

**Notes for Comments by the Canadian Environmental Law Association to the
Standing Committee on International Trade (CIIT) respecting a Study into the
Benefits of Full Membership in the Pacific Alliance**

April 17, 2013

Thank you for inviting me to attend and make comments to you today. My name is Theresa McClenaghan and I am the Executive Director and Counsel with the Canadian Environmental Law Association.

My organization, the Canadian Environmental Law Association is a federally incorporated not-for-profit environmental non-governmental organization, and an Ontario specialty legal aid clinic. We provide direct legal services to clients including test cases and precedent setting environmental law cases; our clientele includes low income and vulnerable communities and those who would not be able to afford a lawyer. Our mandate includes law reform, public legal education and community outreach.

I will provide brief remarks in the hope that we can be of assistance in your study of the potential benefits of Canada joining the Pacific Alliance as a full member. I understand that the relatively recently formed Pacific Alliance's full members currently consist of Chile, Columbia, Mexico and Peru and that Canada has become an observer to that process since last November. I also understand that there are now other observer countries to the Pacific Alliance.

I have read with interest the transcripts of this Committee's enquiries into this Study of March 18, 20 and 25th and am therefore somewhat familiar with the testimony you have heard so far.

I have also read the information that I could obtain with respect to the Pacific Alliance and its Agreements to date. For example, I obtained translated text of the Lima Declaration, signed by the four member countries (with Panama then an Observer), of April 28, 2011. The Lima Declaration, which is very high level, describes a process for the designated Senior Ministers in the four countries to work toward developing a Framework Agreement for a "deep integration area."

My focus will be on issues relating to environmental protection in the event of Canada joining the Pacific Alliance as a full member and my remarks will in general explore both potential benefits and also potential risks. My remarks are very general since this is very early in the process and of course there are no specific agreements or proposed language to which Canada would be bound, to consider at this time. I will be drawing largely on CELA's prior work on environment and trade matters, for example we have spoken about other bilateral trade agreements at this committee in

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earlier Parliaments, and there are certain issues that we consistently seek to ensure are considered as they impact environmental protection and sustainability. For example we provided testimony in relation to the Canada-Peru Agreement in 2009.

My primary question is the extent to which participation in the Pacific Alliance would improve both Canada's and the current four members' situations in terms of sustainability. So, for example, I noted that a witness from Canada's Department of Foreign Affairs and International Trade indicated that Canada is pursuing three "pillars" in terms of its engagement in the Americas. She outlined those as consisting of:

- Economic opportunity
- Strengthening security and institutions
- Fostering Lasting relationships.

I would strongly encourage the adoption of a fourth pillar, namely:

- Pursuing Sustainability and Environmental Stewardship

Sustainability as normally understood, includes pursuit of environmental, social, and economic goals that ensure that we are not only meeting the needs of the present, but also ensuring opportunities and resources for those of the future.

If this pillar of Sustainability were explicitly added to Canada's engagement strategy for the Americas, there may be opportunities that would then become evident in further discussions involving further integration and engagement among the members and Canada. I want to be clear that I would see these opportunities as operating both in advancing and improving Canada's pursuit of sustainability, as well as in the Pacific Alliance member countries.

For example, with Canada engaged extensively in mining investment and activities in the Pacific Alliance countries, a question arises as to whether Canada's mining laws are adequate for strong protection of the environment and for provision of strong labour, health and safety rules, both at home and abroad. We would want to see these areas improving wherever Canadian companies are operating. Similar questions arise with respect to oil and gas operations. An opportunity could be created to improve Canada's reputation respecting environmental sustainability if the discussions provide a mechanism to develop and implement 21st century solutions whereby trade and investment are focussed particularly on sustainable practices.

These opportunities extend from the level of research and development, including participation by academia, governments, ENGOs, and the corporate sector, through to implementation of best practices. A necessary part of a sustainability approach is to keep track of whether goals of sustainability and environmental stewardship are being achieved, versus whether negative impacts are occurring; thus there is a need for monitoring and enforcement to be part of any strategy or Agreements that might be

developed. Equally important is to ensure that there is public participation and transparency, both in the development of frameworks of sustainability, as well as in considering the results of implementation of environmental rules and analysis of their level of success or any need to modify approaches.

