01/1996**

Party concerned: **Mexico**

Latest update: The final factual record was publicly released. (24/10/1997)

[Metales y Derivados \(SEM-98-007\)](#)

Date filed: **23/10/1998**

Party concerned: **Mexico**

Latest update: The final factual record was publicly released. (11/02/2002)

[Migratory Birds \(SEM-99-002\)](#)

Date filed: **19/11/1999**

Party concerned: **United States**

Latest update: The final factual record was publicly released. (24/04/2003)

[Molymex II \(SEM-00-005\)](#)

Date filed: **6/04/2000**

Party concerned: **Mexico**

Latest update: The final factual record was publicly released. (8/10/2004)

[Oldman River II \(SEM-97-006\)](#)

Date filed: **4/10/1997**

Party concerned: **Canada**

Latest update: The final factual record was publicly released. (11/08/2003)

[Río Magdalena \(SEM-97-002\)](#)

Date filed: **15/03/1997**

Party concerned: **Mexico**

Latest update: The final factual record was publicly released. (11/12/2003)

[Tarahumara \(SEM-00-006\)](#)

Date filed: **9/06/2000**

Party concerned: **Mexico**

Latest update: The final factual record was publicly released. (9/01/2006)

**Active files (12)**



[ALCA-Iztapalapa II \(SEM-03-004\)](#)

Date filed: **17/06/2003**

Party concerned: **Mexico**

Latest update: The Secretariat posted a request for information relevant to the factual record on its web site. (16/11/2005)

[Coal-fired Power Plants \(SEM-04-005\)](#)

Date filed: **20/09/2004**

Party concerned: **United States**

Latest update: The Secretariat informed Council that the Secretariat considers that the submission warrants development of a factual record. (5/12/2005)

[Coronado Islands \(SEM-05-002\)](#)

Date filed: **3/05/2005**

Party concerned: **Mexico**

Latest update: The Secretariat received a response from the concerned government Party and began considering whether to recommend a factual record. (10/01/2006)

[Devils Lake \(SEM-06-002\)](#)

Date filed: **30/03/2006**

Party concerned: **Canada**

Latest update: The Secretariat received a revised submission and began to analyze it. (7/07/2006)

[Devils Lake \(SEM-06-002\)](#)

Date filed: **30/03/2006**

Party concerned: **United States**

Latest update: The Secretariat received a revised submission and began to analyze it. (7/07/2006)

[Environmental Pollution in Hermosillo II \(SEM-05-003\)](#)

Date filed: **30/08/2005**

Party concerned: **Mexico**

Latest update: The Secretariat received a response from the concerned government Party and began considering whether to recommend a factual record. (16/02/2006)

**[Ex Hacienda El Hospital II \(SEM-06-003\)](#)**

Date filed: **17/07/2006**

Party concerned: **Mexico**

Latest update: The Secretariat acknowledged receipt of a submission and began a preliminary analysis of it under the guidelines. (18/07/2006)

**[Lake Chapala II \(SEM-03-003\)](#)**

Date filed: **23/05/2003**

Party concerned: **Mexico**

Latest update: The Secretariat informed Council that the Secretariat considers that the submission warrants development of a factual record. (18/05/2005)

**[Montreal Technoparc \(SEM-03-005\)](#)**

Date filed: **14/08/2003**

Party concerned: **Canada**

Latest update: The Secretariat posted a request for information relevant to the factual record on its web site. (8/02/2005)

**[Ontario Logging \(SEM-02-001\)](#)**

Date filed: **6/02/2002**

Party concerned: **Canada**

Latest update: The Secretariat submitted a final factual record to Council for Council's vote on whether to make the final factual record publicly available. (20/06/2006)

**[Ontario Logging II \(SEM-04-006\)](#)**

Date filed: **12/10/2004**

Party concerned: **Canada**

Latest update: The Secretariat submitted a final factual record to Council for Council's vote on whether to make the final factual record publicly available. (20/06/2006)

**[Pulp and Paper \(SEM-02-003\)](#)**

Date filed: **8/05/2002**

Party concerned: **Canada**

Latest update: The Secretariat submitted a final factual record to Council for Council's vote on whether to make the final factual record publicly available. (28/06/2006)

