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May 5, 1993

The Hon. Michael Wilson  
Minister of International Trade  
Room 515-S  
House of Commons  
Parliament Buildings  
Wellington Street  
Ottawa, Ontario  
K1A 0A6

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Dear Mr. Wilson,

We are writing to you from across the country as members of the Canadian environmental community from coast to coast to coast. The groups who oppose the North American Free Trade Agreement ("NAFTA") represent the broad range of the environmental movement and have an informed analysis of the environmental implications of NAFTA which we would like to convey to you. We are extremely concerned that the North American Free Trade Agreement ("NAFTA") will have devastating impacts on our environment. NAFTA repeats the environmental mistakes of the FTA by accepting the growth led development model which is accelerating our planet's demise. The ecological failure of "trickle down economics" demands that we reconstitute our trade strategies in a manner which is environmentally sound.

To attain a sustainable environment and economy, our governments must retain powers to use the full range of environmental protection and green economic strategies. We must manage trade with our partners based on the primacy of planetary sustainability and, in the South, with the goal that trade will also contribute to greater social justice, both within and among nations.

It is our view that NAFTA views environmental protection and natural resource conservation strategies as non-tariff trade barriers. The result is that our environmental regime which has taken much painstaking time and effort to develop over a quarter of a century will come under serious, repeated attack. This will occur through a number of mechanisms whose effect will be to significantly erode our ability to protect the environment for present and future generations. For these reasons we implore you not to implement NAFTA.

In the four years of experience which we have had with the FTA on every single occasion in which an environmental policy issue has arisen our environment has suffered. NAFTA gives

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CANADIAN ENVIRONMENTAL LAW  
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us every reason to assume that this pattern will continue at an even quicker pace. Consequently, we believe that the proposed supplementary agreement on the environment cannot fix the fundamental environmental flaws of NAFTA. The following analysis proves that NAFTA is an anti-environmental agreement:

### **FTA Environmental Impacts in Canada**

To achieve sustainability, Canada must adopt conservation measures for our natural resources. However, under the Canada-U.S. Free Trade Agreement (the "FTA"), conservation efforts are losing ground. Conservation of our fisheries, energy and forest resources have all been undermined by the agreement. A useful example can be provided with respect to our energy sector.

Both the James Bay hydroelectric project and the MacKenzie Delta natural gas development can be seen as a direct outcome of the economic and natural resource principles enshrined in the FTA. These projects can only be seen as contributing to the degradation of the environment while affirming the view of the FTA that it is acceptable to place limits on the ability of governments to regulate the development of our natural resources or to pursue more sustainable conservation strategies.

This trend will inevitably lead to the permanent exhaustion of these resources while having the immediate impact of accelerating the problems of global warming. Rather than encouraging North America's voracious appetite for energy we should be promoting energy efficiency, the use of renewable, alternative energy sources and supporting least-cost energy strategies. It goes without saying that our energy options would require a full environmental impact analysis before implementation takes place.

Canadian conservation efforts will be undermined further through the "proportionality clause" which guarantees the permanent supply of the U.S. market on a proportional access basis with respect to all of our natural resources, including water.

The agreement has also undermined green standard-setting, requiring the downward harmonization of Canadian pesticides standards to the U.S. standard, and causing the loss of a Canadian Fisheries Act regulation in the Salmon and Herring FTA panel decision.

### **NAFTA and Environmental Standards**

NAFTA continues these negative impacts and provides others. Like the FTA, it perpetuates resource conservation problems in Canada, and again provides no exemption. NAFTA adds an important change in standard setting contained in the chapters pertaining to "technical standards" and "phytosanitary measures". The text borrows heavily from the same sections

of the GATT Uruguay Round text. The NAFTA sections call for the harmonization of standards, to be performed by international bodies not accessible to the Canadian public or to green activists. It is an unfortunate paradox that just as citizens and the planet are demanding greater attention to our ecological survival your government is bargaining away its power to regulate in this area.

It is useful to note that progress on environmental issues has often occurred through a "leap-frog" process in which one nation sets a high standard which is then met and surpassed by others. Auto emissions standards provide a good example. The nations of the EC, Japan and various U.S. states have all lead the way at various points in promoting higher standards. NAFTA would directly challenge this type of process through its insistence on a process which will result in the downward harmonization of environmental regulations solely for short-term business reasons.

