Initial Environmental Assessment (EA) of the Canada-India Foreign Investment Protection and Promotion Agreement (FIPA)

I. Executive Summary

This report outlines the results of the Initial Environmental Assessment (EA) of the Canada-India Foreign Investment Protection and Promotion Agreement (FIPA) negotiations. Negotiations for a Canada-India FIPA were re-launched in September 2004. The negotiators are using Canada's new FIPA model as the basis for the negotiations. It is anticipated that the negotiations will conclude successfully in the coming months.

The Canada-India FIPA is the second of such agreements to benefit from an EA. FIPA EAs follow the process outlined in the 2001 *Framework for the Environmental Assessment of Trade Negotiations.* The process focuses on the environmental impacts in Canada and normally involves three phases – the initial, draft and final assessments. The middle, or draft, phase is not undertaken if the FIPA is not expected to generate significant economic effects in Canada. Public consultations are an integral part of the EA and are undertaken throughout the process.

The Initial EA of the Canada-India FIPA negotiations identifies the likely economic effects of the FIPA and, on this basis, draws conclusions about the potential environmental impacts in Canada. The report also considers the impact of the FIPA on the ability of Canada to regulate in the interest of environmental protection. Other environmental issues are discussed as well. Stakeholder input was taken into consideration.

While over the long term the FIPA is anticipated to contribute to a favourable business climate conducive to growth of two way investment, increases will depend on investor's individual assessment of opportunity and risk. It is difficult to measure the economic impact of FIPAs, as the positive impacts of FIPAs are realized over time, whether in the form of enhanced investment opportunities or improved bilateral relations in general. The presence of a FIPA, however, is adding security for Canadian investors contributing to creating more favourable the investment conditions in the host country.

The results of the Initial EA indicate that significant changes to investment flows into Canada are not expected as a result of these negotiations. As such, the economic effects and the environmental impact in Canada are expected to be minimal. However, this report does discuss the likely environmental impacts associated with sectors in which Indian investors have indicated interest.

The Canada-India FIPA will not have a negative effect on Canada's ability to develop and implement environmental policies and regulations. Canada will safeguard its ability to maintain and expand the current framework of policies, regulations, and legislation for protection of the environment in a manner consistent with its domestic and international obligations.

The Government of Canada welcomes comments on this Initial EA by June 22, 2007. A Draft EA will not be carried out as the economic effects in Canada of the Canada-India FIPA are expected to be minimal. The Final EA will coincide with the conclusions of the negotiations. Please submit comments to: consultations@international.gc.ca.

II. Introduction

A FIPA is an international treaty providing binding obligations on host governments regarding their treatment of foreign investors and investments. By setting out clear rules and an effective enforcement mechanism, a FIPA provides a stable legal framework to promote and protect foreign investment. It typically sets out a range of obligations that host governments guarantee pertaining to non-discriminatory treatment, expropriation, transfer of funds, transparency, due process and dispute settlement.

While Canada concludes FIPAs to protect Canadian investment abroad, the disciplines are reciprocal and serve to reinforce Canada as a stable and predictable destination for foreign investment. In this respect, FIPAs help enhance two-way investment flows between signatory countries.

In the absence of a FIPA, Canadian investors rely primarily on host country laws and institutions for protection, which adds a variety of risks to their ventures. For example, a host country may change domestic laws after an investment is made in a way that discriminates against foreign investors. According to the United Nations Conference on Trade and Development *2005 World Investment Report*, an unusually high number of new policies introduced by host governments in 2004 made conditions less favourable for foreign companies to enter and operate despite the general openness of most countries to foreign capital. In cases where a policy change discriminates against a Canadian investor, for example, and causes harm to its investment, a FIPA can be a valuable instrument of protection for Canadian investors abroad.

Emerging economies and those in transition are increasingly important destinations for Canadian investment abroad. By specifying the rights and obligations of the signatories respecting treatment of foreign investment, a FIPA contributes to a predictable investment framework and engenders a stable business environment.

From the perspective of developing countries, foreign investment represents and important lever of development. Developing countries need and want the capital that investment brings and they want to ensure that investment flows predictably to their countries. FIPAs provide for that necessary signal of stability.

In 2003, the Government approved a FIPA model that serves as a template for Canada's discussions with investment partners on bilateral investment rules. This model is available at http://www.dfait-maeci.gc.ca/tna-nac/fipa-en.asp. More background on Canada's FIPA program is available in Annex I of this report.

