

March 29, 2021

Standing Committee on Environment and Sustainable Development
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Sent by e-mail to ENVI@parl.gc.ca

Dear members of the Standing Committee on Environment and Sustainable Development,

Re. Bill C-204, An Act to amend the Canadian Environmental Protection Act, 1999 (final disposal of plastic waste)

I appreciated the opportunity to appear as a representative of the David Suzuki Foundation in your study of Bill C-204, on March 15, 2021. Subsequently, ECCC officials appeared before the committee on March 17, 2021, and described how plastic waste exports are currently treated under the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*. We wish to clarify for the committee the gaps in Canada's current regulatory system and how the amendments the David Suzuki Foundation and others have proposed would address these gaps.

The attached table, which I referred to in my presentation to the committee, sets out Canada's international legal obligations for three categories of plastic waste - hazardous plastic waste, non-hazardous plastic waste and plastic waste requiring special consideration. In short:

- **Requirements currently in place target hazardous plastic wastes.** The amendments we proposed to Bill C-204 explicitly prohibiting exports to non-OECD countries would align Canadian controls with the spirit of the Basel Ban Amendment – proactively banning hazardous plastic waste exports to all non-OECD countries, whether or not that country prohibits import of this waste.
- **Canada has not updated its regulations to address plastic waste requiring special consideration,** a category created by the recent amendments to the Basel Convention. These plastic wastes need to be brought under Canada's hazardous waste export controls (CEPA section 185 and the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*). Furthermore, while the text of the Basel Ban Amendment predates the plastic amendments to the Convention, international best practice is for OECD countries to also ban exports of plastic waste requiring special consideration to non-OECD countries.

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The committee heard that Canadian regulations control wastes that are defined as hazardous or waste prohibited by the importing country, even if the waste is not defined as hazardous in Canada. However, **this regime fails to address the bulk of the plastic waste export problem.** In the absence of an explicit legal requirement for exporters to identify plastic wastes requiring special consideration, exporters typically label these wastes as non-hazardous, or using OECD nomenclature as “green list waste”. As such, the fact that Canadian regulations control wastes prohibited by the importing country is of no consequence; no country prohibits non-hazardous, or OECD green-listed waste imports.

Canada’s regulation has not caught up with the narrow definition of non-hazardous plastic wastes now recognized under the Basel Convention (i.e., plastic wastes consisting exclusively of one non-halogenated polymer or resin, selected fluorinated polymers or mixtures of polyethylene, polypropylene and/or polyethylene terephthalate, provided the waste is destined for recycling in an environmentally sound manner and almost free from contamination and other types of wastes). Mixed and unsorted plastic wastes therefore leave Canada unregulated and without any credible control or accountability mechanisms in place to prevent them from being sent onward for “final disposal” in non-OECD countries.

This legal loophole with respect to controlling plastic waste requiring special consideration benefits unscrupulous waste exporters to the detriment of plastics manufacturers and legitimate, responsible, plastic waste recycling chains. **The most recent case of illegal waste trafficking from Canada that was reported to the Secretariat of the Basel Convention illustrates the ease with which unscrupulous exporters are currently able to disguise harmful plastic waste shipments under the ‘green list waste’ label.** These shipments left Canada undetected and were only intercepted by Belgian authorities by chance, upon random inspection in November 2019, while in transit to India.

Bill C-204 attempts to address these gaps; however as drafted the prohibition on export of plastic wastes “for final disposal” will be difficult to implement as shipments are not identified in this way, and we know that the problem stems from shipments falsely labelled for recycling, as green list waste.

We therefore reiterate our recommendations to strengthen Bill C-204 as follows:

1. Incorporate the language used in the Basel Convention (plastics amendments) to exclude plastic wastes suitable for recycling and control all other plastic waste exports, as EU countries have done in their implementing statutes with respect to non-EU countries. Under the Convention, plastic wastes presumed to be non-hazardous and not subject to the prior informed consent procedure are those *consisting exclusively of one non-halogenated polymer or resin, selected fluorinated polymers or mixtures of polyethylene, polypropylene and/or polyethylene terephthalate, provided the waste is destined for recycling in an environmentally sound manner and almost free from contamination and other types of wastes.*
2. Explicitly prohibit export of plastic wastes characterized under the Basel Convention as “hazardous” or “requiring special consideration” to non-OECD countries. We further recommend that Canada ratify the Basel Ban Amendment at the earliest opportunity.
3. Make plastic wastes not prohibited by Bill C-204 subject to the CEPA section 185 requirements. Plastic wastes suitable for recycling (as described by the Basel Convention) could be excluded.

If Bill C-204 is approved with these amendments, an important effect will be to exclude plastic wastes requiring special consideration from the Canada-U.S. waste trade arrangement signed October 2020.

Exports and imports of these plastic wastes would instead be subject to the notification and permitting requirements of CEPA section 185. This would improve control and accountability and reduce the risk of Canadian plastic waste exports illegally transiting through the U.S. for final disposal in other countries.

Importantly, Bill C-204 with the amendments we propose would not result in a ban on imports or exports of mixed plastic waste between the Canada and the US, but would enhance transparency and accountability over these shipments, as per Canada's legal obligations under the Basel Convention and the OECD Council Decision. The intent is to target illegal plastic waste trade and improve Canada's ability to enforce its obligations under the recent amendments to the Basel Convention.

In parallel, **Bill C-204, if passed with these amendments, should prompt amendment of the Canada-US arrangement to more clearly define (in Section 1) the non-hazardous plastic wastes within its scope** (i.e., clean, sorted wastes suitable for recycling). At the same time, the parties should take the opportunity to correct the deficiencies in the arrangement that the Center for International Environmental Law had identified. We highlighted the conclusions of the CIEL legal analysis in our previous submission to the committee.

The committee has considered compliance and enforcement issues, both with respect to existing controls on waste transiting through the United States and Bill C-204. Explicitly prohibiting plastic waste exports to non-OECD countries with a limited and well-defined exemption for clean, sorted wastes (suitable for recycling) would have the advantage of clarity and may improve compliance.

We urge you to strengthen and approve Bill C-204.

Sincerely,



Sabaa Khan
Director-general, Quebec and Atlantic Region
David Suzuki Foundation

cc. M.P. Scot Davidson

Attachment