Under NAFTA, significant barriers exist to our setting higher national standards through the inclusion of requirements for risk assessment, scientific justification, and the "least NAFTA inconsistent" or "least trade restrictive" tests. These barriers to standard setting are consistent with the Canadian government's Foreign Policy commitment to "move in step with our major trading partners" on standards, and its current review of environmental standards based on their compatibility with "Canadian competitiveness" criteria. NAFTA codifies an agenda which de-regulates corporate activity.

There is the further obstacle that if a nation sought to enforce a higher standard it would be subject to discussion, political pressure and ultimately dispute resolution according to the above-mentioned requirements and on the basis of "scientific" evidence. The greatest concern related to these provisions is the diminution of sovereignty over environmental standard setting for our respective federal and provincial governments. The decision to pass this responsibility on to bodies such as Codex Alimentarius is a betrayal to Canadians as it all but eliminates our role in public policy decisions, leaving these decisions to be made by institutions with no public representation.

To make matters worse, Codex has far from a stellar reputation as an international standard setter given the low pesticide standards which it would seek to impose upon us. Greenpeace reports that in some cases these standards are as many as fifty times as low as some American (and by implication, Canadian) standards.

### **Production and Process Method Standards (PPMs)**

As presently worded NAFTA provisions will mean that laws which put restrictions on products which are processed in an unsustainable fashion (i.e. products made with CFC's) will be subject to challenge.

The GATT tuna/dolphin decision provides a perfect illustration of the problems related to the non-regulation of production methods which NAFTA seeks to codify. Unless process

methods are regulated it will be difficult to regulate domestic industry without placing it at a competitive disadvantage. Although NAFTA seeks to codify GATT article XX to protect the environment recent GATT jurisprudence has undermined this provision to such an extent that it would be difficult to counter environmentally unsustainable PPMs in other nations.

### **Investment**

NAFTA fails to codify the "polluter pays" principle by requiring the full internalization of environmental and human health costs. Consequently, NAFTA does not prevent corporations from moving to jurisdictions with low standards. We are aware of the concerns of Mexican greens and other social justice groups that increased NAFTA-related investment in Mexico will lead to environmental problems throughout the country similar to those in the maquiladora regions.

It is a further point that NAFTA does not guarantee the implementation of minimum environmental standards by all three nations. Enforcement of such standards may not even be considered where they do not exist. Therefore, capital investment decisions will continue to be made according to existing differences in standards between the three nations. NAFTA should not be a vehicle for the perpetuation and enlargement of pollution havens.

### **Intellectual Property**

The extended patent protection provided in NAFTA will not only cause higher drug prices in all three countries, but will deprive the Mexican people of fair access to the benefits of their country's great biodiversity.

The intellectual property provisions also have environmental implications with respect to North America's life forms and the long term effects on agriculture. Life form patents could result in the loss of a farmers traditional right to save seeds for future planting without paying royalties because to do so would constitute an unauthorised copy of a patented product. It is a further problem that biotechnology research may be encouraged in a direction which seeks the development of pesticide-resistant plant varieties which must later be grown with the use of herbicides. Our environment would be better served through the encouragement of chemical free agricultural production.

### **Agriculture**

NAFTA will have other negative effects on our farming industry. Under the agreement the social and environmental costs of agriculture will outstrip any projected gains from Canadian access to export markets. We will witness the further demise of the family farm and its replacement with the chemical intensive practices of agribusiness. This will result in the loss of any opportunity to put agriculture on a sustainable path or to encourage the development of organic farming operations. If the family farm model is to remain intact we must take

steps to preserve our supply management systems. NAFTA's tariffication of quantitative import controls makes this virtually impossible.

### **Issues of Democracy and Public Participation**

The agreement is anti-democratic because it leaves decisions to bodies which are electorally unaccountable (including trade dispute resolution processes and standard setting processes which systematically exclude citizens). Negotiated and administered in secrecy, NAFTA provides a structure in which secret trade panels render decisions that interfere with laws passed by democratically-elected governments. Many of its terms explicitly limit the powers granted to our provincial and federal governments by our national constitution. In order to be responsive to the popular will a decision-making regime must observe the rights of notice, comment, participation and standing to bring complaints. It must also be affordable (i.e. through intervenor funding) and the results of public participation should be reflected in actual decisions. NAFTA features none of these characteristics.

