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BEHIND CLOSED DOORS: TRADE BUREAUCRATS TAKE OVER ENVIRONMENTAL LAW-MAKING

Largely unknown to Canadians, the federal and provincial governments have been negotiating an internal trade agreement since June, 1993. We have had an opportunity to review the environmental chapter of four drafts of the agreement (May 10, May 31, June 7, and June 10) and are stunned at what they reveal about our governments' abdication of responsibility for green policy-making.

Environmental ministries across the country are to be commended for having drafted provisions with strong protections for environmental policy for this agreement. The first drafts demonstrate thoughtful and comprehensive provisions to ensure ever-higher standards of protection, no downgrading of standards, a consultative approach to solving problems through environmental (not trade) ministries, and concerns for "leading edge" concepts in environmental policy (ie. ecosystem integrity, protection of biodiversity, the precautionary principle).

However, after being drafted by environmental ministries, the proposals were re-worked and changed by chief negotiators, all from trade ministries, and their officials. In each successive draft, the commendable environmental ministries' proposals were rolled back, and the most recent draft (dated June 10) shows a rout of environmental policy by trade officials.

Sources say that Alberta has been most hostile to a strong environmental chapter in the agreement. Apparently, the lowest common denominator has prevailed.

Amongst the many issues of concern in this agreement, the following are most serious:

1. Definition of "legitimate objective".

This agreement contains the most restrictive definition of what is a legitimate public policy objective of any trade agreement, much more restrictive than exists in the FTA, NAFTA or GATT. To be permissable under this agreement, a measure (law, standard, practice) must be the "least trade restrictive" that could have been used, must not "create a disguised restriction on trade", and must "not operate to impair (trade) unduly".

While not written into other trade agreements, the "least trade restrictive" test has been applied by trade panels to eliminate environmental protections.

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Now all Canadian environmental policies will have to meet these trade-biased tests. This is an unprecedented blow to green protections.

REMEDY: Draft a definition of a legitimate environmental objective that supports strong protection standards with no subservience to trade considerations.

2. Relationship of the environmental protection chapter to the rest of the agreement.

Originally, environmental ministries designed provisions to ensure that strong green protection regimes would survive and that trade problems with environmental implications would be dealt with in accordance with the environmental protection chapter. This would have ensured that green-friendly principles would apply in activities such as harmonization and dispute resolution (ie. maintenance or improvement of standards, the precautionary principle, protection of ecosystem integrity, etc.)

The current discussions of chief negotiators and the Integration Task Force of trade officials, by calling this a "horizontal" chapter, seek to remove any breadth of impact of this chapter and these special dispute rules. (In this agreement, "vertical" chapters take precedence over "horizontal" chapters.) Further, by allowing disputing parties to choose which chapter of the agreement will apply in each dispute (Article 1702) the trade officials will probably ensure that the environmental protection provisions will never have effect.

The dispute resolution provisions are much worse than those in NAFTA.

REMEDY: It is essential that the rules of the environmental chapter prevail over any general rules in the agreement, ie. it should not be downgraded to a "horizontal" chapter. Otherwise, experience has shown that whenever the environment becomes an issue in a trade conflict, the environment will lose. Without such precedence to the environmental protection chapter, no integration of environmental and economic policy will actually occur.

With regard to dispute resolution, officials must revert to the dispute resolution proposals of the environmental ministries' early drafts.

3. The "precautionary" principle.

The environmental ministries proposed rights to use the precautionary principle (ie. right to adopt green protections when a problem appears, even if the scientific justification is not complete). The trade officials have restricted this right.

REMEDY: Revert to the environmental ministries' wording in early drafts.

4. Investment provision.

The agreement has a welcome provision prohibiting lowering of standards to attract

investment. This should not be changed.

5. "Non-conforming" measures.

The current draft (June 10) introduces a requirement that environmental measures that don't conform to the agreement should be removed by January 1, 2000. This measure makes clear the fundamental goals of trade officials: to roll back environmental protection regimes.

REMEDY: This provision must be removed.

CONCLUSION

These are only a few of the serious attacks on environmental protection that the agreement contains. Overall, the provisions have changed from including strong protections for green policy, to including a process for dismantling environmental policy.

Discussions with a number of environment ministers' staff indicate that they have paid almost no attention to this process, and are not well briefed on it. Nevertheless, all governments plan to conclude this agreement by the end of this month.

We call on environment ministers to put on the brakes, extend the time for public discussion of the agreement, and support their own officials in protecting environmental measures.

Otherwise, we will be stuck with an internal agreement that is even less green than the FTA, NAFTA and GATT.

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