

**WORKSHOP AND PUBLIC CONSULTATION  
ON ENVIRONMENTAL ASSESSMENTS OF FOREIGN INVESTMENT PROMOTION AND  
PROTECTION AGREEMENTS (FIPAS)**

Montreal, Quebec  
1 December 2005, Delta Centre Ville

International Trade Canada (ITCan) and Foreign Affairs Canada (FAC) organized a workshop and public consultation on Environmental Assessments (EA) of Foreign Investment Promotion and Protection Agreements (FIPAs) on the margins of the annual meeting of the Third North American Symposium on Assessing the Environmental Effects of Trade: Investment, Growth and the Environment. Over 20 civil society organizations from a variety of sectors took part in the event.

The first session involved a short presentation by ITCan on Canada's FIPA Program, the Government approach to EA of FIPAs and the current work underway to conduct an EA of the Canada-Peru FIPA, the Canada-India FIPA and the Canada-China FIPA. The second session involved small group discussions focussing on specific questions related to the topic.

**Session one: Presentation and General Questions and Answers**

Panellists were Stephen de Boer (Deputy Director, Investment Trade Policy Division, ITCan), Alisa Postner (Trade Policy Officer, Investment Trade Policy Division, ITCan), Jeanne Richard (Advisor, Consultations and Liaison Division, ITCan) and Rachel McCormick (Environmental Assessment Policy Advisor, Sustainable Development Division, FAC). The event was chaired by Jaye Shuttleworth (Foreign Affairs Canada, Director, Sustainable Development Division, FAC).

**Introductory Remarks by Jaye Shuttleworth (FAC, Sustainable Development Division)**

An overview of the agenda was provided to workshop participants. Emphasis was given on the importance of receiving constructive feedback from participants as interested stakeholders and experts on the environmental impacts of investment that will serve to inform our future work in this area.

**Presentation on the EA of FIPAs by Alisa Postner (ITCan, Investment Trade Policy Division)**

*Highlights: see additional details in the attached presentation*

- Canada's FIPA Program and New FIPA Model
- 2001 *Framework for the Environmental Assessment of Trade Negotiations*
  
- Canada's experience conducting EAs of FIPAs
  
- Issues related to conducting EAs of FIPAs

**General Questions and Answers**

- A participant enquired on the origin of the data on investment used by the government to

conduct analysis on economic effects since this data is very limited. The information is sought from different sources such as data held by International Trade Canada, Statistics Canada, Canadian missions abroad, interested stakeholders, provinces and territories as well as partner countries conducting similar analysis.

- A question was raised in regards to the process used by the government to determine which industry sector will form part of an EA of a FIPA, and specifically why the Peru Initial EA examines the mining sector but not fisheries. This decision was based on qualitative information and quantitative data related to current investment patterns, and information received from Missions, and Canadian exporters doing business in Peru. It is not expected that there will be any increase in Peruvian investment in Canada as a result of the agreement. It was noted that the Draft EA of the WTO negotiations, due out in 2006, examines the fisheries sector in Canada.
- Discussions took place on how to anticipate the economic impacts that are directly associated with a FIPA negotiation. Participants noted that studies show that investment agreements are not directly associated with changes in investment flows. Separation of trade and investment flows that are directly attributable to a negotiation is difficult. The approach used to date is to focus analysis on sectors where we know there is interest in investing in Canada.
- Comments were made on the scope of the EA of trade and negotiations used by the Government of Canada. Looking at possible environmental impacts in Canada is very important but it was suggested that analysis should also examine impacts in the greater global context, and more specifically impacts of trade negotiations on small economies. The *Framework for the Environmental Assessment of Trade Negotiations* calls for analysis of the impacts in Canada however the government knows the domestic focus of the analysis is an area of concerns for stakeholders, and is considering how they might respond to this concern given their mandate.
- A participant asked if provisions were made available for environmental groups to conduct research. Another point was raised in regards to the transparency process, and steps undertaken by the government to consult Canadian stakeholders. Participants were informed that there are no financial provisions to assist environmental groups to conduct such research. Public consultations are undertaken with provinces and territories, experts from academia, NGOs and industry as well as Canadians at large during each of the three phases of assessment - the initial, draft and final EA. Documents are also posted on International Trade Canada's website "Trade Negotiations and Agreements" and the Government of Canada's Website "Consulting with Canadians". Comments received are distributed to the interdepartmental committee for further analysis and to negotiators. The questions and recommendations raised in the feedback are addressed in the next EA report, and inform future EA of Trade work.
- A question was raised in regards to how the FIPA allows for changes in domestic regulations after a FIPA is concluded. The FIPA model contains provisions that retain ability to regulate. Existing regulations can be modified if it is done in a way that is consistent with the obligations of the FIPA (non-discrimination) for example. Most regulations will meet this test. For those regulations that do not meet that test, a second question will be whether the measure falls within one of the reservations, either Annex I or II or the general exceptions contained in the FIPA. In short, the FIPA does permit regulatory change.

