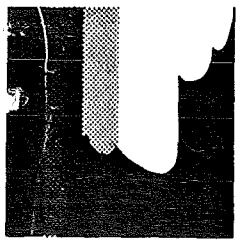

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# ENVIRONMENTAL IMPACTS OF THE CANADA - U.S. FREE TRADE AGREEMENT

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The Standing Committee on Finance and Economic Affairs: Free Trade Review

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## I. INTRODUCTION

The Canadian Environmental Law Association is a public interest environmental group, founded in 1970, and currently funded by the Ontario Legal Aid Plan. Our mandate includes the representation of individuals and environmental groups in legal proceedings, as well as analysis, research, and commentary on legislative and policy initiatives in the environmental protection field. Our work has been focused on issues of toxic chemicals, including pesticides, waste disposal, Great Lakes pollution, forest management, energy policy, industrial pollution, and a wide variety of other environmental issues.

## II. ENERGY

The Free Trade Agreement covers almost every kind of energy product, including oil, natural gas, coal, and their derivatives, as well as electricity and uranium. The deal eliminates the use of tests previously used by the National Energy Board, including the Surplus Test and the Least Cost Alternative Test, meant to protect Canadian energy supplies for Canadians. Between 1959 and 1986, natural gas producers were not permitted to export to the United States unless they could show a 25 year surplus of supplies in Canada. This requirement was reduced to a 15 year test by the Mulroney government, and now has been eliminated. The Least Cost Alternative Test required that energy exports be sold at a price no lower than that which the customer would pay

if he had to buy from an alternative supplier.

ARTICLES 902 to 904 of the Free Trade Agreement replace such tests with a prohibition against restrictions on energy exports. Restriction is defined to mean:

> Any limitation, whether made effective through quotas, licences, permits, minimum price requirements or any other means (page 148).

This prohibition of restrictions on energy exports precludes any price or tax difference imposed by Canada on exports to the U.S. unless such measures apply equally to Canada. In addition, even in periods of shortages, or for purposes of conservation, we are precluded from restricting our exports to the U.S. except to the extent that we maintain exports to them in the same proportion of our production that had existed in the 36 months previous to the period of shortage; Canada could still not impose higher prices on exports to the U.S.; and Canada could not change the proportions of various types of produces exported, such as proportions between crude oil and refined products and among different categories of crude and of refined products. Canada is therefore locked into continual supplying of the American energy market, even if our national priorities change, as a result of shrinking supplies and an increased recognition of the need to move to conservation.

In addition, Canada is ending its requirement for upgrading of Canadian uranium for export to the U.S. (ANNEX 902.5, paragraph

2). We will therefore continue to mine this controversial and dangerous substance, but lose employment opportunities from the refining of it.

The Free Trade Agreement changes investment provisions, and the significant down-grading of review of takeovers of Canadian companies by American companies, will mean more American direct ownership of Canadian energy companies. (ARTICLE 16, ANNEX 1607.3) As government incentives for energy resource development are preserved by the deal (ARTICLE 906), American companies operating in Canada will be entitled equally with Canadian companies to subsidization for energy exploitation, and denial of equal subsidization to them is prohibited by the deal.

We will therefore, as Canadians, be in a position of subsidizing Canadian and American energy enterprises in an accelerating scramble for energy exploitation for export to U.S. markets, and will be guaranteed prices no higher than those charged to Canadians.

That the current government's policy on energy exploitation favours accelerated development is clear from the position of Energy Minister Masse in a speech delivered for him by his Parliamentary Secretary, Jack Shields, to a Toronto Energy Conference sponsored by the American Stock Exchange. Mr. Masse said that additions to Canada's oil reserves in the 1990s would

come from large, capital intensive and risky projects in the country's northern and off-shore areas, as well as tarsands plants in western Canada.

> "This is where true energy security lies - in the vigorous development of our resources for both domestic use and export, and in the creation of flexible and efficient markets that provide a diversity of energy commodities to meet Canadian needs."[2]

This is in keeping with the American government perspective on energy development, stated by James Tarrant, Minister - Counsellor for Economic Affairs at the U.S. Embassy in Ottawa, who told the conference that Canadians should adopt the pact because natural resources have an economic life and it is wise to maximize the benefits.

> "Oil and gas will be a thing of the past at some time ..."[3]

The implications of the energy deal for the Canadian environment are substantial. Canadian governments, provincial or federal, are prevented from exercising any significant control over energy pricing and exports. Possibilities of conservation strategies and soft energy paths for the future are therefore effectively precluded. Future conservation strategies will be limited by the requirements to continue exporting to the U.S. market in the same proportion that we export now, and proliferating mega-projects will have their familiar environmental impacts.

