

Center for International Environmental Law

September 22, 2000

Manon Pepin
JPAC Liaison Officer

Re: Comments on Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15

Thank you for the opportunity to comment on the JPAC process for reviewing issues related to the implementation and elaboration of Articles 14 and 15. We believe the new process for public review of issues has the potential to bring much needed transparency to the citizen submissions mechanism. Additionally, we believe JPAC, as an independent entity that has demonstrated significant leadership in providing advice to the Council, is well-suited to the task of facilitating the review. However, the extent to which the new process increases the fairness and smooth functioning of the citizen submissions mechanism will depend largely on how the Council responds to JPAC advice.

We offer the following general observations and questions about the process:

- It is unclear if JPAC intends to address each issue separately or group the issues chronologically or by subject matter. We suggest JPAC attempt to group the issues, if possible, to ensure an efficient process.
- Clearly, JPAC will need financial and staff resources to implement this process. It appears that for every issue raised by the public, JPAC might have up to four tasks: (1) review for relevancy; (2) draft a written explanation; (3) provide advice to Council; and (4) hold a public review. We encourage the Council to evaluate the workplan to determine where resources might be available. We suggest the Council begin with an evaluation of existing programs that have exceeded their original life expectancy.
- We are most hopeful that the requirement imposed on Council to explain its decisions will reduce the ability of a Party to weaken the process in response to submissions against it. We believe this conflict of interest created by Party actions has been a serious structural flaw in the existing process.

How JPAC receives and transmits issues from the public:

- We suggest JPAC identify the criteria it will use to determine whether an issue raised by a member of the public is relevant to the implementation and further elaboration of Articles 14 and 15. These criteria should be defined liberally to maximize the opportunity for public input; and, in cases of uncertainty, an issue raised by the public should be presumed to be relevant.

- We suggest JPAC identify the timeframe within which it must make this determination of relevancy and the timeframe within which the Council must decide to address or not address the relevant issue.
- JPAC proposes to draft a written explanation of why it considers an issue is not within the scope of Resolution 00-09. Will it provide a written explanation when it believes an issue is relevant? This might provide the Council with additional guidance on its decision to address or not address the issue.

How JPAC reviews issues referred to it by the Council:

- JPAC proposes to "hold a public review in such a form as it determines is necessary". We suggest JPAC describe the possible "forms" for public review and identify the criteria it will use to choose the form of review.
- Again, we suggest JPAC identify timeframes within which JPAC and Council tasks must occur.

Again, thank you for the opportunity to comment on the Public Review of Issues process. We look forward to working with JPAC and the Council to improve the citizen submission process.

Sincerely,

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