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Canadian Environmental Law Association
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ENVIRONMENTAL IMPACTS OF BILL C-130:

THE CANADA-US TRADE AGREEMENT AS ENVIRONMENTAL LAW

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THIS DEAL IS ABOUT THE ENVIRONMENT

The Canada-US trade agreement will have profound and disastrous implications for the Canadian environment and will fundamentally undermine the principles of environmental protection and sustainable resource management.

This government has dismissed concerns about the deal's environmental implications and stated:

"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."

As the following briefing notes clearly reveal, the enormity of the deal's environmental consequences are truly breathtaking, and its effects upon our environment will be varied, wide-ranging and overwhelmingly adverse. In fact, Bill C-130 should be regarded as a law about Canada's environment because of the magnitude and scope of its environmental impacts.

RESOURCE CONSERVATION: THE PRINCIPLE OF SUSTAINABILITY

The report of the World Commission on Environment and Development (the Brundtland Commission), offered unequivocal support for the principles of environmental protection and sustainable resource management. The Brundtland report has now been endorsed by the U.N. General Assembly and echoed by our own National Task Force on Environment and Economy. As noted by the Task Force, the realization of sustainable development engenders two principles:

1. That governments act as trustees of the resources we will pass onto future generations.
2. In accepting this responsibility governments will have to change the way they approach the environment and the economy. They must integrate environmental input into decision-making of the highest level.

The Report of the National Task Force has now been unanimously endorsed by the federal government, all ten provinces and both territories. Tom McMillan has often promoted that fact and made a point of emphasizing it in his speech to the United Nations.

It is astonishing then, that by its own admission, the federal government gave no consideration to, nor did it discuss, the environmental consequences of the trade deal during negotiations.

Yet in the most fundamental way, the trade deal will foreclose Canadian options for implementing the principles of integrated economic and environmental planning in aid of sustainable resource management.

There could be no greater indictment of this Government's true commitment to the principles it so publicly embraces than its complete and resounding failure to give them any effect whatsoever during the negotiations of the Trade Agreement.

ACID RAIN

While the effects will be indirect, the Canada-US Trade Agreement will undermine Canadian efforts to control acid rain in way that is likely to actually increase levels of acid deposition, for several reasons:

1. Canadian subsidies for acid pollution control may now be challenged as unfair and non-tariff barriers to trade by U.S. industry or utilities under Articles 905 and 2011 of the agreement;
2. Diminished provincial and federal authority to regulate energy exports will create pressure to increase coal-fired electrical power generation to meet export commitments as domestic energy demand grows;
3. The US coal industry has already called upon the US administration to weaken air pollution standards to facilitate the establishment of new coal burning generation stations to compete with increases in electricity imports anticipated under the Deal.
4. Canadian industry has also called for reduced pollution standards so that it may compete in the new trade environment;
5. Canadian options for achieving further reductions in acid gas emissions, such as regulating the use of low-sulphur coal from Alberta, are made considerably more difficult, if not impossible.

WATER

Mr. Crosbie's assertion that "nothing in the agreement obligates Canada to sell water to the U.S." is certainly misleading and probably incorrect. To begin with, certain Canadian politicians and businessmen have needed no encouragement to pursue the profits that

may be made from the sale of this vital Canadian resource. A scheme endorsed by Premier Bourassa and publicly supported by Simon Reisman, would direct massive quantities of Canadian water from James Bay to the parched U.S. southwest. In fact, a Vancouver company has already obtained a licence to export fresh water by supertanker to Southern California.

Indeed under scenarios that are likely to arise, Canada might well be obligated to export water whatever its policy on the matter. For example, where a province is diverting water to drought stricken farmers, it is likely that if the province declined a US offer to purchase water on the same terms, that its actions would be considered discriminatory under the Agreement.

Recent announcements of prospective legislation safeguarding Canadian water resources will be of no avail in light of the override provisions of Bill C-130.

ENERGY

Canada is the most energy intensive industrial country in the world. Our climate, size and population density make adequate supplies of energy critical to our survival and the viability of Canadian industry.

The Canada-US trade deal is about many things, but it is primarily about unconstrained U.S. access to Canadian natural resources. Of those resources, energy is by far the most strategic. If implemented, the Deal will effect an unprecedented surrender of essential Canadian energy resources and will represent an abject abandonment of the government's responsibility to manage these resources in the public interest.