Damage to Canadian fisheries, both off-shore and on-shore, are a

matter of concern. In B.C., Alcan has just negotiated an exclusive use agreement for its hydro facilities on B.C.'s Nachaco River, threatening water supplies essential for Fraser River salmon stocks. The development of off-shore oil fields also commonly endangers surrounding fisheries.[4]

The massive mobilization of capital required for mega-project development depletes capital which would be otherwise available for regional economic diversification, resulting in a continuing dependence on energy exploitation, as well as increases in Canadian foreign debt. These projects typically create little local employment, while having massive physical impacts on the geography and wildlife. They also prevent resolution of native claims, and undermine aboriginal rights to land ownership and use.

The energy elements of the deal are exactly the wrong way to go. Our governments should be investing in conservation programmes, the development of renewable energy sources, and regional diversification. Canadians need public policy planning oriented to Canadian domestic needs and long-term sustainablity of these resources, not the accelerated exploitation and sell-off which we can now anticipate. There is particular folly in the Mulroney government's position on energy that "our biggest problem is not shortage, but abundance."[5]

In planning for energy security for Canadians, of present and future generations, abundant energy supplies constitute an enviable element of our national heritage.

## III. RESOURCE REGULATION AND CONSERVATION

Chapter 4 of the deal, entitled BORDER MEASURES, appears to extend to all other goods, including all other natural resources, the restrictions and obligations enacted with regard to energy. Articles 407 and 408 prevent minimum export requirements or export taxes which would make the price of any of our goods exported to the U.S. differ from the price charged domestically. Furthermore, ARTICLE 409 imposes the same prohibition against restrictions, in times of shortage or for purposes of conservation, that apply to energy products, that is, we must continue to supply the U.S. market with the same proportion of the natural resource we exported to it in the three-year period under conservation or shortage policies.

Various provinces of Canada have attempted to reduce our dependency on crude resource extraction by requiring local processing of the resource in the extracting region, leading to diversification, greater wealth production, and more stable employment. Examples include East coast and West coast fish

processing, and prohibitions against the export of unprocessed timber.

Alberta has also sought local benefits from its resources by policies such as low-price natural gas provided to its petro-chemical industry in the 1970's, and the establishment of the Alberta Heritage Fund from oil and gas royalties. Provinces have also required private interests to procure supplies locally for resource development.

Chapter 4 of the Free Trade Deal appears to preclude future provincial initiatives, including requirements on industry to locate processors near the extraction of the resource, and local procurement of supplies. Present Canadian provisions against the export of unprocessed logs and East coast fish are preserved in the deal, but can still be challenged at the General Agreement on Tariffs and Trades. These provisions will undoubtedly lead to accelerating pressures on primary resource extraction to achieve those degrees of economic stability which are now assisted by local processing and supplying of resource extractors.

In Ontario, such policy limitations have significant implications for the current government's stated goal of diversification and strengthening of the economy of Northern Ontario. Taken together with the rights to be gained by American companies through national treatment under the deal, the Ontario government

appears to be precluded from requiring, in the future, local processing of resources, use of local suppliers, or even, location in Canada of U.S. companies extracting natural resources.

The environmental implications of these changes are profound. We face significant restrictions on our options to develop conservation strategies for our resources, and will have to supply the U.S. market in the same proportions even in times of shortage. In addition, we are precluded from using resource pricing formulas (higher export prices) to raise funds for public policy goals in Canada. The energy and natural resource elements of the deal together mark a commitment to our current consuming society, rather than to a conserver society respecting the limits to development of the planet.

The power of the provinces to regulate natural resource development and use was constitutionally entrenched in Canada in Section 92 A of the Canada Act in 1982. That section provides:

> 92 A. (1) In each province, the legislature may exclusively make laws in relation to:
>
> a) exploration for non-renewable natural resources in the province;
> b) development, conservation and management of non-renewable resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and,
> c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.[6]

ARTICLE 103 of the Free Trade Deal obliges the federal government to ensure that provisions of the deal are given effect by provincial and local governments. In our view, the limitations on provincial policy options in the area of natural resource regulation contravene the constitutional rights of the provinces for natural resource regulation. We note that the Attorney General of Ontario, the Honourable Ian Scott, has already raised concerns about the constitutionality of various elements of the trade deal.[7] Beyond the issue of whether federal authority over international trade prevails over provincial powers outlined in Section 92 A, we are concerned that the power to effectively regulate and conserve natural resource use in Canada has been lost to both levels of government, and that rapid market-driven exploitation of our resources will degrade our environment and deprive future generations of Canadians of economic and environmental values

## IV. FISHERIES

Canadian fisheries exports represent an economic success story, as we are now the world's top fish exporting nation, counting for 7 to 8 % of global fish trade. There are virtually no tariff barriers in Canada or the U.S. regarding trade in fish across our common border. The provisions of the deal noted above, particularly failure to protect the right to insist on domestic processing of Canadian fish, may lead to the loss of 5,000 direct and indirect fisheries related jobs in B.C. The deal

specifically protects the East coast fishery for now but local processing of fish in that area too could be subject to future countervail action from the U.S. Again, elimination of local processing can only increase local pressure to increase extraction from fishing stocks, to provide employment. We share the concern expressed to you by George Tough, Deputy Minister of Natural Resources, that the right of national treatment accorded to U.S. business in the deal may also preclude any restriction on the movement of U.S. commercial fishermen into Canadian waters.