The Canadian government is committed to integrating sustainable development into domestic and foreign policy, and the environmental assessment of trade and investment negotiations is one mechanism for doing so. We are therefore committed to conducting environmental assessments (EAs) of trade negotiations using a process that requires interdepartmental coordination along with public and stakeholder consultations, including provincial and territorial governments. The 2001 *Framework for the Environmental Assessment of Trade Negotiations* details this process. It was developed in response to the 1999 *Cabinet Directive on Environmental Assessment of Policy, Plan and Program Proposals*[1] , which requires that all initiatives considered by Ministers or Cabinet must be assessed if implementation of the proposal may result in important environmental effects, either positive or negative. Detailed guidance for applying the Framework is contained in the *Handbook for the Environmental Assessment of Trade*[1] .

III. Background on the EA Process

The Framework provides a methodology for conducting an EA of a trade or investment negotiation. It is intentionally flexible so that it can be applied to different types of negotiations (e.g., multilateral, bilateral, regional) while ensuring a systematic and consistent approach to meet two key objectives.

The first objective is to assist Canadian negotiators to integrate environmental considerations into the negotiating process by providing information on the possible environmental impacts of the proposed agreement. As such, negotiators and environmental experts are involved in the EA and work proceeds in tandem to the negotiations.

The second objective is to respond to the environmental concerns expressed by the public. The Framework contains a strong commitment to communications and consultations throughout each EA of trade negotiations.

Three phases of assessment are generally undertaken: the Initial, Draft, and Final EA. These phases correspond to progress within the negotiations. The Initial EA is a preliminary examination to identify key issues. It occurs earlier on in the negotiations. The Draft EA builds on the findings of the Initial EA and requires detailed analysis. A Draft EA is not undertaken if the negotiation is not expected to yield large economic changes. The Final EA takes place at the end of the negotiations. At the conclusion of each phase, a public report is issued with a request for feedback.

A consistent analytical methodology is applied during each phase. The Framework recognizes that economic and environmental effects can relate to changes in the level and pattern of economic activity, the type of products traded, technology changes, as well as regulatory and policy implications.

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[1] Available at: http://www.ceaa-acee.gc.ca/016/directive_e.htm.
[1] Available at: http://www.dfait-maeci.gc.ca/tna-nac/env/env-ea-en.asp.

The Government of Canada has completed Initial EAs of the WTO, Free Trade Area of the Americas (FTAA), Singapore, and Central America Four trade negotiations. The Initial and Final EA reports have been issued for the Canada-Peru FIPA. Initial EAs are underway for the Canada-Korea FTA, Canada-EU Trade and Investment Enhancement Agreement, and the Canada-China FIPA. The Draft EA for the WTO negotiations is also underway. The Government of Canada will continue to apply the Framework to future trade and investment negotiations. All EA reports are available at: http://www.dfait-maeci.gc.ca/tna-nac/env/env-ea-en.asp

The findings of this Initial EA have been communicated to Canada's lead negotiator, to the EA Committee for the Canada-India FIPA and to the EA of Trade Secretariat. Any comments the public has on this report will inform the Final EA, and be circulated to key contacts within the Government of Canada. EAs of all FIPAs will continue to evolve based on our experience and feedback from experts and the public.

IV. Invitation to Submit Comments

In keeping with the Framework, an Environmental Assessment Committee (EAC) has been formed to undertake the analysis of the FIPA. Coordinated by the Department of Foreign Affairs and International Trade Canada, the Canada-India FIPA Environmental Assessment Committee includes representatives from other Federal government departments, including Environment Canada, the Canadian Environmental Assessment Agency, and Natural Resources Canada. An important responsibility of the EAC is to gather input from provinces and territories, stakeholders representing business, academics, and non-governmental organization, as well as the general public.

As part of its commitment to an open and transparent process, the Government has opened this Initial EA for public comment from June 1, 2007. Feedback on the likely economic effects and the likelihood and significance of resultant environmental impacts are especially welcome. Keep in mind that the assessment is focused on the possible environmental impacts in Canada.