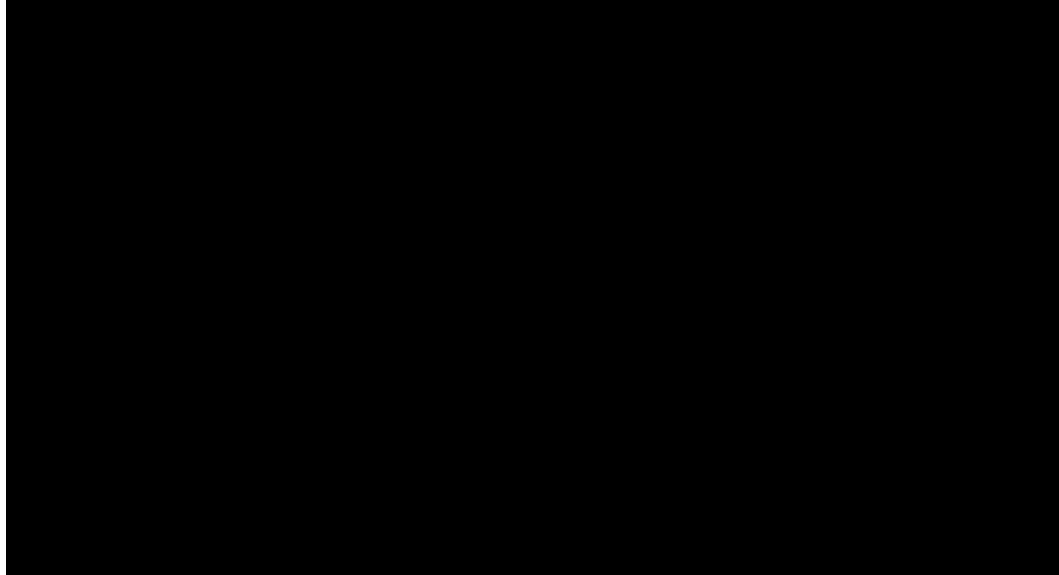
**[Quebec Automobiles \(SEM-04-007\)](#)**

Date filed: **3/11/2004**

Party concerned: **Canada**

Latest update: The Secretariat placed a work plan on its web site or otherwise made it available to the public and stakeholders. (5/07/2006)

**Closed files (43)**



[AAA Packaging \(SEM-01-002\)](#)

Date filed: 12/04/2001

Party concerned: Canada

[Aage Tottrup \(SEM-96-002\)](#)

Date filed: 20/03/1996

Party concerned: Canada

[ALCA-Iztapalapa \(SEM-02-005\)](#)

Date filed: 25/11/2002

Party concerned: Mexico

[Aquanova \(SEM-98-006\)](#)

Date filed: 20/10/1998

Party concerned: Mexico

[BC Hydro \(SEM-97-001\)](#)

Date filed: 2/04/1997

Party concerned: Canada

[BC Logging \(SEM-00-004\)](#)

Date filed: 15/03/2000

Party concerned: Canada

[BC Mining \(SEM-98-004\)](#)

Date filed: 29/06/1998

Party concerned: Canada

[Biodiversity \(SEM-97-005\)](#)

Date filed: 21/07/1997

Party concerned: Canada

[CEDF \(SEM-97-004\)](#)

Date filed: 26/05/1997

Party concerned: Canada

[Cozumel \(SEM-96-001\)](#)

Date filed: 17/01/1996

Party concerned: Mexico

[Crushed Gravel in Puerto Peñasco \(SEM-05-001\)](#)

[Cytrar I \(SEM-98-005\)](#)

Date filed: 11/08/1998



Date filed: 12/01/2005  
Party concerned: Mexico

Party concerned: Mexico

[Cytrar II \(SEM-01-001\)](#)

Date filed: 14/02/2001  
Party concerned: Mexico

[Cytrar III \(SEM-03-006\)](#)

Date filed: 15/08/2003  
Party concerned: Mexico

[Dermet \(SEM-01-003\)](#)

Date filed: 14/06/2001  
Party concerned: Mexico

[El Boludo Project \(SEM-02-004\)](#)

Date filed: 23/08/2002  
Party concerned: Mexico

[Environmental Pollution in Hermosillo \(SEM-04-002\)](#)

Date filed: 14/07/2004  
Party concerned: Mexico

[Ex Hacienda El Hospital \(SEM-06-001\)](#)

Date filed: 26/01/2006  
Party concerned: Mexico

[Fort Huachuca \(SEM-96-004\)](#)