## V. AGRICULTURE

### a. Agricultural Production

Commentators have argued that Canadian agriculture cannot compete successfully with American agriculture because of our shorter growing season, higher energy costs, smaller market with lower population densities, and greater distances of transportation.[8]

Even the MacDonald Commission argued that agriculture should not be included in a free trade deal because little gain for Canadian farmers would result. However, the U.S. wishes to expand its agricultural exports into Canada, as Canada had a trade surplus with the U.S. in 1985 for the first time in agricultural products. Although the deal does not now eliminate Canadian

agricultural marketing boards, the Mulroney government supports the American position of elimination of these marketing boards at negotiations of GATT. Should the Canadian farm community be destabilized by provisions of the deal and the elimination of marketing board price stability, we should expect an increase in bankruptcies and greater penetration by agribusiness with its attendant environmental damage.

b. Harmonization of agricultural technical regulations

The Canadian Environmental Law Association has a particular concern for the provisions of ARTICLE 8, ANNEX 708.1 and SCHEDULES 4 to 8 pursuant to ANNEX 7.08.1. These provisions provide that technical regulations and standards for agricultural, food, beverage and certain related goods are to be "harmonized", defined as "made identical". The standards to be harmonized include animal quarantine restrictions, accreditation procedures for inspections, approval requirements for new goods and processes, and technical regulations, including "levels of quality, performance, safety or dimensions". Working groups will be established to harmonize standards on various agricultural issues, including veterinary drugs and fees, food, beverage and colour additives and "unavoidable contaminants", pesticides, and the labelling and packaging of agricultural, food, beverage and certain related goods for human consumption.

In Canada, we do not concede that a category of "unavoidable contaminants" is permissible in food products.

The Canadian Environmental Law Association has a particular concern with implications of this harmonization for the regulation of pesticides.

According to federal officials, between 1971 and 1981, total pesticide sales in Canada increased 12 fold in current dollars (57.3 million to 698 million) and more than fourfold when adjusted according to the Statistics Canada price index for pesticides ($57.3 million to $243 million). At least 10 million acres in 1975 were treated with herbicides on the Canadians prairies. By 1978 this had increased to at least 15.5 million acres. In 1976 alone, Canada imported almost 117 million pounds of pesticides from the United States.[9]

The use of pesticides involves the deliberate application to land or water of chemicals which are intended to be poisonous to selected organisms. Two categories of undesirable effects resulting from pesticide use have been identified. These are the development of resistence in pest species, and the impact on non-target species and organisms. The United Nations Environment Programme has stated that "even when properly used, chemical pesticides have a number of unavoidable side effects." These include 3 million bird deaths in New Brunswick during 1975 from

aerial spraying of approximately 7 million acres of forest with phosphamidon and fenitrothion; death of a farmworker in 1983 in British Columbia from pesticide poisoning; the possibility that 10% of Alberta grain farmers may be experiencing pesticide poisoning every year; and a Canada/Ontario report on pollution of the St. Clair River estimating that 70% of the 2.5 million kilograms of agricultural pesticides used annually on the land draining into the Detroit and St. Clair Rivers connecting channels are potentially environmentally hazardous. In addition, the presence of agricultural pesticide residues in food has also been identified in Ontario.[10a]

Currently, in Canada, our regulatory scheme for pesticides has received increased scrutiny with the publication of a Law Reform Commission report on pesticide regulation[10], and the legal and political controversy surrounding the federal government's decision to cancel the registration in Canada of the pesticide alachlor. Several hundred public interest and environmental groups across Canada are currently involved in research and advocacy of issues related to pesticide use, particularly, environmental and human health effects.

The Free Trade Agreement provides for the harmonization of standards and regulations regarding pesticides. (Chapter 7, ANNEX 708.1, SCHEDULE 7; found at APPENDIX A of this brief)

The schedule specifically provides for equivalence in risk/benefit assessment of pesticide use. In Canada, the criterion to be considered by the Minister of Agriculture in deciding whether to register a pest control product is whether the use of the pesticide "would lead to an unacceptable risk of harm to ... public health, plants, animals or the environment."[11] While the regulation clearly contemplates an evaluation of the risk, it does not require a risk/benefit analysis, as commonly used in the United States.