Comments on this document may be sent by email, mail or fax to:

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V. Analysis of the Canada-India FIPA

Negotiations for a Canada-India FIPA were re-launched in September 2004. The Canada-India FIPA negotiations are anticipated to conclude in the coming months. The treaty will need to be ratified by both Parties.

a) Identification of Likely Economic Effects

The first step in the EA process is the identification of the likely economic effects of the FIPA. This is informed by an understanding of the current FDI from India into Canada. In 1999, FDI from India totalled $18 million and has been on the rise since then. At year-end 2006, India's FDI in Canada was valued at C$201 million, up from C$145 million in 2005. While India's share of global FDI in Canada remains very small (0.05% in 2006), the Indian government's recent easing of restrictions on outward investment provide opportunities for increased FDI into Canada. The most striking development has been the growth in Indian investments in Canada's Information and Communications Technology (ICT) sector by Indian software manufacturers. In addition to ICT, other sectors of interest to Indian investors include financial services, life sciences, automotive, oil and gas, forestry and minerals/metals.

Canadian Investment in India showed an increase from $247 million in 1999 to $327 million in 2006. Still, India's share of global Canadian Direct Investment Abroad (CDIA) remains small – about 0.06% in 2006. However, increasing liberalization by the Indian government of inward investment restrictions, combined with India's rapid economic growth present significant investment opportunities for Canadian companies. Priority sectors include: infrastructure (particularly telecommunications, transportation and power generation); ICT; financial and insurance services; environmental technologies; engineering services; agriculture and agri-food; life sciences; minerals/metals.

A high-standard FIPA will help continue to achieve this potential by improving investor confidence in the country. While the existence of a FIPA should be a positive and important factor in investors' decisions on whether to invest in the territory of the other party, it will be but one of many factors. Large changes in investment patterns are not expected to result from these negotiations.

b) Identification and Assessment of Likely Environmental Impacts in Canada and the Context for these Impacts

The Framework calls for the identification and assessment of the environmental impacts that could stem from the anticipated economic effects of the FIPA. The likelihood and significance of such impacts would depend on the degree of increase in investment, the sectors of the investment, and the measures in place to protect the environment in relation to those activities.

As noted above, India's stock of investment in Canada is modest. While over the long term the FIPA is anticipated to contribute to a favourable business climate conducive to growth of two way investment, increases will depend on investor's individual assessment of opportunity and risk. Significant new flows of investment into Canada as a result of the FIPA are not anticipated. Therefore, it is concluded that the environmental effects of the Canada-India FIPA will be minimal to non-existent.

The following is a very general discussion regarding the known environmental impacts associated with the Information and Communication Technology sector, a sector where Indian investment has been growing steadily. The known environmental impacts of the Financial Services Sector, the Automotive Sector, and Oil and Gas Sector, are also discussed. These are known sectors of interest to Indian investors, however indicators of the expected economic effects of the FIPA on Indian investment in these sectors is not available because there are no specific investments known to be dependent on the FIPA's conclusion or a direct known correlation between FIPAs and expansion of investment. However, given there is known interest in these sectors it was decided that a general discussion on the likely environmental impacts should be included. This ensures that decision makers are aware of the potential environmental impacts of the FIPA.

Finally, it should be noted that the Canada-India FIPA will not impact on Canada's ability to develop and implement environmental policies and regulations. Canada will safeguard its ability to maintain and expand the current framework of policies, regulations, and legislation for protection of the environment in these sectors in a manner consistent with its domestic and international obligations.

Information and Communication Technology (ICT)

The environmental challenges facing the industry as a whole can be broken down into e-waste, toxic and hazardous use, water and energy use.

- ***E-waste***. According to Environment Canada, e-waste in Canada would have reached 71,000 tonnes in 2005, almost double what was produced in 1999. As much as 40 per cent of the heavy metals in landfills (such as lead, mercury and cadmium) come from electronic equipment discards. Disposal of old computers and the hazardous wastes associated with them is one of the biggest issues facing the industry in terms of environmental impact. While the industry is responding to the issue, the sheer size and rapid technological change associated with the industry requires that industry move quickly to create solutions.
- ***Toxic and Hazardous Materials Use***. Semiconductor manufacturers use a number of extremely toxic chemicals in the chip making process. These chemicals are a serious issue for both the workers who have to deal with them and the communities where the chemical wastes end up.
- ***Water and Energy Use:*** While the industry as a whole is relatively frugal with water and energy, the manufacturing of silicon chips and semiconductors requires large amounts of clean water and reliable energy, while the operation of fixed line networks (telecoms) is also energy intensive.

