

21. September 2020

The Honorable Mary Ng
Minister of Small Business, Export Promotion and International Trade
Canada

Dear Minister Ng:

Our associations represent a wide range of North American businesses and manufacturers dedicated to protecting the environment, improving public health, and ensuring long-term economic growth. Through the implementation of innovative, sustainable practices, we are focused on supporting healthy communities and ecosystems and safeguarding the longevity of our planet. The companies that we represent manufacture products, use those products, and create processes that make modern life possible, such as plastic resins and the chemistries needed to make plastic resins, compound and process plastics, plastic packaging, and plastics used in manufactured goods.

We strongly support full implementation of the Canada-United States-Mexico Agreement (CUSMA) and greatly appreciate the significant efforts by the Government of Canada to negotiate, ratify, and implement the agreement. This agreement contains innovative provisions regarding regulatory cooperation for chemical substances in Sectoral Annex 12.A that will support North American industry's global competitiveness and grow jobs in our sectors, which include both producers and downstream users of chemical products.

It also contains critical obligations in Article 24.12 of the Environment Chapter that each CUSMA Party shall take measures to prevent and reduce marine litter and cooperate to address matters of mutual interest with respect to combating marine litter. Our associations are committed to crafting effective solutions to eliminate plastic waste and marine debris. We believe that aggressive global and regional public-private commitments and partnerships focused on these efforts should be given an opportunity to work. Global waste, litter, and marine debris challenges require teamwork, and developing solutions through these partnerships is vital to protecting our planet. The CUSMA can establish the gold standard for how governments and industry can work together to prevent and reduce marine litter.

Despite these important steps, the government of Canada is advancing a regulatory approach that is not based on strong scientific evidence and would undermine partnerships and progress against marine litter. The government of Canada has signalled its intention to declare plastics as toxic under Schedule 1 of the Canadian Environmental Protection Act (CEPA) -- in other words, to add plastics to the Toxic Substances List. Previously, Canada announced its intention to ban certain single use plastics. Many of the associations here wrote to you in May to express our shared concern with Canada's scientific assessment, as detailed in the attached letter.

Instead of this regulatory approach, the Canadian government should focus its efforts on directly addressing the issue of concern: plastic waste entering the environment. These efforts should be based on the implementation of sustainable practices that balance environmental protection, economic growth, and social development. Importantly, solutions need to recognize the flow of plastic materials and products across the border, as well as the flow of

plastic waste across North American waste streams. For example, U.S. plastic scrap exports are feedstock for the Canadian recycling industry.

Our concerns and the list of concerned associations are growing. We understand that Environment and Climate Change Canada is preparing to release a "discussion document" as the next step in the process. Our shared view is that this discussion document should not be released, and that Canada should not proceed with the adding of plastic or products containing plastics to Schedule 1 of CEPA. Such a designation would have grave consequences, which we outline below. We are seeking your support to halt this action.

First, the proposed ban on any product containing plastic and manufactured in the United States clearly meets the definition of a non-tariff barrier and has the potential to have a significant impact on trade, including potential bans on the importation of plastic materials into Canada. Such bans could impact over \$12.1 billion in U.S. exports to Canada (see illustrative list of products in **Attachment A** below), exclusive of other products that contain plastic. This approach by Canada – taken without consultation with the United States and Canada’s other close trading partners – directly threatens trade in plastic materials and products containing plastics, causing unintended consequences and commercial impacts across virtually every value chain.

Second, misguided regulatory action by Canada to ban products manufactured in North America from being offered for sale in Canada violates the country’s international trade obligations under the CUSMA and World Trade Organization. This approach would preclude products from entering Canada based on an incomplete and inconclusive “scientific assessment.” This is contrary to Canada’s obligation under the CUSMA Sectoral Annex 12A.4.3 to endeavor to use a risk-based approach to the assessment of specific chemical substances and chemical mixtures, where appropriate. This approach may also violate Article 2.2 of the WTO Technical Barriers to Trade (TBT) Agreement, which requires that technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.

Third, rather than banning valuable products, Canada should remain focused on how to further reduce pollution and waste. This can be achieved by creating investments and other opportunities for innovation, including through the expansion of the green economy and the promotion of sustainable approaches to plastics by the government of Canada.

Fourth, Canada’s proposed rules do not appear to be based on sound science, which is a must in efforts to drive successful and impactful environmental solutions forward. Canada’s recent scientific assessment document was not a risk assessment, and did not make a compelling case for invasive market action. The document cited generalized environmental impacts from larger-sized litter in the environment. However, these impacts are not specific to plastics as materials and would occur from any large-sized litter, regardless of material (e.g., glass and aluminum). The document likewise did not conclude that “microplastics” concerns justify action.