The U.S. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires the United States Environmental Protection Agency to determine whether a pesticide causes "unreasonable adverse effects on the environment," further defined to mean "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide."

The Canadian environmental community opposes the importation to Canada of the use of risk/benefit analysis in pesticide registration decisions. U.S. Congressional investigators have concluded that the state of the art in quantifying benefits is primitive, and that studies estimating benefits may mislead Agency decision-makers and the public. These analyses cannot easily deal with questions of equity, given that cost, risks and benefits are often borne by different groups within society. The

Canadian Environmental Law Association considers that pesticide registration, which has fundamental impacts on the health of Canadians, should have safety as its principle focus, and not adopt a risk/benefit approach. However, with no public notice or debate, our government, through the Free Trade Agreement, has now agreed to adopt this American approach.

Furthermore, this harmonization of our standards with American ones will be occurring at a time when the U.S. Environmental Protection Agency is systematically downgrading its standards on pesticide regulation, as summarized in APPENDIX B to this brief. A "level playing field" with the Americans on toxics regulation at this time, is likely to result in unacceptable risks to the health and safety of Canadians.

## VI HARMONIZATION OF TECHNICAL STANDARDS

In addition to the harmonization of standards for agricultural, food, beverage and related goods, the Free Trade Deal provides, in Chapter VI, for harmonization of federal standards for all other goods. Standards are to present no "disguised barriers to trade" as provided in ARTICLE 603:

> Neither party shall maintain or introduce standards - related measures or procedures for product approval that would create unnecessary obstacles to trade between the territories of the parties. Unnecessary obstacles to trade

shall not be deemed to be created if:

> a) The demonstrable purpose of such a measure or procedure is to achieve a legitimate domestic objective; and
> b) The measure or procedure does not operate to exclude goods of the other party that beat that legitimate objective.

Legitimate domestic objective is defined to mean:

> An objective whose purpose is to protect health, safety, essential security, the environment, or consumer interests.

Procedures for standard setting are to be made compatible (ARTICLE 604). Canadians will not be able to insist that "testing facilities, inspection agencies or certification boards be located or make decisions within (Canadian) territory."

This clause leads to the very important question of whether harmonized standard setting will lead to higher or lower environmental standards. There is a great diversity of standards among American and Canadian federal, state, and provincial laws. In some areas Canadian standards are higher than American ones, and in other areas, American standards are higher. As Canadians, we will have to do extensive research to establish how harmonization will affect environmental protection, given the current state of both law and policy. At the federal level in both Canada and the United States, the current administrations have downgraded environmental protection. The Mulroney government has substantially cut funding for the Canadian federal environment department, and as noted above, the American EPA has also experienced substantial funding cuts under the Reagan

administration, and are currently downgrading both their standards and enforcement.

As regards future environmental protection standards, the Free Trade Deal introduces great uncertainty, given that it remains to be seen how "legitimate domestic objectives" will be applied. At a minimum, Canadian government and public policy groups will be required to lobby in the United States for standards affecting the Canadian environment. The deal provides for no public participation in the harmonization process, and therefore undermines the movement to wider public interest participation and debate in setting standards for product safety and environmental protection.

VII. SERVICE SECTOR

Canadians have tended to ignore the importance of the service sector in our country. Services account for about two thirds of our income and about 70% of our jobs.[12] The service sector is the only major sector in the U.S. which manages to generate a trade surplus, and American business therefore seeks worldwide to expand trade in services. Most countries of the world, including poor and underdeveloped ones, recognize the importance of this sector for employment, and have resisted American penetration.

The Mulroney-Reagan trade deal, in ARTICLES 105 and CHAPTER 14, has permitted American service sector penetration into Canada,

giving service companies the right of national treatment in Canada. This right entails "treatment no less favourable than that accorded in like circumstances to (Candian companies) with respect to the measures covered by (Chapter 14). This Chapter specifically obliges states and provinces to follow the same policy with respect to service investments from the other country.

ARTICLE 1402(9) read together with chapter 16 on investment leaves ambiguity as to whether American service companies establishing businesses in Canada will qualify for subsidies now available to Canadian companies. The Canadian government did not succeed in arriving at a definition of subsidy during negotiations, although that was a primary goal in entering into the trade negotiations. Therefore, since American service companies now have the right of national treatment, and can operate in Canada, without necessarily being located here, Canadian subsidies for service industries may be obtainable by American companies not even located in Canada.

There is concern about lost employment in the service sector in such areas as data processing, American-managed health services in Canada, and a variety of services to be conducted in Canada but administered from the U.S.