In Canada, major firms in the telecommunications sector are considered leaders in environmental stewardship. All of the major companies in the telecom sector have environmental policies and a significant majority of them have third party auditing of their environmental policies. As well, the sector does an excellent job of providing employees with environmental education to promote knowledge and skill development around environmental issues. Companies in the telecom sector have also begun to embrace product take-back initiatives, a leading edge issue for companies worldwide.

Some companies have included environmental criteria in their contracts with suppliers. Of particular note is the Electronic Industry Code of Conduct (EICC), released by HP, Dell and IBM and created in conjunction with a number of electronics manufacturers. The code is intended to create and industry standard for socially responsible business practices across global supply chains. Companies signing on to the EICC commit to going above and beyond regulatory compliance throughout their supply chain (recent endorsements of the code have come from Intel, Microsoft and Cisco Systems). The majority of the industry has not yet fully addressed this complex issue.

Financial Services Sector

There are limited direct environmental effects associated with this sector, namely the day to day operations of offices. Indirect impacts result from the influence of the sector in the activities of others, for example, when providing insurance or financing a project with environmental implications, requiring environmental risk assessments before providing financing, or providing preferential service to corporate clients that have demonstrated effective environmental management systems.

Auto Sector

The environmental impacts of this sector include scale impacts from production (increased scale of production would lead to additional environmental impacts unless new processes and technologies are used that reduce the rate of impact) and product impacts (i.e., if the autos that are made have higher/lower environmental impacts when they are used including with respect to emissions). With respect to scale impacts, an expansion in the automobile production would require steel, electricity, petroleum, plastics. Each of these inputs requires extraction of natural resources. There are direct and indirect energy uses associated with auto production, and therefore air emissions. Different technologies can be more energy efficient. Volatile organic compound emissions are associated with painting and coating during auto production, again different products and processes have different rates of emissions. Auto production uses water – again, technologies can be used to improve efficiency. Generally, impacts associated with the auto sector could be expected to occur in southern Ontario, where current auto production activities are located.

Oil and Gas Sector

The oil sands are located in northern Alberta. According to the Alberta Energy and Utility Board, the oil sands consist of three main deposits that cover nearly 150,000 square kilometres and represent 1.7 trillion barrels of crude bitumen, of which 19% is likely to be recovered. If reserves are located within 100 meters of the surface they can be recovered through surface mining activities commonly referred to as strip mining or open pit mining. Deeper reserves require in situ recovery.

There are a number of environmental issues associated with oil sands development, with water usage and land reclamation methods at the forefront of public concerns. Water usage issues center around the potential negative impact on the aquatic ecosystem, the removal of water from the watershed (surface and groundwater) and the large tailings ponds that are being created. Land reclamation concerns are that the proposed future reclaimed landscape will be significantly different than the original boreal forest, with 10 percent less wetlands, more lakes, and no peat lands. There are currently divergent views regarding the ultimate success of reclamation methods. While in-situ processes requires no excavation and less surface area for operation, fragmentation of the forest from the construction of new roads in the area, seismic lines and exploration well sites are concerns.

The production of the oil sands emits higher greenhouse gas (GHG) emissions than the production of conventional crude oil and has been identified as the largest contributor to GHG emissions growth in Canada. While significant progress has been made towards decreasing the intensity of GHG emissions produced by oil sands operators (GHG intensity of production improved by some 27% over 1990 to 2000), total emissions have increased due to higher production levels.

Technology will continue to be an essential element in addressing the environmental impacts aforementioned. CANMET Energy Technology Centre at Devon, Alberta is the federal government's primary research group for the development of hydrocarbon supply technologies and related environmental technologies, with an emphasis on oil sands and heavy oil. The Centre is working closely with industry and the province on a range of new oil sands and heavy oil technologies including technologies that will reduce the industry's dependence on natural gas and water. Research areas include: combustion of residue bitumen, coal / coke gasification, air injection, the application of nuclear energy to provide the heat and power alternatives to natural gas, and non-water based extraction and process technologies. The use of CO2 for enhanced oil recovery could potentially reduce GHG emissions and create an economic opportunity.

Managing the environmental footprint of oil sands development will be an on-going challenge for the orderly and sustainable development of the resource.

c) Policy and Regulatory Context

Canada's EA of Trade methodology, as outlined in the Framework, calls for consideration of the potential policy and regulatory effects of the FIPA. Foreign investors in Canada are bound by the same environmental protection regulations that govern the activities of domestic investors. Proposed projects resulting from inward investment would be subject to applicable environmental assessment legislation, including the Canadian Environmental Assessment Act and provincial environmental assessment regulations.