Date filed: 14/11/1996  
Party concerned: United States

[Gasoline spill in Tehuantepec \(SEM-04-003\)](#)

Date filed: 7/09/2004  
Party concerned: Mexico

[Great Lakes \(SEM-98-003\)](#)

Date filed: 28/05/1998  
Party concerned: United States

[Guadalajara \(SEM-98-001\)](#)

Date filed: 9/01/1998  
Party concerned: Mexico

[Hazardous waste in Arteaga \(SEM-04-001\)](#)

Date filed: 27/01/2004  
Party concerned: Mexico

[Home Port Xcaret \(03-002\)](#)

Date filed: 14/05/2003  
Party concerned: Mexico

[Jamaica Bay \(SEM-00-003\)](#)

Date filed: 2/03/2000  
Party concerned: United States

[Lake Chapala \(SEM-97-007\)](#)

Date filed: 10/10/1997  
Party concerned: Mexico

[Logging Rider \(SEM-95-002\)](#)

Date filed: 30/08/1995  
Party concerned: United States

[Metales y Derivados \(SEM-98-007\)](#)

Date filed: 23/10/1998  
Party concerned: Mexico

[Methanex \(SEM-99-001\)](#)

Date filed: 18/10/1999  
Party concerned: United States

[Mexico City Airport \(SEM-02-002\)](#)

Date filed: 7/02/2002  
Party concerned: Mexico

[Migratory Birds \(SEM-99-002\)](#)

[Molymex I \(SEM-00-001\)](#)

Date filed: 19/11/1999  
Party concerned: United States

[Molymex II \(SEM-00-005\)](#)

Date filed: 6/04/2000  
Party concerned: Mexico

[Oldman River I \(SEM-96-003\)](#)

Date filed: 9/09/1996  
Party concerned: Canada

[Oldman River III \(SEM-04-004\)](#)

Date filed: 10/09/2004  
Party concerned: Canada

[Ortiz Martínez \(SEM-98-002\)](#)

Date filed: 14/10/1997  
Party concerned: Mexico

[Río Magdalena \(SEM-97-002\)](#)

Date filed: 15/03/1997  
Party concerned: Mexico

[Tarahumara \(SEM-00-006\)](#)

Date filed: 9/06/2000  
Party concerned: Mexico

Date filed: 27/01/2000  
Party concerned: Mexico

[Neste Canada \(SEM-00-002\)](#)

Date filed: 21/01/2000  
Party concerned: United States

[Oldman River II \(SEM-97-006\)](#)

Date filed: 4/10/1997  
Party concerned: Canada

[Ontario Power Generation \(03-001\)](#)

Date filed: 1/05/2003  
Party concerned: Canada

[Quebec Hog Farms \(SEM-97-003\)](#)

Date filed: 9/04/1997  
Party concerned: Canada

[Spotted Owl \(SEM-95-001\)](#)

Date filed: 30/06/1995  
Party concerned: United States

## IV. Case Study (Metales y Derivados)

<http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=67>

### Metales y Derivados

*Submission ID:* **SEM-98-007**

*Party concerned:* **Mexico**

*Date filed:* **23 October 1998**

*Status:* **Closed**

**Latest update:** 11 February 2002

[The final factual record was publicly released.](#)

#### Summary of the matter addressed in the submission:

The Submitters allege that Mexico has failed to effectively enforce its environmental law in connection with an abandoned lead smelter in Tijuana, Baja California, Mexico, that poses serious threats to the health of the neighboring community, and to the environment. The submitters assert that New Frontier Trading Corporation, through its subsidiary Metales y Derivados, failed to repatriate to the United States the hazardous waste it generated, as required under Mexican law and the La Paz Agreement. The submitters allege that "the owner and operators abandoned the company upon its closure and returned to the United States, leaving behind an estimated 6,000 metric tons of lead slag, waste piles of by-products (mainly broken battery cases made of polypropylene, battery internal components made of polyvinyl chloride and metal scrap), sulfuric acid, and heavy metals such as antimony, arsenic, cadmium and copper from the battery recycling operations".

The submission alleges that Mexico "has failed to effectively enforce its environmental laws by its inability or unwillingness to continue the criminal proceedings [initiated] against [the owner] by means of formal extradition." It further alleges that Mexico "failed to effectively enforce Article 170 of the General Law by not taking appropriate measures to either contain or neutralize the

#### Submitter(s)

Environmental Health Coalition  
Comité Ciudadano Pro Restauración del Cañón del Padre y Servicios Comunitarios, A.C.