Chapter 14 of ANNEX 1408 of the deal lists a number of services

now open for American penetration, with direct environmental consequences. These include: soil preparation, crop planting, cultivating and protection, crop harvesting, farm management, landscape and horticultural services, crop preparation, livestock and animal specialty services, forestry services such as reforestation and fire-fighting, as well as mining services.

ANNEX 1404B. provides for national treatment of firms coming into Canada in the tourism sector.

Cumulatively, these provisions are likely to lead to declining employment in these sectors, and again, greater dependence on primary extraction of natural resources in the Canadian economy.

A further problem is raised by ARTICLE 2010 of the Agreement regarding monopolies, meaning:

> Any entity, including any consortium, that in any relevant market in the territory of a Party, is the sole provider of a good or a covered service.

The Agreement prevents "anti-competitive practices" by monopolies, and compensates any enterprises which could be deprived of business opportunities through the establishment of the monopoly in any sector of the market. (ARTICLE 2010, paragraph 3)

A combination of the service sector provisions and the monopoly provisions reduces policy options available, for example, for

diversification of the economy in Northern Ontario, or other resource dependent areas. Such strategies as locally based tourism development as alternatives or complementary to forest industry use of public lands, and local public authorities, for forestry or tourism, will be difficult to establish, if not impossible, under the deal. Such policies could lead to demands for compensation from American industries operating in that service sector.

A further question arises regarding current Ontario reforestation practices. Under Forest Management Agreements, the licencing system which covers 70% of forested lands in the province, the Ontario government subsidizes the holder of the licence to replant logged forest lands. This practice may be attacked by American forestry service companies as a "anti-competitive practice".

The deal provides for negotiations to expand the number of sectors of services to be opened up in the future. A capping of public sector initiatives through the "monopolies" provision, and the possible export of service sector employment permitted under the deal, foreclose numerous policy options that would otherwise be available for environmental protection.

## VIII. AMERICAN TRADE LAW AND ENVIRONMENTAL PROTECTION SUBSIDIES

Historically, American Countervail and Anti-Dumping Duties laws have been used to attack Canadian production policies, primarily in the resource sectors such as fish, softwood lumber, shakes and shingles, and potash. The Free Trade Deal preserves the right of each party to use its trade legislation, and therefore preserves the right of U.S. industrial interests to continue to use its trade law to attack Canadian production. (ARTICLE 1902) For certain purposes, that law is actually incorporated into the Agreement (ARTICLE 19.04, paragraph 2). The dispute resolution panel established under the Deal (ARTICLE 1904), can only make declaratory judgments about whether the applicable trade law was accurately applied in a given Countervail/Anti-Dumping Duty dispute, and it cannot reverse decisions made in the U.S. legal system on such issues. We must therefore expect that such disputes, initiated by American industrial interests, will continue.

The disputes all turn on the American concept of what constitutes "subsidies" in production. Since the Canadian government failed to obtain the all important definition of subsidy that it sought in these negotiations, the deal does not prevent American retaliation against such Canadian social policies as unemployment insurance for fishermen.

In Canada, government subsidies (incentives) have been used at both the federal and provincial levels to achieve environmental protection goals.[13] Examples of such subsidies include:

- The Ontario Ministry of Environment's Waste Management Branch, Industrial Four R's Support Program for assistance with reduction, reuse, recovery, and recycling of waste. Projects eligible for assistance include feasibility studies, new or expanded projects for reduction/recycling of waste, process or equipment modification, demonstration of new technology, upgrading operations and research.

- Canadian national D-RECT programs co-administered by Environment Canada and the Department of Energy, Mines and Resources, has provided funding for projects related to energy conservation, and development of innovative technology, including waste reduction and recycling projects.

- A Quebec program of financing for industrial recycling.

- A B.C. program of technical assistance for consulting costs for productivity improvement.

- In 1981, DREE provided funds for pulp and paper mill modernization projects in the Atlantic region, Quebec and Ontario, to encourage pollution abatement and industrial modernization.

- Ontario subsidizes forest regeneration by logging companies.

Given the failure of the Deal to limit the application of American trade law to Canadian industry, the possibility remains that such subsidies as these will be attacked by American industrial interests as unfair subsidies to Canadian companies, resulting in a discriminatory advantage relative to American producers in a given field. American environmental protection initiatives have not included such "discretionary" subsidies as those outlined above. As such incentives have been an important

part of initiatives for environmental protection in Canada, their elimination by market-driven forces would retard efforts for increased environmental protection.

## IX. IMPACT ON NATIVE RIGHTS IN CANADA

In 1985, over 120 land claims had been filed by native bands and were in process across the country.[14] Native claims for ownership of land and for traditional use of Crown land, typically places the native band in a position of conflict with development-oriented resource extracting enterprises. The acceleration of development of energy and natural resources, likely to be fueled by the Free Trade Agreement, will create increasing difficulties for resolving claims now filed, and will undoubtedly provoke further conflicts with traditional native land use in the future. It will provoke particular difficulty for native people asserting rights to self-government, and attempting to define the parameters of authority to be accorded to native self-government.