Recent revisions to the Government of Canada's FIPA model have clarified governments' right to regulate in the public interest. The new model includes a general exception that permits a Party to take measures necessary to protect human, animal or plant life or health, the environment and safety, or measures primarily aimed at the conservation of exhaustible natural resources, provided that these measures are not applied in an arbitrary or unjustifiable manner and are not disguised restrictions on trade or investment. In addition, the model clarifies the rules governing direct and indirect expropriation with regard to governments' right to regulate. FIPA parties may also reserve existing laws and regulations such that they are not subject to specified obligations of the treaty, and they may reserve sensitive sectors for future regulation. Finally, the revised FIPA model strengthened a clause on "not lowering standards". Specifically, this clause recognizes that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. In the event a Party has offered such encouragement, the other party may request consultation.

The revised FIPA model is the basis for Canada's position in the Canada-India negotiations. We anticipate, therefore, that the final agreement will not have a negative effect on Canada's ability to develop and implement environmental policies and regulations. Canada will safeguard its ability to maintain and expand the current framework of policies, regulations, and legislation for protection of the environment in a manner consistent with its domestic and international obligations.

VI. Other Environmental Considerations – Transboundary Effects

Canada's *Framework for Conducting EAs of Trade Negotiations* calls for national assessments, and allows for consideration of transboundary, regional, and global environmental impacts if they have a direct impact on the Canadian environment. However, it is outside of the scope of this study to assess the potential for positive or negative environmental impacts that could occur in India because of these negotiations, or to judge the measures in place within India to enhance or mitigate such impacts. While increasing investment in India could, if not carefully managed, lead to increases in transboundary or global pollutants, specific studies documenting the likelihood or impacts of such increases, if any, were not reviewed in this assessment.

VII. Stakeholder Feedback

The notice of intent to conduct an EA of the Canada-India FIPA was in the Canada Gazette on November 5, 2005. The notice included an invitation to interested parties to submit their views on the likely environmental impacts of the Canada-India FIPA on Canada. There were no comments received on the Notice of Intent. We have however received general comments on conducting EAs of FIPAs through other consultation mechanisms.

While it is outside the scope of this study to analyze the potential environmental effects of the Canada-India FIPA on India, there is scope in this study to review information and resources on issues relevant to environmental impacts of Canadian activity in India.

a) Canada/ India Environmental Cooperation Activities

Canada and India are actively engaged in environmental cooperation activities. For example, during the visit of the Prime Minister of Canada Paul Martin to New Delhi on January 17-18, 2005, the Prime Ministers of India and Canada agreed to deepen environmental cooperation between the two countries. This included support for the creation of an India-Canada Forum for Environmental Cooperation which would serve as a mechanism through which cooperation on environmental management, sustainable development and green technologies could be pursued.

The Canada-India Environmental Institutional Strengthening Project built long-term collaboration between Environment Canada and the Indian Ministry of Environment and Forests. The two departments worked together to strengthen India's institutional capacity to tackle pressing environmental issues, such as air quality, hazardous waste and toxic substances. Environment Canada provided overall management and technical assistance to the project, and the Canadian International Development Agency contributed $4 million over four years, from 2001 to 2005.

Through this project, Canada has provided training to 33 Indian scientists in Canada and has supplied monitoring equipment, which has resulted in improved capacity to monitor criteria air pollutants such as CO, CO2 and NOX as well as hazardous air pollutants (Persistent Organic Pollutants, Volatile and Semi-volatile Organic Compounds and Particulate Matter less than 10 micrograms) and hazardous wastes imports including used oil and scrap metals such as Zinc ingots and skimming, governed by the Basel Convention on Transboundary Movement of Hazardous Wastes. The major difference that this project has made in India is to shift from traditional monitoring techniques to the use of continuous monitoring, improved quality control and enhanced reliability of data.

In December 2005 Canada and India signed a Climate Change Memorandum of Understanding (MOU) to facilitate and enhance bilateral cooperation in carbon market and technology transfer between the private sector entities, leading to reduction in global emissions of green house gas emissions.

