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Delivered via email dany.drouin@canada.ca

Dear Dany Drouin:

As a follow-up to the webinar held on Thursday September 17 on the *Canada-US Arrangement on the trade of plastic waste*, the Canadian Environmental Law Association (CELA) and Health and Environment Justice Support (HEJSupport) outline the following actions needed to address plastic waste in Canada:

1. Ratification of the Basel Convention Plastic Waste Amendments before January 1, 2021;
2. The release of Canada's National Strategy on Plastics by 2021 that will include a ban of "harmful single-use plastics" as stated in the Speech from the Throne¹;
3. Regulate plastic waste under CEPA, including listing to Schedule 1 (Toxics Substances List) and Schedule 3 (Export Control List);
4. Require transparency and public reporting on the movement of plastic waste and its further management.
5. Establish a multi-stakeholder expert group to discuss plastic arrangements between the US and Canada with full public engagement.

CELA and HEJSupport want to thank you for the opportunity to participate in the webinar on the Canada-US Arrangement on the trade of plastic waste. This webinar is the third meeting with you and other experts from Environment and Climate Change Canada (ECCC) to discuss Canada's perspectives to ratify the Basel Convention Plastic Waste Amendments that become effective as of January 1, 2021.

¹ The Speech from the Throne highlights the government's commitment to deal with single use plastics: "The Government will ban harmful single-use plastics next year and ensure more plastic is recycled. And the Government will also modernize the Canadian Environmental Protection Act." <https://www.canada.ca/en/privy-council/campaigns/speech-throne/2020/stronger-resilient-canada.html>

These amendments confirm each Parties' commitment to uphold objectives of enhancing the control of the transboundary movements of plastic waste and clarifying the scope of the Convention as it applies to such waste. It is indeed important to note Canada's support of the plastic waste amendments.

As stated in the ECCC presentation, "Canada and the US are currently discussing an arrangement regarding the environmentally sound management [ESM] of plastic waste subject to a transboundary movement between the two countries. And that "plastic waste covered by the arrangement and circulating between the two countries is managed in an environmentally sound manner and as such, continues to circulate freely between the two countries."

As it was made clear at the webinar, the arrangements are indisputably linked to the Basel Convention Plastic Waste Amendments. While Canada supports the amendments and their entry into force, it nevertheless submitted the request to the Secretary-General for an extension of the period needed for compliance. Canada has not yet confirmed a timeframe for completing a necessary review and ratification of the Plastic Waste Amendments. At the webinar it was noted that once the government submits the ratification package proposal to Parliament, at which point a review will be undertaken to consider whether Canada can ratify them. Based on the discussions, there remains great uncertainty when a decision on ratification will be made.

Canada's successful adoption of the Basel Convention Plastic Waste Amendments is vitally important within Canada's Strategy on Zero Waste. The outcome from the US-Canada discussions must uphold the objectives of the Basel Convention Plastic Waste Amendments if Canada is to meet its commitment to address plastic waste by upholding the need to apply EMS strategies, creating opportunities to consider better design of plastic products to avoid toxic additives and promoting alternatives to plastic materials through innovative approaches.

According to the government website, "Canadians throw away over 3 million tonnes of plastic waste every year. Only 9% is recycled while the rest ends up in our landfills, waste-to-energy facilities or the environment. Plastic waste and marine litter burdens our economy and threatens the health of our environment including our wildlife, rivers, lakes and oceans."²

We raise the following issues for further consideration to ensure Canada meets its obligations on the Basel Convention Plastic Waste Amendments and advance work on Canada's Plastic Waste Strategy. During our meeting in June, the ECCC representatives noted that the OECD Working Group (WG) initiatives on transboundary movement of waste are among key processes that impact Canada's ability to adopt the obligations under the Basel Convention.

According to the decision made at the OECD meeting of 7 September, OECD members agreed to update rules and require prior-informed consent (PIC) for hazardous plastic shipments, such as material contaminated with toxic chemicals or other hazardous contaminants. However, no

² Government of Canada. Toward zero plastic waste . <https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/zero-plastic-waste.html>

consensus was reached on how to regulate “non-hazardous plastic waste” that includes “both pure single-polymer waste, where recycling leaves little residue, and mixed plastic waste where recycling leaves by-products that need to be properly disposed of”³.

According to OECD, it means that all OECD countries will need to secure permission from destination countries before shipping hazardous plastic waste. In addition, with every Basel country now, if a country accepts the restrictions over certain plastic waste under Annex II or VIII, ECCC will seek permission and the waste may be declined.

However, there will be no OECD-specific controls on shipping non-hazardous plastic waste between member countries. Within the OECD, each country will have the right to “define requirements for such shipments in line with domestic legislation and international law.”⁴ Thus, when the new plastic amendments under the Basel Convention come into effect on January 1, 2021, Canada’s non-acceptance of Basel Convention Plastic Amendments at this time leaves it vulnerable to plastic scrap import from other OECD countries.