Examples of the types of inquiries that need to be considered in analyzing a sustainability framework and the current challenges and opportunities are found in the Sustainability Reports of the Inter-American Development Bank for Latin America and the Caribbean. For instance, the Bank's 2011 Report outlined the challenges arising from growing incomes and greater opportunities, in that it becomes urgent to consider integrated approaches to energy, food, and water security and to ensure future supplies of all of these while not degrading the underlying environment on which these goods depend. Significant issues of sustainable agriculture, low carbon development, and sustainable resource extraction are just a few of the most obvious and urgent issues.

If Canada is increasing activity and investment in the region, and if its activities are accelerating the pace of change and contributing to greater environmental stresses, then Canada is obligated to explicitly consider how to turn its actions into opportunities for greater sustainability. Because many actions have long-lasting impacts (such as resource extraction, for example), it is imperative that this type of analysis be undertaken very early in the process of considering further activity in the region. And as I said earlier, I would urge Canada to apply the lessons learned at home as well as in other areas of the world in which our nationals are active.

I noted when I reviewed the Committee's testimony that the members of the Pacific Alliance have established the Pacific Cooperation Platform, and that this is the area in which issues of environment, climate change, innovation, science and technology, social development and educational institutions are being considered by the Alliance in terms of further integration. However, I have been unable to find details as to these discussions at this point. I would suggest that this would be an area for further productive inquiry by this Committee - to ascertain the extent to which sustainability issues are already under discussion, and the extent to which Canada's full participation could or would constructively advance sustainability.

Turning to the risks of participation, I will briefly mention some of the issues which concern us in various bilateral and regional trade agreements. These would be issues that I would encourage the Committee to consider in making recommendations as to Canada's further participation, to the extent that there are opportunities to consider these issues in the Pacific Alliance discussions.

One issue of ongoing concern to us is the continued provision of investor rights in the Agreements (as is the case with the existing bilateral agreements with the Pacific Alliance countries). Our concern is that the agreements provide the opportunity for non-domestic investors to bring claims against our government for regulatory action taken by our provincial or federal governments. We are of the view that this is not

appropriate and that if there is a claim of true expropriation as understood by our well-developed court system, then those types of claims should proceed under our domestic system in the same way that our nationals would proceed.

Another concern is that of the frequent aim set out in the Agreements, to pursue harmonization of standards. While this is framed in terms of efficiency, our concern is that we want all governments to be free to pursue strongly protective environmental, labour, occupational safety, and health standards. We worry that harmonization approaches often result in adoption of the standards at levels that the least progressive nation will approve; or at the very least, standards below best practices that could otherwise be required based on available science and technology.

We are also concerned to ensure that Canada consistently protects the rights of Canadian governments at all levels, from municipal to provincial to national and First Nations, to ensure that those governments continue to own, manage, operate, and make decisions in respect of key services such as public drinking water supplies. Any discussions about providing additional private investment in this area must be cognizant of the high priority Canadians place on public drinking water control which was stressed after the experience of the Walkerton tragedy in Ontario in the year 2000.

To conclude, there may be opportunities to pursue additional environmental and sustainability commitments in the areas of habitat protection, restoration, wildlife conservation, restoration of legacy contaminated sites and many other areas, both in Canada and in the Pacific Alliance member countries. Attention to quality of life issues is also essential as any expansion of economic activity by Canada is considered. These include fair, safe work, environmental health, application of the precautionary principle, reduction of use of toxic materials, and public participation in decision making regarding land use, to name just a few of the critical issues in the area of sustainability. However, there are risks in that many of these areas may be worsened if the sustainability issues are not examined and explicitly pursued in any decision by Canada to enter into full membership with the Alliance.

Thank you for the opportunity to make these comments and I will be pleased to answer any questions that the Committee has so far as I am able to do so.

Theresa McClenaghan
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