More about the process  
[Bringing the Facts to Light](#)

A Guide to Articles 14 and 15 of the North American Agreement on Environmental Cooperation

[More information >>](#)

[\[Download document\]](#)

hazardous waste generated by Metales y Derivados in order to prevent an imminent risk of harm to the environment and to public health..." and that it has failed to enforce "article 134 of the General Law because it has not taken appropriate actions to control or prevent soil contamination in and near the Metales y Derivados site." In addition to the allegations under article 14 and 15 of the NAAEC, the Submitters request that the Secretariat prepare a report under article 13 of the NAAEC. They argue that the case "... merits a report by the Secretariat because it falls under two principal strategic programs of the 1996 Annual Program. One program is aimed at protecting human health and the environment and the other focuses on enforcement cooperation."

### **Name and citation of the environmental law inquestion**

General Law on Ecological Balance and Environmental Protection (General Law) Articles 170 and 134, Penal Code Article 415, Law on International Extradition Article 3 and the Extradition Treaty Between the United States of America and the United Mexican States Articles 1 and 2.

### **Submission timeline**

#### **23 October 1998**

The Secretariat acknowledged receipt of a submission and began a preliminary analysis of it under the guidelines.


 **[Submission](#)** — Submission authored by Submitter(s) on 23 October 1998

 **[Acknowledgement](#)** — Communication to Submitter(s) authored by Secretariat on 30 October 1998

The Secretariat began reviewing the submission under Article 14(1).


#### **5 March 1999**


The Secretariat determined that the submission met the criteria of Article 14(1) and requested a response from the concerned government Party in accordance with Article 14(2).

 **[Determination](#)** — Secretariat Determination under Article 14(2) authored by Secretariat on 5 March 1999

## 1 June 1999

The Secretariat received a response from the concerned government Party and began considering whether to recommend a factual record.

 [Party Response](#) — Response from the Party under Article 14 (3) authored by Mexico on 31 May 1999

 [Acknowledgement](#) — Other document authored by Secretariat on 14 June 1999


## 6 March 2000

The Secretariat informed Council that the Secretariat considers that the submission warrants development of a factual record.

 [Determination](#) — Secretariat Notification to Council under Article 15(1) authored by Secretariat on 6 March 2000


## 16 May 2000

The Council voted to instruct the Secretariat to develop a Factual Record.

 [Resolution](#) — Council decision concerning the development of a factual record authored by Council on 16 May 2000

## 30 May 2000

The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders.

 [Document related to the preparation of a factual record](#) — Document related to the preparation of a Factual record authored by Secretariat on 30 May 2000

 [Secretariat Information Request](#) — Document related to the preparation of a Factual record authored by Secretariat on 1 June 2000

## 1 October 2001

The Secretariat submitted a draft factual record to Council, for a 45-day comment period on the accuracy of the draft.

### 15 November 2001

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The Secretariat received comments from Canada.

### 16 November 2001

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The Secretariat received comments from the United States.

### 29 November 2001


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The Secretariat submitted a final factual record to Council for Council's vote on whether to make the final factual record publicly available.

### 7 February 2002

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Council voted to instruct the Secretariat to make the final factual record publicly available.

 [Resolution](#) — Council decision on whether the factual record will be made publicly available authored by Council on 7 February 2002

### 11 February 2002

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The final factual record was publicly released.

 [Final Factual Record](#) — Final Factual Record authored by Secretariat on 7 February 2002

 [Annex](#) — Final Factual Record authored by Secretariat on 7 February 2002

**Additional Resources and References (Optional Reading)**

*Arlene Wilson, GATT, Trade Liberalization, and the Environment: An Economic Analysis*

<http://cnie.org/NLE/CRSreports/Economics/econ-3.cfm>

*Mary Tiemann, NAFTA: Related Environmental Issues and Initiatives*

<http://cnie.org/NLE/CRS/abstract.cfm?NLEid=15870>

*Publication and Information Resources (CEC: Commission for Environmental Cooperation)*

[http://www.cec.org/pubs\\_info\\_resources/publications/all\\_pubs/index.cfm?varlan=english](http://www.cec.org/pubs_info_resources/publications/all_pubs/index.cfm?varlan=english)