As part of the MOU Canada's Clean Development Mechanism (CDM) and Joint Implementation (JI) Office at the Department of Foreign Affairs & International Trade, in collaboration with Environment Canada, Natural Resources Canada, Industry Canada and the Canadian International Development Agency, is working to identify potential opportunities to promote Canadian technologies that reduce Greenhouse Gas (GHG) emissions. Canadian companies continue to show a strong interest in emission reduction opportunities in India, which has now the single largest supplier of Certified Emission Reduction units. Canada's CDM & JI Office continues to help offset project transaction costs for Canadian entities, leading to other benefits for Canadian industry such as access to new markets and investment opportunities. The first bilateral initiative since the signing CDM MOU was a series of CDM workshops in New Delhi, Indore, Ahmedabad and Hyderabad, India, during March 2006.

The Government of Canada will contribute $3.6 million, through the Climate Change Technology Early Action Measures program, to a group of Canadian companies that are developing and demonstrating natural gas vehicles in India. NGV Mumbai is a flagship project of ATF Advanced Technologies and Fuels Canada Inc. The aim is to demonstrate up to three hundred commercial fleet vehicles operating on the new natural gas vehicle system and showcase a new high-volume fast-fill fuelling station concept.

CIDA has been working in cooperation with the Confederation of Indian Industry (CII) on capacity building of the Environment Management Division of the CII including a strengthening their capacity in the area of corporate social responsibility. The project closed in March 2006. CIDA is also currently supporting the CANMET-CIDA-CII High Volume Ash Fly Ash Concrete (HVFAC) project: a technology transfer project funded by the Canada Climate Change Development Fund through CIDA, to help India reduce greenhouse gas emissions by adopting HVFAC technology.

b) Third Party Documents

The Canada-India Business Council (C-IBC), in conjunction with the Government of Canada, (Trade Team Canada Environment -TTCE), and supported by the Confederation of Indian Industry (India's apex association of industries), completed a successful environmental and clean energy business mission to India December 12-16, 2005. According to the Canada-India Business Council the mission was successful in identifying and developing collaborative business relationships between Canadian and Indian firms in the environmental and clean energy fields. More information on the Mission can be found on the C-IBC website: http://www.canada-indiabusiness.ca/

In July 2004, India's Centre for Social Markets (CSM) held a one day international conference on Information and Communication Technology (ICT) and Sustainable Development in Kolkata, West Bengal, India. As mentioned earlier in the report, this is a key sector for CDIA in India. A representative from the Canadian Government, Kernaghan Webb brought the international perspective on ICT and corporate social responsibility (CSR) His presentation emphasized that the internalization of CSR

practices was essential in the state as the current approach to CSR relied too much on philanthropy. He said that the current competitive advantage in West Bengal needed to be protected through reputation and risk management. More information on this event can be found on the CSM website: http://www.csmworld.org/public/pdf/CSM%20Post%20Conf%20Press%20Release%20July24.pdf

The Department also conducted a workshop and public consultation concerning FIPAs on December 1, 2005 in Montreal, at which the following issues were raised: the environmental impact of the negotiations and governance issues in the country with which Canada is negotiating; challenges associated with determining how investment will change as a result of the negotiation; options for improving FIPA EA consultation mechanisms and options for integrating environmental considerations into the negotiating process and policy development.

As outlined in the *Handbook for EAs of Trade Negotiations*, consultations were also held with the Government of Canada's External Advisory Group on EA of Trade. These consultations, which were chaired by the lead negotiator, allowed the Department to solicit comments and guidance from the Advisory Group. The feedback that was received informed the analysis for this assessment and was shared with the EAC.

VIII. Conclusion and Next Steps

The Initial EA concludes that significant changes to investment in Canada are not expected as a result of the Canada-India FIPA negotiations. As such, the environmental impacts on Canada are expected to be minimal.

The Initial EA will be circulated to decision makers to inform the conclusion of the Canada-India FIPA negotiations as well as other policy development activities. Following the receipt of public comments on the Initial EA, the Final EA will be completed taking into account the consultative findings. In the light of the Initial EA's conclusions regarding the unlikelihood of significant economic activity and environmental impacts in Canada, preparation of a Draft EA is deemed to be unnecessary. The Final EA will coincide with the conclusion of the negotiations with India.

Annex 1

Canada's FIPA Program

a) Background on Canada's FIPA Program

A Foreign Investment Promotion and Protection Agreement (FIPA) is a bilateral agreement aimed at protecting and promoting foreign investment through legally-binding rights and obligations.