## **Session Two: Small Group Discussion and Recommendations to the Panelists**

Participants were divided into three groups in order to hold focussed discussions on specific questions related to Environmental Assessments (EAs) of Foreign Investment Promotion and Protection Agreements (FIPAs). Following the discussion selected rapporteurs presented each group's recommendations to the panel. The questions and recommendations given were as follows:

- 1) The EA of FIPAs considers the environmental impact of the negotiations on Canada. A number of stakeholders have raised concerns regarding the environmental impact of the negotiations and governance issues in the country with which Canada is negotiating. While it is outside the scope of the EA to analyse these issues, Canada's approach taken thus far in EAs of FIPAs is to include a "Stakeholder Feedback" section in the Initial EA report which identifies and discusses these issues. What are your views on this approach? Are there other ways, within the scope of the EA, for these issues to be addressed?

### **Comments and recommendations from workshop participants on Question 1:**

- Inclusion of a "Stakeholder Feedback" section in FIPA EA reports to respond to issues about impacts in partner country is a welcome initiative.
  - Funding should be provided to third parties to help partner countries analyse the potential environmental impacts of the negotiation.
  - Consideration should be given on how Canadian investments relate to Multilateral Environmental Assessments Agreements (MEAs) to which Canada is a party to. The context of this examination could focus on transboundary and global impacts on Canadian environment.
  - Training modules on EA of Trade and Investment negotiations should be developed to help countries do their own assessments.
  - Improve examination of transboundary and global impacts of FIPA negotiations on the Canadian environment.
  - Incorporate trading partner environmental issues and concerns in EA reports to inform potential capacity building projects and to improve understanding of how the two countries environments might relate to the negotiations.
- 2) One of the objectives of the EA is to assist Canadian decision makers to integrate environmental considerations into the negotiating process and policy development activities by providing information on the possible environmental impacts of the proposed agreement. Are there specific mechanisms the Government could employ to enhance this outcome?

### **Comments and recommendations from workshop participants on Question 2:**

- Key industry sectors and provincial/territorial governments could be consulted when Foreign Direct Investment (FDI) into Canada is expected. Their views could serve to inform the Initial EA.
- Other sources of information such as CEC studies, OECD, universities as well as national, local and municipal impact assessments could be used to complement the lack of existing data. The data could also be shared with NAFTA partners with CEC acting as information portal.

- Discussion should be broadened to include labour issues. It was recognized that this is outside of the mandate provided by the Framework and that this is more difficult to assess than environmental issues.
  - Once Notice of Intent has been publicly released, comments and feedback could be sought from the other country's interested stakeholders.
- 3) Two central challenges of assessing the environmental impacts of trade and investment negotiations are 1) determining how trade and investment will change as a result of the negotiation, and 2) determining the potential impacts of those changes based on a limited set of data. What tools or approaches could the Government use to overcome these challenges?

**Comments and recommendations from workshop participants on Question 3:**

- Involve environmental references in consultations with industry while developing trade negotiating positions.
  - Improve understanding of how the two parties environments relate and incorporate this information in the negotiations for the trade agreement and any side agreement for environmental cooperation.
  - Include provisions in FIPAs that requires enforcement of existing regulations.
  - Identification of key sectors should be the first step in the EA process; once sectors have been identified, modelling can take place.
- 4) In your opinion, are there other types of trade consultation mechanisms (i.e. stakeholder meetings, Electronic Dialogue Discussions, etc.) that could help the Canadian government in better informing Canadians?

**Comments and recommendations from workshop participants on Question 4:**

- More direct engagement with stakeholders and less reliance on the “website” as a means of consultations.
- Establishment of ad hoc advisory groups for specific FIPA EAs; an advisory group for China EA could focus on oil and gas and forestry sectors.
- Active participation from Chambers of Commerce should be sought.
- University students could be engaged and challenged on how to improve the process.
- Follow-up efforts should be taken to solicit feedback from environmental experts such as key researchers, industry associations, and NGOs once a Notice of Intent to conduct an EA of a FIPA has been published.

**General comments expressed by participants:**

- It might be time to revise the Framework, and consider labour and human rights, and impacts outside of Canada. Canada has enough experience to move to the next step.
- Consideration could be given to improve health and environmental impact linkages.
- Consideration should be given to expanding the scope of inquiry of EA to formally include the impacts of the negotiations on partner countries in the EA process.