Fifth, the proposed ban would have a disproportionate trade impact, given the \$12.1 billion of manufactured plastic that enters Canada from the United States every year. That is exclusive of other products (like cars, medical supplies and devices, and information technology products) that contain plastic components (see figures below) or goods that require plastic to prevent contamination, such as food. A CEPA-toxic designation would

adversely affect these products as well. Consumers would assume that every day and essential products that contain plastic are now toxic; companies would face uncertainty in the marketplace regarding whether they can export to and sell their products in Canada.

Sixth, the ban's precedent that key manufactured materials and products are branded in blanket fashion as "toxic" could inspire global trade barriers against Canadian exports of plastic resins, plastic products, products with plastic components, and products protected by plastic packaging. Such a precedent would create further incentives to ban trade by other governments, which could impact over \$10 billion in Canadian exports of plastics and plastic products.

Conclusion

We urge the Canadian government to:

- Immediately reconsider the inappropriate use of CEPA to address plastic waste issues, taking into consideration the potential impact to the credibility of CEPA if it is misused in this way (for example, creating stakeholder confusion, diminishing the value of the globally respected Chemicals Management Plan, and weakening circular economy initiatives).
- Engage with industry and the Canadian provinces to craft an appropriate coordinated provincial approach to our common goals of keeping plastic waste out of the environment.
- Fully consult with agencies responsible for the regulation of products where the designation of plastics as CEPA-toxic would have a disproportionate impact, such as food packaging, baby formula, medical devices, agricultural packaging, and other items critical to safety and health. Consumer focus group testing might also be essential to avoiding stakeholder confusion and potential impacts on health and safety.
- Refrain from releasing any discussion document – or moving forward under the CEPA Chemical Management Plan process – unless and until these considerations are fully addressed.

Environmental laws and regulations should be designed with utmost care to ensure that they are effective in achieving their desired objectives while at the same time avoiding unnecessary adverse social and economic impacts. Everyone must do his and her part to protect the environment and we remain dedicated to helping communities and ecosystems flourish worldwide. As you engage with your government colleagues, we urge you to reach out to officials in the United States government, including at the Office of the United States Trade Representative, the United States Department of Commerce, and the United States Department of State, to understand their perspectives and facilitate further bilateral discussions, particularly with respect to CUSMA implementation.

Sincerely,

The Adhesive and Sealant Council
AdvaMed
Advanced Recycling Alliance for Plastics
Alliance for PE Pipe
AMERIPEN – the American Institute for Packaging and the Environment
American Bakers Association

American Chemistry Council
American Cleaning Institute
American Coatings Association
American Frozen Foods Institute
American Fuel & Petrochemical Manufacturers
American Trucking Association
Association of Plastic Recyclers
Association of Rotational Molders
Association for Unmanned Vehicle Systems International
Carpet Cushion Council
Center for Baby and Adult Hygiene Products (BAHP)
Center for Biocide Chemistries
Center for the Polyurethanes Industry (CPI)
Chemical Fabrics and Film Association
Consumer Brands Association
CropLife America
EIFS Council of Canada
EIFS Industry Members Association
EPS Industry Alliance
Extruded Polystyrene Foam Association (XPSA)
Flexible Packaging Association
Flexible Vinyl Alliance
Foam Sheathing Committee
Foodservice Packaging Institute
Fragrance Creators
Household & Commercial Products Association
INDA, Association of the Nonwoven Fabrics Industry
Institute of Scrap Recycling Industries
International Association of Plastics Distribution
International Sleep Products Association
Metal Construction Association
Motor & Equipment Manufacturers Association
National Association of Chemical Distributors
National Association of Manufacturers
National Confectioners Association
North American Meat Institute
North American Modern Building Alliance
Personal Care Products Council
Pine Chemicals Association
Plastic Drum Institute (PDI)
Plastic Glazing Coalition
Plastic Pipe and Fittings Association
Plastics Pipe Institute
Plastics Foodservice Packaging Group
Plastics Industry Association
Plumbing Manufacturers International
Polyurethane Foam Association
Polyisocyanurate Insulation Manufacturers Association
PVC Pipe Association
Resilient Floor Covering Institute

Rigid Intermediate Bulk Container Association of North America (RIBCA)
SOCMA
Spray Foam Polyurethane Association
SPRI (Single Ply Roofing Industry)
Styrene Information and Research Center
U.S. Chamber of Commerce
Vinyl Institute
The Vision Council
United States Council for International Business
Western Plastics Association