## X. RELATION OF THE FREE TRADE AGREEMENT TO THE REPORT OF THE NATIONAL TASKFORCE ON ENVIRONMENT AND THE ECONOMY[15]

On December 1, 1987, at the Conference of First Ministers in Toronto, Canada's first ministers endorsed this report, with comments from Prime Minister Mulroney that Canada must move toward "sustainable economic development ... to ensure that the utilization of resources today does not damage profits from the future"[16].

The Taskforce was comprised of 17 members from government, industry, academia, and environmental groups. They made 36 recommendations for the integration of environmental and economic planning, and commented as follows:

> ... governments will have to change the way they approach the environment and the economy. They must integrate the environmental input into decision-making at the highest level. Environmental considerations cannot be an add-on, an afterthought. They must be made integral to economic policy-making and planning and a required element of any economic development proposal. (Page 6)

Amongst the 36 recommendations made by the Taskforce are the following:

> 2.1 ... that Cabinet documents and major government economic development documents demonstrate that they are economically and environmentally sound and therefore sustainable.
>
> 5.3 Canada should explore and promote mechanisms to ensure that environmentally sound economic development is an important component in international discussions and negotiations dealing with development and trade ...

However, the following question to the government was placed on the House of Commons Order Paper in the fall of 1987:

> In 1987, what studies have been conducted to assess potential impacts on the environment resulting from free trade negotiations?

The government's reply was as follows:

> The Free Trade Agreement is a commercial accord between the world's two largest trading partners. It is not an environmental agreement. The environment was not, therefore, a subject for negotiations nor are environmental matters included in the text of the Agreement.[17]

Our analysis of the Free Trade Agreement indicates that it will have significant impacts on the environment, as do most economic development proposals. This deal is the government's blueprint

for Canadian economic development for the future, and entrenches a market-oriented approach to economic decision-making which will accelerate resource development in Canada and put added stress on the environment.

However, there was no involvement in the negotiations by Canadian federal or provincial environment ministers, no government assessment of the environmental impact of the deal, and no opportunity for examination of these impacts or any form of public participation in the negotiations. In all these respects, and in the surrender of both provincial and federal powers to enact environmental protection through various policy alternatives, the actions of the federal government in negotiating this agreement are in direct contradiction with its claim to adopt the approach and recommendations of the report of the National Taskforce on the Environment and Economy.

APPENDIX A

Free Trade Agreement

Chapter Seven: Agriculture

Annex 708.1, Schedule 7

SCHEDULE 7: PESTICIDES

The Parties shall, with respect to pesticides:

a) exchange analytical residue methodology and provide crop residue data for the use, including minor uses, of pesticides;

b) co-operate regarding regulatory reviews of data on registered older chemicals;

c) work toward equivalent guidelines, technical regulations, standards and test methods;

d) work toward equivalent residue monitoring programs;

e) work toward equivalent technical regulations, standards or certifications for those pesticides selected by the Parties; and

f) work toward equivalence in:

   i) the process for risk-benefit assessment,

   ii) tolerance setting, and

   iii) the setting of regulatory policies with respect to oncogenic pesticides.

By Dick Russell


"HERE'S HOW WE'LL HANDLE THIS BREAK-UP OF THE OZONE LAYER. WE'LL SIMPLY DOWNGRADE IT FROM "HIGHLY CARCINOGENIC" TO "MILDLY IRRITATING".'

Universal Press Syndicate

# Reagan's EPA: working on killer resumes

WHAT IS GOING ON AT THE Environmental Protection Agency (EPA)? In what consumer advocate Ralph Nader calls "a kamikaze dive," over the past two months the EPA has embarked on a systematic overhaul of its toxic chemicals policy, appeasing industry at the expense of public health.

**Day-by-day deregulation:** A chronicle of the federal agency's recent decisions shows an alarming reversal of standards many environmentalists had already thought were too low:

• **November 23:** Citing lack of funds, the EPA announces that it is dropping its primary tests for measuring the exposure of humans to toxic substances. These include longtime programs to measure the accumulation of dangerous chemicals in body fat and blood. It was one of these tests—the National Human Adipose Survey—that played a major part in banning production of toxic polychlorinated biphenyls (PCBs), which were showing up in fatty tissues in alarming quantities. After PCBs were outlawed in the late '70s, later tests showed a dramatic decline of their presence in humans. The same survey has also shown existing levels of toxic substances like dioxins and DDT in an overwhelming majority of the individuals tested.