### **Development in the South**

The Agreement also fails to provide the financial and technological transfers needed to assist Mexico in moving towards sustainable development. In extending the free trade regime to a Southern country, NAFTA does not provide a development model to benefit the millions of poor Mexicans who will not share in the advantages that will flow to the wealthy elite. The already intolerable experience which Mexico's working poor have faced with unregulated corporate enterprise in the maquiladoras will only be extended under NAFTA.

### **Environmental Protection Strategies**

NAFTA directly challenges federal and provincial sovereignty concerning existing and future environmental protection and natural resource conservation efforts. It restricts our governments' authority to use a wide range of environmental protection strategies: local processing of resources, preferential government purchasing, subsidies for pollution abatement, government-assisted green research and development, "true cost pricing" (internalizing the environmental costs of production) and other green industrial strategies.

### **NAFTA: What to do?**

Having had four years' experience of free trade impacts on the Canadian environment, we oppose NAFTA and urge the Canadian government not to implement it.

### **NAFTA supplementary agreements**

Nor do we believe NAFTA's negative environmental impacts can be "fixed" by the

supplementary agreement planned by the U.S. government. We are convinced that a legally binding enforcement mechanism, which would allow citizens reciprocal enforcement powers in every NAFTA nation to see that environmental laws are upheld, will not be provided in a supplementary agreement. Such an accord will not reverse the unacceptable erosion of our national and provincial sovereignty concerning progressive environmental regulation and natural resource conservation. Moreover, an enforcement mechanism would be rendered impotent in the face of trade challenges to environmental regulations given the formidable array of weapons which NAFTA provides for their successful elimination.

These weapons flow from the structure and purpose of the agreement itself, namely, entrenching the current pattern of de-regulated corporate activities that are causing accelerated ecological degradation and are in direct contradiction with a sustainable development strategy.

### **North American Commission on the Environment (NACE)**

In our view, the negotiation of supplemental agreements, and the establishment of NACE, represent a smoke-screen, intended to obscure the fact that the trade policy goals of NAFTA are fundamentally incompatible with environmental objectives. Moreover, many of the provisions of NAFTA itself are irreconcilable with environmental protection and resource conservation, and need to be fundamentally redesigned. On the key point of renegotiation however, Canada, Mexico and the United States are adamant that NAFTA not be reopened.

Creating a new environmental bureaucracy to oversee, and comment on, the disastrous environmental consequences of NAFTA as written, is not useful. Given the wording of the NAFTA, it is not possible for a Commission to correct the ecological problems fundamental to it.

We also understand that some environmentalists have suggested that NACE is needed even if NAFTA fails. Whether or not we need to augment or replace the mandate of the International Joint Commission is an issue that must be considered apart from the current debate about NAFTA and the Canada U.S. Trade Agreement. Any attempt to link the two is unacceptable in our view, and would be opposed by many Canadian environmentalists.

### **Conclusion**

At present, the corporate trade agenda and global environmental health are on a collision course whose path will be littered with environmental tragedies of the worst kind. If you are committed to the ecological sustainability of our planet then you must consider the environmental wisdom of abandoning NAFTA. Such a decision would represent the first step towards a more sustainable future.