Cc:

The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance
The Honourable Navdeep Bains, Minister of Innovation, Science and Industry
The Honourable Mélanie Joly, Minister of Economic Development and Official Languages
The Honourable Patty Hajdu, Minister of Health
The Honourable François-Philippe Champagne, Minister of Foreign Affairs
The Honourable Seamus O'Regan, Minister of Natural Resources
The Honourable Jonathan Wilkinson, Minister of Environment and Climate Change

Attachment A

Trade Commodity	UOM	Quantity:2019	Value: (CAN\$) 2019
Chapter Plastics and articles thereof	15,134,110,675
Articles of plastics, nes and articles of other materials of Nos 39.01 to 39.14	N/A	-	1,091,864,452
Acrylic polymers, nes, in primary forms	KGM	195,362,830	607,303,029
Polyethylene, having a specific gravity of 0.94 or more	KGM	338,245,179	605,903,608
Propylene copolymers	KGM	247,539,836	572,996,314
Film and sheet, etc, non-cellular, etc, of polymers of ethylene	KGM	104,386,946	545,184,635
Polypropylene	KGM	250,082,226	516,460,148
Articles for the conveyance or packing of goods, nes, of plastics	N/A	-	515,129,357
Boxes, cases, crates and similar articles, of plastic	N/A	-	501,602,521
Poly(vinyl choride), not mixed with any other substances	KGM	437,058,535	501,574,067
Carboys, bottles, flasks and similar articles, of plastics	N/A	-	491,322,352
Polyethylene, having a specific gravity of less than 0.94	KGM	244,473,361	433,454,537
Stoppers, lids, caps and other closures, of plastics	N/A	-	432,935,180
Self-adhesive plates, sheets, film, etc, of plastic, nes	KGM	38,742,824	380,520,895
Film and sheet, etc, nes, of plastics	N/A	-	353,968,535
Sacks and bags, including cones, of polymers of ethylene	N/A	-	326,008,374
Ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94	KGM	162,667,247	294,762,018
Polyethers, nes	KGM	91,749,392	280,309,220
Film and sheet, etc, non-cellular, etc, of polymers of propylene	KGM	46,870,041	276,903,343
Poly(methylene phenyl isocyanate) (crude MDI, polymeric MDI), in primary forms	KGM	107,052,815	262,928,452
Polyurethanes, in primary forms	KGM	36,011,339	214,873,559

Builders' ware, nes, of plastics	N/A	-	208,330,496
Self-adhesive plates, sheets, film, etc, of plastic, in rolls <=20 cm wide	KGM	19,861,491	207,232,660
Polymers of ethylene, in primary forms, nes	KGM	109,172,909	203,198,839
Polyamide-6, -11, -12, -6,6, -6,9,-6,10 or -6,12	KGM	46,181,437	196,559,766
Tableware and kitchenware, of plastics	N/A	-	187,772,825
Polyesters, nes, in primary forms	KGM	35,233,991	169,392,672
Fittings, of plastic, for tubes, pipes and hoses	KGM	15,807,368	158,475,522
Polyesters, nes, unsaturated	KGM	55,852,308	152,440,488
Plates, sheets, film, etc, not supp/combi with other mat,of other plastics, nes	KGM	13,534,431	149,511,831
Monofilaments >1 mm, profile shapes, etc, of polymers of ethylene	KGM	23,635,170	138,718,528
Epoxide resins	KGM	30,997,854	134,239,790
Polycarbonates	KGM	30,547,379	133,885,430
Silicones, in primary forms	KGM	15,717,561	129,125,140
Polysulphides,polysulphones,other products of Note 3 to Ch,in primary forms,nes	KGM	33,168,366	128,334,077
Film and sheet, etc, non-cellular, etc, of poly(ethylene terephthalate)	KGM	29,477,939	123,933,829
Film and sheet, etc, cellular of polyurethane	N/A	-	122,172,715
Fittings for furniture, coachwork or the like, of plastics	KGM	11,209,947	121,413,028
Film and sheet, etc, non-cellular, etc, of poly(methyl methacrylate)	KGM	16,235,184	117,443,239
Floor, wall and ceiling coverings, etc, of polymers of vinyl chloride	MTK	10,846,968	114,130,465
Film and sheet, etc, cellular of, plastics, nes	KGM	20,610,028	113,933,365
Household and toilet articles, nes, of plastics	N/A	-	113,293,511
Polystyrene, nes	KGM	56,839,898	103,410,209