Joseph Breen, chief of the field studies branch in the EPA's toxic substances office, told the *New York Times* cutting these tests is "almost crazy....How do you winnow down to those chemicals that the health scientists have to do something about?" Breen asked.

• **December 9:** The EPA releases a new draft study that lowers its assessment of the cancer-causing potential of dioxin to one-sixteenth of its original 1985 estimate. While admitting that dioxin remains the most toxic substance it regulates (about 10,000 times more likely to cause cancer than PCBs at the same level of exposure), the EPA maintains that dioxin is probably a "promoter" of other cancer-causing agents rather than an initiator. The study will substantially effect the way the EPA regulates exposure to dioxins—byproducts of pesticide production, and combustion processes such as incineration.

• **December 10:** Testimony before a congressional committee reveals that a coalition of petrochemical companies and their insurers has formed to mount a four-year study of the Superfund program for cleanup of hazardous waste sites. The companies have retained former EPA chief William Ruckelshaus to represent them. "The EPA's reaction was that this was manna from heaven," says Bill Walsh, an attorney with U.S. Public Interest Research Group (U.S. PIRG) in Washington. Walsh says EPA officials seemed excited about "somebody doing a wide-ranging study that they would do themselves if they had the resources. Some congressional staffers felt the same way. Everyone ignores the vested bottom-line interest of all these corporations in escaping financial liability."

• **December 15:** Slightly more than a year after an EPA announcement that it was considering permanent restrictions on Monsanto's alachlor, the nation's most widely-used herbicide, the agency says it will allow continued use. A four-year EPA study concludes that the chemical does not pose an "unreasonable" risk of cancer, and that cancelling alachlor would cost farmers nearly $500 million in first-year readjustments. Alachlor, a known groundwater contaminant, had previously been outlawed by Canada and the state of Massachusetts.

• **December 29:** The EPA tells Congress that new federal regulations of toxic waste from drilling operations for oil and gas are unnecessary. In 1985, the industry generated over 12 billion barrels of liquid and mud waste containing such hazardous substances as benzene, lead, arsenic, barium and antimony. But because most of the dangers to groundwater come from violations of current regulations, the EPA has decided that tighter laws wouldn't provide much additional protection. But protection was not the only thing the EPA was worried about. New rules could reduce domestic oil and gas production by up to 12 percent and create up to $4.5 billion in additional costs to be borne by consumers, according to the agency.

• **January 3:** Because of new evidence based on what the agency called improved techniques for laboratory animal testing, the EPA announces that many chemicals are less dangerous to humans than previously believed. Therefore, says the agency, it is reassessing the risks of many substances it regulates. These include the threat of skin cancer from ingested arsenic, an ingredient in pesticides that enters food and water supplies. The EPA now finds that ingested arsenic is one-tenth as dangerous as it thought in 1984. Marvin Schneiderman, former associate director of the National Cancer Institute, comments that it appears "not much science was being used" by the EPA in reassessment.

• **January 4:** The EPA eases restrictions on Du Pont's cyanazine, a weed-killer used on up to one-fourth of the U.S. corn crop. The agency explains that the chemical appears to pose less of a threat to groundwater than once feared.

• **January 5:** A study released by the Center for Responsive Law in Washington, D.C., reveals that nearly one out of five of the 79,000 public water systems in the U.S. appear to be contaminated with chemicals. It charges the EPA with being "derelict in its duty" in setting water standards, monitoring requirements and prescribing treatment methods.

• **January 7:** The EPA postpones for at least a year earlier plans to ban the use of pesticides where a particular chemical might threaten an endangered species. The original plan had called for pesticide container labels to list counties where such species existed.

• **January 13:** In a new proposal that could affect 2.3 million farm workers, the EPA says it is preparing to revise rules governing their exposure to pesticides. "It's weak in almost every area," Shelly Davis, a lawyer with the Migrant Legal Assistance Project, told the *New York Times*.

• **January 15:** The agency agrees to allow continued use of the pesticide dinoseb for at least two years, as long as inventories at the Cedar and Drexel corporations last. The move comes only months after the EPA had implemented an emergency ban—only its third ever on a pesticide—on dinoseb, which was shown to cause severe birth defects and sterility as well as brain and spine problems in animal tests. "Basically, the EPA made a backroom deal with the chemical companies," says Norma Greer of the Northwest Coalition for Alternatives to Pesticides.

**Resume-builders:** Why the pell-mell rush to downplay toxic hazards? "Unless Jack Kemp gets elected, all the Reaganite ideologues are soon going to be out of work," says Will Collette, program developer for the Citizens Clearinghouse for Hazardous Wastes in Arlington, Va. "These guys are basically getting their resumes in order, because their only constituency now is the companies they've been regulating where they expect to get future employment. So this is their last hurrah, a chance to leave the imprint of the 'Reagan revolution' on environmental policy. And it will become more pronounced as the year progresses."