When shortages of non-renewable energy resources once again occur (our conventional oil reserves are less than half those of 1969) Canada will be committed to the continued supply of US markets in spite of domestic shortages whatever any future Canadian or provincial government may feel about the matter.

Protestations that the trade deal is not about the environment are also dramatically at odds with the fact that Canadian energy production is of course responsible for several of Canada's most significant environmental problems. Coal-fired electrical generation is a major source of acid rain. Nuclear power, uranium mining or high level radioactive waste disposal problems are among our most controversial environmental issues. Hydro-electric mega-projects have devastating impacts upon local eco-systems and populations. Oil and gas exploration has diverse and serious impacts from the Alberta foothills to the Beaufort Sea.

ELECTRICITY EXPORTS

To ensure that electricity sales are in keeping with the public interest and to guard against excessive export commitments, a number of safeguards have over the years, been built into the Canadian regulatory process. The Mulroney trade deal either specifically dismantles or undermines these safeguards in a way that actually obliges Canada, in certain circumstances, to serve American needs in preference to its own.

Under circumstances that are likely to arise:

- *Reluctant provincial utilities may be compelled to export energy;

- *Canada will be obliged to maintain electricity exports notwithstanding domestic shortages and the absence of any contractual obligation to do so, and;

- *The NEB would have to issue an export license even for electricity that is wanted and needed in Canada.

NUCLEAR POWER

There are several reasons to expect that the Canada-US trade deal will increase the likelihood that additional nuclear generation stations will be built in Canada - facilities that may be needed for no other reason than to satisfy U.S. export quotas as local demand grows.

One important factor will be Annex 905.2 of the agreement which eliminates the "least cost alternative" test of the National Energy Board Act Regulations that limited the discount at which exported electricity could be sold. With this safeguard removed, Canadian utilities will be free to make prospective U.S. purchasers a deal they simply cannot refuse.

In fact, if Canada builds in anticipation of export markets the U.S. may have Canada over a barrel when it comes time to negotiate a price for electricity that is unneeded for Canadian domestic supply. Nuclear generation stations cannot simply be switched on and off. Even worse is the fact that once a contract is negotiated, Article 904 of the agreement appears to entitle the U.S. to that proportion of Canadian supplies, even after the contract expires, for as long as the U.S. is willing to pay for it.

NATURAL GAS

Natural gas is one of Canada's most abundant and important energy resources. While conservation has to be the first priority of a sustainable energy resource policy, natural gas offers several environmental benefits when compared with other fossil fuels.

Abundant Canadian supplies might also offer Canadian industry a cost effective way to control air pollution. Natural gas co-generation systems, that co-produce electricity and steam, also contribute significantly to energy efficiency and conservation objectives.

Because of the export guarantees accorded by the agreement, opportunities to put this important Canadian resource to its best use in achieving important economic and environmental objectives for Canada, will be lost forever.

ENERGY CONSERVATION AND EFFICIENCY

Effective conservation strategies are absolutely vital to Canada's continued prosperity. Not surprisingly, the National Task Force on the Environment and Economy describes conservation as "imperative to ensure that our renewable resource base is sustained for future utilization".

The Canada-US trade deal surrenders for all time one of the most important regulatory mechanisms that a sovereign nation has to accomplish resource management and conservation objectives - export controls.

In addition Article 906 undermines the principle of sustainable resource management by specifically recognizing the value of Canadian subsidies and incentives for oil and gas exploration while completely ignoring the need to encourage research and development in the areas of energy efficiency and conservation technology. Because Canada will no longer be able to buffer energy intensive Canadian industry from future energy shocks, it is absolutely essential, that progress be made to improve our energy-productivity equation.

The Trade Deal assures that Canadian priorities will lie elsewhere and that we will continue to lose ground in relationship to countries like Japan and Sweden who have taken the conservation message seriously.

FORESTS

Canadian forests are in serious trouble because of over-cutting and under reforestation. Since 1950, Canadian annual wood harvests have increased by 50%, and Environment Canada has confirmed that present harvests are often in excess of allowable maximum cuts. Shortages are already apparent in some regions and the situation is sure to worsen as the legacy of bad management practices catches up to us.

What little reforestation is carried out in Canada is heavily subsidized by Canadian government. U.S. lumber interests regard reforestation grants as unfair trade practices and subsidies to Canadian lumber exports, and have been effective in prompting the U.S. government to take up its cause by retaliating against Canadian imports. The culmination of the recent soft wood lumber dispute with the United States was an agreement by the B.C. government to end replanting subsidies to the forest industry. B.C. did so only after sending a delegation to Washington to get U.S. government approval.