Yours truly,

**Action Environment - St. John's, Newfoundland**  
**Alberta Pesticide Action Network**  
**Algoma/Manitoulin Environmental Awareness - Gore Bay, Ontario**  
**Animal Alliance of Canada - Toronto, Ontario**  
**B.C. Coalition for Alternatives to Pesticides**  
**Brant County Environment Group - Brantford, Ontario**  
**Cambridge Pesticide Action Group - Cambridge, Ontario**  
**Canadian Environmental Law Association - Toronto, Ontario**  
**Canadian Institute for Environmental Law and Policy - Toronto, Ontario**  
**Canadian Parks and Wilderness Society - Calgary, Alberta**  
**Cariboo Horse Loggers' Association - Quesnel, British Columbia**  
**Centre for International Studies - Baddeck, Nova Scotia**  
**Citizen's Clearinghouse on Waste Management - Cameron, Ontario**  
**Citizens Environment Alliance of Southwestern Ontario**  
**Comité de protection de la santé de l'environnement de Gaspé - Québec**  
**Concerned Citizens of Manitoba - Winnipeg, Manitoba**  
**Conservation Council of New Brunswick - Fredericton, New Brunswick**  
**Conservation Council of Ontario - Toronto, Ontario**  
**Crossroads Resources Group - Winnipeg, Manitoba**  
**CUPE Local 3235 (Employees of Pollution Probe) - Toronto, Ontario**  
**East Coast Environmental Law Association - Halifax, Nova Scotia**  
**Ecological Agriculture Project - Ste-Anne-de-Bellevue, Quebec**  
**Ecology Action Centre - Halifax, Nova Scotia**  
**Ecology North - Yellowknife, North West Territories**  
**Edmonton Bicycle Commuters Society - Alberta**  
**Edmonton Friends of the North Environmental Society**  
**Environmental Coalition of Prince Edward Island**  
**Environmentalists Plan Transportation - Toronto, Ontario**  
**Forest Protection Allies - Quesnel, British Columbia**  
**Friends of the Athabaska - Athabasca, Alberta**  
**Friends of the Forest - Thunder Bay, Ontario**  
**Friends of the Oldman River Society - Calgary, Alberta**  
**The Gaia Group - Regina, Saskatchewan**  
**Galiano Conservancy Association - Galiano Island, British Columbia**  
**Global Community Centre - Kingston, Ontario**  
**Greenpeace**  
**Great Lakes United - Ontario**  
**Guelph Pesticide Action Group - Guelph, Ontario**  
**Guideposts for a Sustainable Future - Merrickville, Ontario**  
**Hockley Valley Community Association - Orangeville, Ontario**  
**Humber Environment Action Group - Corner Brook, Newfoundland**  
**Inter-Church Uranium Committee Educational Cooperative - Saskatoon, Saskatchewan**

**It's Not Garbage** - Toronto, Ontario  
**Jackfish Environmental Protection Association** - Terrace Bay, Ontario  
**Kings Environmental Group** - Kentville, Nova Scotia  
**Kingston Environmental Action Project** - Kingston, Ontario  
**Lake Nipigon Watch Dog Society** - Geraldton, Ontario  
**Lambton Wildlife Inc.** - Sarnia, Ontario  
**Land Resource Science Club, Guelph University** - Guelph, Ontario  
**Maple Key** - Waterloo, Ontario  
**Niagara Citizens for Modern Waste Management** - Grimsby, Ontario  
**Nipissing Environment Watch** - North Bay, Ontario  
**North Bay Peace Alliance** - North Bay, Ontario  
**Northwatch** - North Bay, Ontario  
**Nuclear Awareness Project** - Oshawa, Ontario  
**Oakville Pesticide Action Group** - Oakville, Ontario  
**Organic Crop Improvement Association, Saskatchewan Chapter #1**  
**Ontario Toxic Waste Research Coalition** - Vineland Station, Ontario  
**Ontario Public Interest Research Group** - Carleton University  
**Ontario Public Interest Research Group** - Guelph University  
**Rainforest Action Group of Edmonton** - Edmonton, Alberta  
**Save Georgia Strait Alliance** - Gabriola Island, British Columbia  
**Sierra Club of Western Canada** - Victoria, British Columbia  
**Society of Grasslands Naturalists** - Medicine Hat, Alberta  
**Southern Alberta Environmental Group** - Lethbridge, Alberta  
**Stratford-Perth Environment Committee** - Stratford, Ontario  
**Sunshine Coast Environmental Protection Project** - Sechelt, B.C.  
**Tatonka Foundation** - Edmonton, Alberta  
**Timiskaming Environmental Action Committee** - New Liskeard, Ontario  
**Toronto Environmental Alliance** - Toronto, Ontario  
**Toxics Watch Project** - Edmonton, Alberta  
**Transport 2000** - Toronto, Ontario  
**Turtle Island Earth Stewards** - Vancouver, B.C.  
**Upper Credit Naturalists** - Shelburne, Ontario  
**Warwick-Watford Landfill Committee** - Watford, Ontario  
**Waste Not** - Orillia, Ontario  
**We Express Concern About Ruining our Environment (WE-CARE)** -  
Brampton, Ontario  
**Wetlands Preservation Group** - Dunrobin, Ontario  
**Windsor and District Labour Council Environment Committee**  
**Winnipeg Water Protection Group** - Winnipeg, Manitoba  
**Women for the Survival of Agriculture** - Metcalfe, Ontario  
**Yukon Conservation Society** - Whitehorse, Yukon