Ralph Nader volunteers a similar assessment: "A lot of those people are cutting deals, getting ready to cut out and join big corporate firms." And Al Meyerhoff, a San Francisco-based attorney for the Natural Resources Defense Council, bemoans, "This is a very disturbing pro-industry movement. How many more people will they kill in the meantime? You would think maybe they'd try to prevent a few more cancers in the waning hours rather than look out for their own futures."

Environmental groups across the nation are expressing similar outrage. And apparently, not everyone within the EPA is pleased about the policy-level changes either. Barry Commoner, a prominent environmental author and director of the Center for the Biology of Natural Systems at Queens College, received a loud ovation when he recently took the EPA to task before a standing-room-only crowd of agency employees in Washington. Commoner is most alarmed about the re-evaluation of dioxin risks. "In the EPA's new report, they mention two other risk assessments which are 10 and 100 times higher than their 1985 study. They admit these are just as valid as any other, but don't include them in the average—which came out indicating a 16 times lower risk," Commoner says.

**Science vs. policy:** Hugh Kaufman, the EPA's assistant to the director of the hazardous site control division, says that Commoner forced the higher-ups to concede that the dioxin decision "is policy-driven, not science-driven."

Kaufman continues: "There are a number of issues where special-interest groups want us to back off. Obviously Agent Orange [the defoliant used in Vietnam of which dioxin is the key component] is one of these. Both the Carter and Reagan administrations have been dragging their heels in paying off victims of the Agent Orange situation. A second issue is the cost of cleaning up Superfund sites where dioxin is involved, and the concomitant financial liabilities of the companies that created the problem—the wood preservative manufacturers, Monsanto, Syntex and Dow. Finally, there is the drive by the manufacturers and builders of incinerators to diminish the dioxin issue. The weaker the regulations, clearly the better if

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# EPA

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is for all of them."

Walsh, of U.S. PIRG says that EPA officials are corrupting science. If you change science into policy, it's stepping to the brink of double-speak. The hook I think is for Congress to realize that all their hard work in developing tougher laws is just being thrown out the window. The EPA and this administration are just thumbing their noses at them."

**Toxic bureaucracy:** A recent congressional study indicates the nation may have to spend $22.7 billion cleaning up hazardous waste sites that were supposedly already operating under strict environmental regulation. This is more than double what the Congress has designated for the monumental cleanup program of abandoned waste dumps. The congressional report cites another study, by the government's General Accounting Office, that says the U.S. may have as many as 425,380 potential hazardous waste sites.

That staggering figure is being obfuscated in every way possible by the EPA. At the 900-some acknowledged Superfund sites, despite a much tougher congressional mandate, the agency's policy can only be described as inconsistent at best. Consider that, at a Kentucky site, the agency declared an acceptable level of certain extremely toxic chemical wastes to be only one part per million—while in Louisiana, a cleanup of the same material permitted human exposure as high as 1,300 parts per million. To induce company officials at an Arkansas facility into voluntary compliance with the law, the EPA accepted an increased cancer risk to the local population ten times as high as the level it established prior to the negotiations.

Now, according to U.S. PIRG's Walsh, the agency's national contingency plan for Superfund, due to be revised by April, will seek to defer listing sites that it claims will be addressed under other statutes. The prime examples are the 1,000-some pesticide contamination sites being considered for cleanup, which the EPA says would be properly addressed under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Unfortunately, nothing in FIFRA provides for cleanup. "They're defining away the problem so the numbers look better and the reality of the situation just slips by everyone's grasp," says Walsh.

**The buck that doesn't stop:** In the cases of pesticides like alachlor and dinoseb, the EPA has acquiesced to industry claims that abolishing these materials would trigger losses in agricultural productivity. "The agency for many years has been at a standstill on pesticides," says Jay Feldman, director of the National Coalition Against the Misuse of Pesticides in Washington. Feldman says the agency is "simply not regulating and allowing the status quo to go forward—which translates into continued poisoning."

Environmental advocates say the EPA assumes that alternatives to dangerous chemicals do not exist. Alachlor, for example, is an herbicide used in no-till farming, which has been promoted by the government as a means for controlling soil erosion. The EPA doesn't seem to take into consideration non-chemical approaches, including inter-cropping and cover cropping, which have successfully worked across the country.

Indeed, as a recent Greenpeace report on dioxin notes, "Under the pesticide law, EPA could only cancel product registration if the risks outweighted the benefits. In theory the pesticide law's 'risk-benefit analysis' *requires that a dollar's worth of economic benefits outweighs 98 cents worth of cancer.*"

That seems to be the EPA's "bottom line"—the buck doesn't stop, and the price is human life. □

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APPENDIX A - Pesticides Schedule

APPENDIX B - In These Times