Just at the time of a dawning recognition of the need for sustainable management practices, important tools that will be necessary for the task will be made even more vulnerable to attack by U.S. economic interests.

AGRICULTURE

Productive agricultural land is a vital Canadian natural resource. Without it we lose our ability, as a nation, to feed ourselves. While most Canadians are aware of the successive economic crises to confront our farming communities, few are aware of the enormous ecological problems associated with our current agricultural policies and practices.

One measure of the enormity of the problem is the fact that in the last 40 years we have lost much of the sub-soil structure of our most valuable farmland and have seriously threatened its sustaining potential as a "renewable" resource. Soil acidification, salinization and erosion seriously compound the problem. We are also losing productive agricultural lands at an enormous rate to urban development.

Because agricultural and food industries will be major losers under the deal it will be even more difficult to re-orient agricultural practices and policies in favour of sustainable management approaches that must include much greater commitments to recycling organic wastes, using renewable sources of energy, applying ecologically derived cropping patterns and integrative pest control programs.

In fact the very existence of certain sectors of the farm economy is threatened by the deal. A collapse of Canada's horticultural industry would obviously be a disaster, only one consequence of which would be an even more rapid conversion of the last of our most precious agricultural lands to real estate development.

PESTICIDES

Schedule 7 to chapter 7 provides that the U.S. and Canada must "work toward equivalent guidelines, technical regulations, standards and test methods" for pesticide regulation. In particular, under the deal, Canada undertakes to work toward equivalency in "the process of risk/benefit assessment".

In Canada pesticides are licenced pursuant to the provisions of the Pest Control Products Act which does not mandate risk/benefit analysis but rather places emphasis squarely upon demonstrating the safety of the pesticide in issue.

In contrast, U.S. pesticide legislation requires a balancing of risks and benefits. It is an approach that environmentalists have argued against for years.

The differences between the U.S. and Canadian approach is quite real. In the U.S. there are 20% more active pesticide ingredients registered for use and over 7 times as many pesticide products.

One current example is the herbicide alachlor (lasso) which the U.S. continues to license, but is banned in Canada. According to Health and Welfare officials the evidence of alachlor carcinogenicity is more convincing than for any other pesticide. Yet the U.S. found that the benefits outweighed risks and continues to register this substance. Not surprisingly, the manufacturer has argued that Canada's licencing criteria should also be founded upon a risk/benefit assessment.

ENVIRONMENTAL STANDARDS

Several provisions of the Trade Agreement are intended to promote the harmonization of standards, testing procedures and regulations. Article 6 of the Agreement, which provides for the harmonization of technical standards, will not apply to the provinces and of course very little environmental regulation exists at the federal level. In this area then, the effects of the deal on air pollution or waste management standards are likely to come indirectly and as a result of the new economic pressures that will be brought to bear as a result of the deal.

At the federal level disparities between U.S. and Canadian environmental standards do exist. In some areas Canadian standards are higher, in others the U.S. is tougher. If recent experience with plywood and pesticides is to be a guide, Canada will have to struggle just to maintain the status quo.

The other casualty of the provision of the harmonization provisions of the agreement will be public participation in the regulatory process. If Canadian and U.S. standards are to be harmonized in many areas, the regulation making agenda, timetable and venue will probably be set by the U.S. American standard setting processes are often more formal than our own and substantially greater resources are available to U.S. interest groups than in Canada. The results of U.S. licencing hearings may now de facto, set the standard for Canada as well. It is very unlikely that Canadian groups would influence the U.S. approvals process even if they could find resources to open offices in Washington. Again, the deal's effect is to remove from Canada its ability to regulate our environment, without the concurrence of the US.

ENVIRONMENTAL SUBSIDIES/INCENTIVES

Environmental standards and incentives represent two sides of the same coin - each is intended to achieve environmental quality and resource management objectives. The trade agreement has already prompted new attacks on Canadian pollution abatement subsidies and incentives by US business interests.

U.S. countervail, anti-dump and other trade remedies are potent mechanisms with which to attack Canadian environmental incentives. Simon Reisman noted the importance of restricting the applications of the U.S. contingency protection measures;

"Any agreement which did not restrict the use of U.S. dumping and countervail statute... would not be worth the powder it would take to blow it to hell".

Not only does the Canada-US trade deal leave U.S. protectionist measures entirely intact but it actually adds new and potent weapons to the arsenal and provides even more effective mechanisms of enforcement.

