



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

ecojustice.ca
formerly Sierra Legal Defence Fund

January 11, 2012

Hon. Ed Fast
Minister of International Trade &
Minister for the Asia-Pacific Gateway
Room 105, East Block
Ottawa, Ont, K1A 0A6

cc. Hon. Mr. Kent, Minister of the Environment, Hon. Leona Aglukkaq, Minister of Health, DFAIT Trade Policy and Negotiations Division I (TPE)

Via e-mail

Dear Minister Fast,

Re: Canada-India CEPA Environmental Assessment, joint comments

The Canadian Environmental Law Association (CELA) and Ecojustice are pleased to provide our collective input for the Strategic Environmental Assessment for Canada and India's Comprehensive Economic Partnership Agreement.

CELA (www.cela.ca) is a non-profit, public interest organization established in 1970 to use existing laws to protect the environment and to advocate environmental law reforms. It is also a free legal advisory clinic for the public, and will act at hearings and in courts on behalf of citizens or citizens' groups who are otherwise unable to afford legal assistance. Ecojustice (www.ecojustice.ca) is a national charitable organization dedicated to defending Canadians' right to a healthy environment. It provides legal services free-of-charge to charities and citizens on the front lines of the environmental movement helping ensure equitable access to environmental justice nationwide. Their work also extends outside the courtroom and includes outreach campaigns, workshops, investigations and reports that bring attention to their environmental work helping guide conservation efforts throughout Canada.

CELA and Ecojustice support Canada's effort to increase economic growth through increased trade with India, so long as it is undertaken with careful attention to protecting the environment, health, safety and labour rights. As such, we encourage Canada's efforts to ensure that this economic development is sustainable, both in India and Canada. For example, we support Canada's partnership with India to build their environmental protection capacity, namely air quality and mercury air emissions monitoring and

environmental information sharing. We look forward to Canada and India's planned collaboration on waste management and biodiversity and wildlife issues and expect that proposals outlining the details of these efforts will include open and transparent public engagement. We also support Canada's commitment to conducting environmental assessments before committing to trade agreements and believe that Canada's model *Foreign Investment Promotion and Protection Agreement* (FIPPA) provides useful direction in developing trade agreements that both support Parties' effort to seek protective and precautionary measures for the protection of the environment and human health and do not threaten the ability of parties to enact legitimate public interest litigation.

However, in order to effectively protect the environment and ensure sustainable development, our organizations strongly urge Canada to ensure that the Comprehensive Economic Partnership Agreement and its parallel environmental agreement include substantial analysis and recommendations relating to the environmental impacts of these agreements to ensure that goals and objectives entrenched in domestic environmental laws in Canada are not weakened or threatened. Additionally, Canada should include an assessment of the environmental impacts of the Comprehensive Economic Partnership Agreement on India during its environmental assessment process; a practice we believe should be mandated when negotiating trade agreements with countries unwilling or unable to take on this responsibility themselves.

We discuss a variety of issues in this letter, but our primary concern is with Canada's exportation of asbestos to India. We reserve the right to make additional comments on the other aspects of the prospective Comprehensive Economic Partnership Agreement at a later date.

Environmental assessment process

We are concerned that although Canada is undertaking an environmental assessment of the likely and significant environmental impacts this prospective Comprehensive Economic Partnership Agreement may have on Canada, it fails to review the serious environmental consequences to which India could be subjected. These potential environmental and health consequences will be overlooked because India does not intend to undertake an environmental assessment of its own.

Specifically, we believe Canada's environmental assessment should take into consideration how increasing investment in India could lead to increases in transboundary or global hazardous substances, such as asbestos. It is well recognized that asbestos fibers, when inhaled, are carcinogenic and can cause serious illnesses, such as mesothelioma and asbestosis. According to Industry Canada, Canada exported \$40.3 million worth of asbestos-related products to India in 2010. India is the largest recipient of Canada's \$90 million asbestos industry. The World Health Organization says asbestos causes an estimated 8,000 deaths each year in India.

We are deeply concerned that the proposed Canada-India trade agreement will facilitate the increased movement of asbestos and other hazardous substances between the two

countries. We urge Canada to refrain from exporting asbestos to India and ban the production of asbestos in Canada, like so many other western countries that have stopped the production and export of asbestos. At the very least, we urge Canada to support the inclusion of all forms of asbestos, including chrysotile asbestos, in the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention). This would ensure that importing countries could only consent to imports of hazardous chemicals and materials, such as asbestos, if they are fully aware of the environmental and health risks and proper safe-handling instructions.

As members of the international environmental community involved in the international regulation of hazardous chemicals and materials, we feel it is morally incumbent on Canada to consider and mitigate the effect of its trade in such materials on importing countries. Therefore, the final environmental assessment of the Comprehensive Economic Partnership Agreement should include an assessment of the potential increase of the export of hazardous and toxic chemicals (such as asbestos, persistent organic pollutants, etc.) to India which are or may be subject to various international agreements focused on managing toxic substances, such as the Rotterdam Convention or the Stockholm Convention on Persistent Organic Pollutants.

Comprehensive Economic Partnership Agreement environmental provisions

We expect that the revised Canadian FIPPA model provisions regarding environmental protection will not just be used as Canada's initial negotiation position, but that they will be further strengthened and entrenched in the final Comprehensive Economic Partnership Agreement. Provisions that should be entrenched in the final Agreement include:

- a general exception that permits a Party to take measures primarily related to the protection of human, animal or plant life or health, the environment and safety, or measures primarily aimed at the conservation of exhaustible natural resources;
- that any measures defended under this exception be reviewed by an arbitration panel consisting of environmental experts, rather than just trade experts; and
- a “not lowering standards” clause that recognizes that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. In the event a Party has offered such encouragement, the other Party shall require a consultation.

In addition we recommend that Canada not include an expropriation provision or an investor-state dispute settlement provision, as these provisions provide foreign investors with greater rights than a country's own citizens. Both Canada and India have advanced judicial systems capable of determining such disputes. Furthermore, we urge Canada to exclude essential public services from the ambit of the Comprehensive Economic Partnership Agreement, as governments are best placed to ensure that these services are provided in the public interest by ensuring transparency and accountability.

Parallel environmental agreement

We urge Canada to implement a parallel agreement on the environment with India that is binding and commits the Parties to pursue high levels of environmental protection and to strive to continue developing and improving their environmental laws and policies. This approach has been taken with regard to other trade agreements such as the North America Free Trade Agreement (NAFTA). Specifically, the environmental agreement should include provisions regarding:

- the effective enforcement of current and future domestic environmental laws;
- environmental impact assessment procedures for projects;
- domestic measures to sanction or remedy violations of environmental laws;
- effective public awareness activities and enhanced, transparent civil society engagement (for example the Taking Stock report required under NAFTA and its public petition process);
- voluntary corporate social responsibility and incentive-based measures; and
- accountability and transparency in all aspects of the agreement.

This agreement should also protect the powers of both parties to enforce current and future multilateral environment agreements, and any additions to such agreements.

Conclusions

Canada is negotiating this agreement to create new opportunities for Canadian exporters, investors and innovators by securing competitive terms of access in markets that offer significant potential for our products and expertise. Such efforts should not be undertaken at the expense of further degradation to Canada or India's environment and quality of public health. The above comments are intended to highlight issues that the government should address in its efforts to conduct an effective environmental assessment of the Comprehensive Economic Partnership Agreement.

Thank you for taking the time to consider our comments. We would be pleased to discuss these submissions further at any time.

Yours truly,



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