We would like to highlight that not all OECD members have an advanced recycling system in place. For example, Chile, Colombia, Mexico, and Turkey are far behind in managing plastic waste in EMS. Canada’s low recycling rates on plastic is at only around 9% with the rest dumped in landfills or incinerated. It means, that no control over plastic waste shipment within the OECD members may result in unprecedented burden on the already problematic recycling system in Canada.

Based on the information provided at the webinar, Canada and the US arrangement will inter alia affirm that plastic waste will be managed in an ESM and continue to circulate freely. This includes plastic to be regulated under new entry Y48 that “covers plastic waste, including mixtures of such wastes except for those falling under entries A3210 (hazardous waste) or B3011 (plastic waste will not be subject to the PIC procedure). An example of a plastic waste covered by Y48 is waste polyvinyl chloride.”⁵

During the webinar, several questions were raised, including the need to explain what ESM plastic waste means. This is especially important when addressing the recycling of PVC, considering Canada is home to some of the world’s largest vinyl processors.

Though some participants at the webinar said modern PVC now may not contain some chemicals of concern like lead, it nevertheless contains other toxic substances, including phthalates, cadmium, and/or organotins with many identified as toxic under Canadian Environmental Protection Act (CEPA). As it is noted in the UNEP Assessment Report on Issues of Concern

³ <https://www.oecd.org/environment/waste/full-summary-of-the-amendments-to-the-OECD-Council-Decision.pdf>

⁴ [Ibis](#)

⁵ <http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/FAQs/tabid/8427/Default.aspx>

“lead used as a PVC stabiliser was first replaced by cadmium, which was then largely replaced by organotins — despite extensive knowledge about the high toxicity of both cadmium and organotins.”⁶ These toxic additives can leach out or evaporate into the air over time, posing unnecessary dangers⁷.

Does Canada have a capacity to safely recycle PVC waste? What percentage is the amount of PVC waste imported to Canada from the US in comparison to domestically generated and elsewhere imported PVC waste?

We believe that the need for permits is critical for disclosure for each of the shipments to validate that plastic waste is addressed in an ESM to meet the objectives between the US and Canada. However, it largely depends on the arrangements between the two of them.

The Basel Convention does not preclude movement of waste, but requires countries involved in the movement to give their consent that they accept these materials and that they can manage them safely. The arrangement between the US and Canada will reduce the trade barriers but not requiring the permit between two businesses may result in the overloading of the recycling system in Canada. We find the uncertainty created with this arrangement will undermine the overall efforts by Canada to promote improved recycling efforts and diminish opportunities for product design that is badly needed.

Thus, a lot depends on what type of plastic is included into the arrangements with the US. If plastic currently included into Annex IX (entry B3011) of the Basel Convention is part of the revised arrangements, then materials under the arrangements can circulate freely according to the provisions of international agreement. However, if PVC or another type of plastic that is part of Annex II (entry Y48) or Annex VIII (A3210) is included into the arrangement, then Canada will have the right to provide its US partner a prior informed consent and justify its ability to manage the waste safely.

We present that:

- Delaying the acceptance of Basel Convention plastic amendments goes against Canada’s plans to regulate plastic waste and leaves Canada vulnerable to plastic scrap import from the US and other OECD countries.
- Canada cannot jeopardize obligations set by the international agreement (Basel Convention) to which it is a party.
- The development of the arrangements between the US and Canada cannot cause delays in acceptance of the Basel Convention Plastic Waste Amendments by Canada.

As stated earlier, we are looking forward to discussing the following actions needed to address plastic waste in Canada with you:

⁶ <https://chemicalwatch.com/157846/un-report-suggests-legally-binding-mechanisms-to-address-issues-of-concern>

⁷ <https://www.state.nj.us/humanservices/opmrdd/health/pvc.html#:~:text=PVC%20contains%20dangerous%20chemical%20additives,posing%20unnecessary%20dangers%20to%20children.>

1. Ratification of the Basel Convention Plastic Waste Amendments before January 1, 2021;
2. The release of Canada's National Strategy on Plastics by 2021;
3. Regulate plastic waste under CEPA, including listing to Schedule 1 (Toxics Substances List) and Schedule 3 (Export Control List);
4. Require transparency and public reporting on the movement of plastic waste and its further management.⁸

We also believe that a multi-stakeholder expert group should be set up to discuss plastic arrangements between the US and Canada with full public engagement ensured.

Thank you for your consideration. We look forward to your response to these comments.

Yours truly,

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⁸ Also read: Canadian Environmental Law Association and Health Environment Justice Support. Backgrounder – Canada and Turkey risk being dumping ground for plastic waste. July 22, 2020. <https://cela.ca/wp-content/uploads/2020/07/CELA-HEJSupport-Backgrounder-plastic-waste-Basel-Convention-OECD.pdf>