

Letter sent by The Council of Canadians on October 20, 2011 to all Members of the European Parliament (MEPs) urging them to ignore Canadian pressure when they are asked to vote, as early as December 2, 2011 on an important fuel quality policy that rightly lists all tar sands crude as more polluting than conventional oil.

Dear Member of the European Parliament,

We are writing regarding the proposed European Union Fuel Quality Directive and with critical information concerning the implications of potential investor state provisions under the Canada and European Union Comprehensive Economic and Trade Agreement (CETA), currently being negotiated.

First, we want to commend the recent EU Commission's proposal for a Fuel Quality Directive (FQD) that includes higher default emissions value for unconventional fuels, including tar sands and oil shale. We commend the EU for showing leadership with this important climate policy and encourage your support for this policy as it moves forward to the European Parliament for approval.

As you know, our government, alongside industry active in the Canadian tar sands, have been furiously lobbying against assigning a specific value for tar sands crude. We will continue to pressure our government to cease this lobbying.[i]

We understand that, following the Commission's recent announcement, our Minister of Environment, Joe Oliver, continued this negative pattern by asserting that the value assigned to the tar sands was not based on science and was discriminatory. We and many others understand that this is clearly not the case. The value assigned by the Commission which concerns all tar sands development, those in Canada being the most developed, is based on a peer reviewed scientific report prepared for the Commission. In fact, there are numerous reports on the full lifecycle emissions of Canadian tar sands that confirm they are a high carbon fuel.[ii]

While our government often highlights progress made in reducing the energy intensity of tar sands development, the reality is that this is primarily the result of one-time advances, it has levelled off in recent years and new technologies will likely take at least a decade to be viable.[iii] Of further concern is the expected shift to a major portion of overall production coming from in situ mining, a significantly more greenhouse gas intensive means of production - around 2.5 times more intensive than mining.

We are also writing to encourage your rejection of a proposed investor-to-state dispute settlement process in the CETA, and to suggest that the FQD should be carved out of the scope of the Canada-EU agreement altogether. Disputes between investors and governments related to environmental and extractives policy are on the rise in Canada. Firms are increasingly using the NAFTA investor-state dispute process to challenge legitimate public policy or decisions by provincial governments to deny permission to dig quarries due to the impacts on water and farmland.

Investment disputes in the Canada-EU trade and investment relationship are, as the EU Parliament has already declared, best handled by Canada's and the EU's just and fair legal systems. [iv] We

believe it would be in the best interests of the EU to insist on this with respect to the ongoing Canada-EU free trade negotiations, particularly given the Canadian government's clear opposition to an EU FQD that attributes a high carbon content value to tar sands crude[A1] .

The Council of Canadians, joined by the Indigenous Environmental Network and Friends of the Earth Europe commissioned legal analysis on these implications for the pace and character of oil sands development that we encourage you to review.[v] This analysis affirms that provisions such as strong investor rights and a state dispute settlement mechanism, could be used to challenge important environmental policies.

To reiterate, we commend the advancement of the currently proposed FQD and encourage that you take actions to protect it and other important policies from investor challenges by rejecting an investor-state mechanisms in the CETA.

Sincerely,

Andrea Harden-Donahue, Energy and Climate Campaigner, Council of Canadians
Stuart Trew, Trade Campaigner, Council of Canadians

[i] Amongst other actions, the Council of Canadians, alongside numerous other civil society organizations issued an open letter to our Prime Minister, relevant Ministers and our Ambassador to the EU about these efforts last April. The letter demands an end to all lobbying aimed at weakening the FQD and a shifting of focus instead to efforts that address the serious social and environmental consequences of tar sands development. To read the letter, please visit: <http://canadians.org/trade/documents/CETA/letter-lobbying-CETA-tarsands.pdf>.

[ii] Simon Mui, Luke Tonachel, Bobby McEnaney, and Elizabeth Shope, "GHG Emission Factors for High Carbon Intensity Crude Oils," September 2010 Ver. 2, Natural Resources Defence Council.

[iii] Marc Huot, Lindsay Fischer and Nathan Lemphers, "Oilsands and Climate Change: How Canada's Oilsands are Standing in the way of Effective Climate Action," Pembina Institute, September 16, 2011, available at: <http://www.pembina.org/pub/2262>.

[iv]As of the end of 2010, 29 of the 66 investor-state disputes under the NAFTA have involved environmental regulation or natural resource management issues. Scott Sinclair "NAFTA Chapter 11 Investor-State Disputes (to October 1, 2010), available at: <http://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2010/11/NAFTA%20Dispute%20Table.pdf>.

[v] Potential Impacts of the Proposed Canada-European Union Comprehensive Economic and Trade Agreement (CETA) on the Pace and Character of Oil Sands Development, Legal Opinion prepared by Steven Shrybman of Sack Goldblatt Mitchell LLP, November 2010, available at: <http://canadians.org/trade/documents/CETA/legal-opinion-CETA-tarsands.pdf>.