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SURFRIDER
FOUNDATION.

December 2, 2020

Hon. Jonathan Wilkinson, Minister
Environment and Climate Change Canada
House of Commons
Ottawa, Ontario, K1A 0A6
Dear Minister Wilkinson,

We are writing to express our serious concerns regarding the fact that five weeks ago the Canadian government, in a secretive, non-transparent manner, signed a Bilateral Arrangement with the United States regarding the import and export of plastic wastes. In addition to the secretive manner in which the Agreement was negotiated, we are concerned that in signing the Agreement Canada will be in violation of its legal obligations under the Basel Convention when the Convention's plastic wastes provisions come into effect on January 1, 2021.

The Canadian government has expressed its desire to ratify the Basel Convention amendments including the new listings of contaminated and difficult-to-recycle plastic waste before the amendments come into effect on January 1. These amendments require that Canada obtain Prior Informed Consent from any Basel Party to which Canada wishes to export plastic wastes that are listed in the Basel Convention and forbids trading such waste with no parties.

The United States is not a Party to the Basel Convention and is therefore not bound by these requirements. Parties such as Canada are prohibited from trading hazardous or other wastes with non-Parties. However, Article 11 of the Convention allows Parties such as Canada an exception to this rule if they sign Bilateral Agreements with non-Parties such as the United States. Any country exercising the Article 11 exception is legally obliged under Article 11 to ensure that "these agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by the Convention" and "must not derogate from the environmentally sound management of hazardous wastes and other wastes as required under the Convention."

The agreement signed by Canada is reported to maintain the status quo and allow a free trade in these newly listed plastic wastes, and thus once the new Basel Convention amendments on plastic wastes enter into force, the Canadian agreement with the US will derogate dramatically from the provisions of the Convention. The bilateral agreement fails to meet the test of providing an equivalent level of control (no control v. prior informed consent) and thus fails to ensure its provisions are not less environmentally sound than those required by Article 11 of the Convention.

We are deeply concerned that the Canada-United States Arrangement on export of plastic wastes, which Canada initiated and signed on October 26, 2020, thus does not comply with the Basel Convention and further sends a message to the world that Canada is willing to violate international law and wants the environmental trade rules they helped negotiate to apply to others but not to themselves or their trading partners.

The United States government invited non-governmental organisations to participate in a briefing on November 18, 2020 "on the recently signed Arrangement Between the Government of the United States of America and the Government of Canada concerning the Environmentally Sound Management of Non-Hazardous Waste and Scrap subject to Transboundary Movement." The text of the Arrangement was not presented at that meeting, but was declared to be an Article 11 arrangement that will preserve the current free trade in plastic waste and scrap of all kinds even after the entry into force of the Plastic Waste Amendments to the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal.

At that meeting, US government officials also stated that the Arrangement was not legally binding. It is impossible to understand how on the one hand it can be said to meet the Article 11 requirements of the Basel Convention, which is legally binding on Canada, and at the same time not be a legally binding document. It also appears that there are no requirements in the Arrangement that the United States not export to developing countries the plastic wastes that it imports from Canada unless it first obtains the Prior Informed Consent of the importing developing country.

We are concerned that the Bilateral Arrangement appears not to comply with the Basel Convention. This situation will open a loophole whereby Canada can export plastic wastes to the US and these plastic wastes can then be re-exported by the United States to developing countries without complying with the Basel Convention and its new Amendments. Such a loophole does not adhere to the intent and purpose of the Amendments and the Convention itself. Such an agreement, would violate Canada's international legal obligations and would gravely undermine the Basel Convention.

We note that at a Parliamentary Committee hearing on a private member's bill regarding export of plastic wastes (Bill C-204) on October 30, 2020, your Parliamentary Secretary, Terry Duguid, speaking on your behalf, stated: "The majority of Canada's trade in plastic waste is with the United States." While speaking about Canada's export of plastic wastes to the United States, Mr. Duguid failed to disclose that Canada had just four days earlier signed an important Bilateral Arrangement with the United States regarding export of plastic wastes, many of which can be easily re-exported to third countries by US waste brokers. We consider this to be troubling on its face but also an example of an extreme lack of transparency.

We request that:

- The government make the Bilateral Agreement between Canada and the United States public immediately;
- The government complete the ratification of the the Basel Convention Plastic Waste amendments and, if has not, state when it intends to do so;
- The Bilateral Arrangement be changed to require prior informed consent for all export of plastic waste between Canada and the United States and ensure it provides an equivalent level of control as the Basel Convention, in particular a strict prohibition of

re-export of those waste transferred from Canada.

- That Canada, take steps to ensure that plastic wastes leaving Canada and entering the US will not be able to be exported to third countries.

We urgently request your immediate response.

Sincerely,



Kathleen Ruff, Founder & Director
RightOnCanada.ca



Jim Puckett, Executive Director
Basel Action Network

On behalf of:

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