FIPAs accomplish their objectives by setting out the respective rights and obligations of the countries that are parties to the treaty with respect to the treatment of foreign investment. Typically, there are agreed exceptions to the obligations. FIPAs seek to ensure that foreign investors: will not be treated worse than similarly situated domestic investors or other foreign investors; will not have their investments expropriated without prompt and adequate compensation; and, in any case, will not be subject to treatment lower than the minimum standard established in customary international law. As well, in most circumstances, investors should be free to invest capital and repatriate their investments and returns.

Canada's policy is to promote and protect investment through a transparent rules-based system in a manner that reaffirms the right of Governments to regulate in the public interest, including developmental interests. As an instrument that supports the rule of law and fosters fairness, transparency, non-discrimination and accountability, a FIPA encourages good governance. A FIPA also promotes sustainable development principles by exhorting Governments to not lower health, safety or environmental measures in order to attract investment.

Canada began negotiating FIPAs in 1989 to secure investment liberalisation and protection commitments on the basis of a model agreement developed under the auspices of the Organization for Economic Cooperation and Development (OECD). In 1994, Canada introduced a FIPA model incorporating the enhanced investment protection afforded under the North American Free Trade Agreement (NAFTA). Canada signed 5 agreements using the OECD model and signed 18 FIPAS based on the 1994 model for a total of 23 FIPAs to date.

b) Canada's New FIPA Model

In 2003, Canada began updating its FIPA model to reflect lessons learned from its experience with the implementation and operation of the investment chapter of the NAFTA. The principal objectives of this exercise were: to enhance clarity in the substantive obligations; to maximize openness and transparency in the dispute settlement process; and to discipline and improve efficiency in the dispute settlement procedures. Canada also sought to enhance transparency in the listing of reservations and exceptions from the substantive disciplines of the Agreement.

In May 2004, Canada's new model for the negotiation of FIPAs was published on the Department of Foreign Affairs and International Trade's website www.international.gc.ca/tna-nac/fipa-en.asp. The new FIPA model provides for a high standard of investment protection and incorporates several key principles: treatment that is non-discriminatory and that meets a minimum standard; protection against expropriation without compensation and restraints on the transfer of funds; transparency of measures affecting investment; and dispute settlement procedures. The new model serves as a template for Canada in discussions with investment partners on bilateral investment rules. As a template, the provisions contained therein remain subject to negotiation and further refinement by negotiating parties. Thus, although all FIPAs can be expected to follow this approach, it is highly unlikely that any two agreements will be identical.

Canada's FIPA negotiating program is intended to reflect the priorities of Canadian investors. With many countries expressing great interest in negotiating FIPAs with Canada, we are currently undertaking a comprehensive priority setting exercise to consider potential FIPA partners based on the following factors: 1) likelihood of engagement 2) commercial and economic interests 3) lack of investor protection 4) trade policy interests 5) political / developmental interests.

c) Environmental Issues related to the new FIPA Model

Underlying Canada's new FIPA model are renewed commitments to transparency, including with respect to crosswalks between investment agreements and environmental issues. For instance, Canada seeks commitments whereby Parties would agree to publish laws, regulations and other procedures respecting any matter covered by the FIPA. We also seek to allow Parties an opportunity for prior comment on future legislation covering inward investment.

Canada also recognizes the benefits of transparency with respect to procedural arrangements associated with our investment agreements. This includes investor-state dispute settlement procedures, whereby Canada seeks to facilitate third-party (*amicus)* submissions to tribunals, for example.

Canada’s new FIPA model incorporates various safeguards aimed at protecting Canada’s right to regulate for legitimate public welfare objectives. It also includes a statement in the preamble on the consistency of the agreement with sustainable development, and general exceptions with respect to human, animal, or plant life of health based on GATT Article XX/GATS Article XIV.

The revised FIPA model clarifies Canada’s position that non-discriminatory measures, such as a regulation, designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute an indirect expropriation. This provision is intended to ensure that crucial regulations (including environmental) are not stifled by the obligation to provide costly compensation. For example, unless a

measure is so severe that it cannot be reasonably viewed as having been adopted and applied in good faith, a non-discriminatory environmental regulation that may adversely affect an investor would not constitute indirect expropriation and would not require compensation under the treaty.

The revised FIPA model strengthened a clause on "not lowering standards", whereby signatories recognize that it is inappropriate to attract investment through lowering health, safety, and environmental standards. Specifically, this clause recognizes that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. In the event a Party has offered such encouragement, the other party may request consultation.