

**REPORT OF CANADA FOR 2003-2005
ON THE IMPLEMENTATION OF THE ESPOO
CONVENTION ON ENVIRONMENTAL IMPACT
ASSESSMENT IN A TRANSBOUNDARY CONTEXT**
for the period mid-2003 to end of 2005

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PART I – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

Please provide the information requested below in Part I, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should not be used to describe your experience of applying the Convention, i.e. just the framework for its implementation.

Article 2

General Provisions

DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (Art. 2.2).*

See response to question 5.

TRANSBOUNDARY EIA PROCEDURE

2. *Describe your national and transboundary EIA procedures and authorities (Art. 2.2):*
 - a. *Describe your EIA procedure and indicate which steps of the EIA procedure include public participation.*

See response to question 5.
 - b. *Describe how the different steps of the transboundary EIA procedure mentioned in the Convention fit into your national EIA procedure.*

See response to question 5.
 - c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure. Also list the authorities responsible for the domestic EIA procedure, if they are different.*

See response to question 5.
 - d. *Is there one authority in your country that collects information on all the transboundary EIA cases under the Convention? If so, name it. If not, do you intend to establish such an authority?*

The Canadian Environmental Assessment Agency collects the information.

3. *Do you have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

Canada would initiate consultations with the government authorities in the neighbouring jurisdictions. The discussions would focus on the following areas of cooperation:

- Information sharing on the project and its potential environmental effects;
- Legislative or regulatory requirements for the conduct of environmental assessment procedures;
- Public communication and participation requirements/opportunities in the environmental assessment procedures;
- The technical review of the environmental information;

- The possibility of joint hearings;
- The timing and announcements of decisions; and
- Follow-up requirements.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING EIA UNDER THE CONVENTION

4. *Is your country's list of activities subject to the transboundary EIA procedure equivalent to that in Appendix I to the Convention?*

Canadian Environmental Assessment Act (CEAA) applies to a wide range of proposed projects that are commensurate to those listed in Appendix I to the Espoo Convention. CEAA also applies to many other types of projects that are not listed under Appendix 1. If a Responsible Authority is involved in a proposed project (see response to question 5.a., below), that Responsible Authority is required to consider the environmental effects of the proposed project whether these effects take place in or outside of Canada.

5. *Please describe:*

- a. *The procedures and, where appropriate, the legislation you would apply to determine that an "activity", or a change to an activity, falls within the scope of Appendix I (Art. 2.3), or that an activity not listed should be treated as if it were (Art. 2.5);*

For the purposes of implementation of the Espoo Convention, the Canadian Environmental Assessment Act (CEAA) is the federal legal instrument that applies to the examination of the transboundary environmental effects of proposed projects as well as domestic effects. CEAA sets out the responsibilities and procedures for the environmental assessment of proposed projects involving the federal government. Under section 5 of CEAA, an environmental assessment of a project is required before a federal authority (federal minister, department or agency) exercises one or several of the following powers, duties or functions: proposes a project, contributes financially to a project, sells, leases or transfers control of land to enable a project to be carried out; or issues a specified federal permit or license that is included in CEAA's Law List Regulations.

When the foregoing conditions apply, the federal authority is deemed under section 11 of CEAA to be a "Responsible Authority" and must ensure that an environmental assessment of the proposed project is conducted as early as possible and before irrevocable decisions are made regarding the proposed project.

Under CEAA, four types of environmental assessment are available: screening, comprehensive study; mediation; and panel review, as detailed below:

Under a screening, a Responsible Authority (as defined 2 paragraphs above) systematically documents the environmental effects of a proposed project and determines the need to eliminate or minimize (mitigate) harmful effects; to modify the project plan; or to recommend further assessment through mediation or panel review. The extent of public participation in a screening, if any, is determined on a case-by-case basis by the Responsible Authority and would take place prior to the Responsible Authority exercising any power, function or duty in respect of the project (see paragraph 2, above).

Screenings will vary in time, length, and scope of analysis, depending on the circumstances of the proposed project, consideration of the existing environment, and the likely environmental effects. Some screenings may require only a brief review of the already-existing information and a short report; others may need new background studies and be as extensive as a comprehensive study under CEAA. The

Responsible Authority must consider whether a follow-up programme for the project would be appropriate, and if so, design and ensure its implementation.

Large-scale and environmentally sensitive projects usually undergo a more extensive assessment called a comprehensive study. The Comprehensive Study List Regulations under CEAA identify the projects for which a comprehensive study is required (It should be noted that the types and categories of projects identified under the Comprehensive Study List Regulations are commensurate with those listed under Appendix 1 of the Espoo Convention). Public participation in a comprehensive study is mandatory and must be initiated by a Responsible Authority regarding the scope of the environmental assessment, including the factors proposed to be considered, the scope of those factors, as well as the ability of the comprehensive study to address issues relating to the project. Following these consultations the Responsible Authority issues a report to the Minister of the Environment regarding the scope of the assessment, public concerns in relation to the project, the potential of the project to cause adverse environmental effects, and the ability of the comprehensive study to address the issues relating to the project. The Responsible Authority also makes recommendations to the Minister as to whether the project should continue on the comprehensive study assessment track, or should instead be referred to mediation or an independent panel review. The Minister then determines, taking into account the Responsible Authority's report and recommendations, whether the project will continue to be assessed as a comprehensive study or instead be referred to a mediator or independent review panel.

If the assessment continues as a comprehensive study, the project may not be subsequently referred to a mediator or review panel. The Responsible Authority must provide a further opportunity for the public to participate in the conduct of the comprehensive study itself. In addition, once completed, the comprehensive study report is subject to a public comment period of at least 30 days. The Minister of the Environment, after taking into account the comprehensive study report and any public comments, then issues a decision statement on whether the project is likely to cause significant adverse environmental effects. At this time, the Minister of the Environment may set out mitigation measures and requirements for a follow-up programme. The Minister also has the authority to request further information or require that action be taken to address public concerns. Finally, the Responsible Authority must design a follow-up programme for projects that have undergone a comprehensive study assessment and ensure its implementation.

It should be noted that under CEAA, it is the Responsible Authority that determines the scope of the factors to be considered in the context of screening and comprehensive study. The factors that must be considered are the following factors:

- the environmental effects of the project, including environmental effects of malfunctions or accidents that may occur in connection with the project, and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
- the significance of these environmental effects;
- comments from the public received in accordance with the Act and its regulations;
- technically and economically feasible measures that would mitigate any significant adverse environmental effects of the project;
- any other matter relevant to the screening or comprehensive study that the RA or, in the case of a comprehensive study, the Minister, may require.

In addition to the above factors, the comprehensive study must address:

- the purpose of the project;

- alternative means of carrying out the project that are technically and economically feasible, as well as the environmental effects of any such alternative means;
- the need for, and the requirements of, any follow-up programme;
- the capacity of renewable resources that are likely to be significantly affected by the project to meet present and future needs.

Where it is considered that a project may cause significant adverse environmental effects, or where warranted by public concerns, a project may be referred to the Minister of the Environment for a review by a panel appointed by the Minister. Panel reviews offer large numbers of groups and individuals with different points of view a chance to present information and express concerns at public hearings. The Minister of the Environment establishes the terms of reference for the panel review after consulting with the Responsible Authority and other parties as appropriate. The factors that must be considered in a public review are the same as those for a comprehensive study. The panel report is submitted to the Responsible Authority and the Minister of the Environment. A government response to panel recommendations is considered by the federal Cabinet. Subsequent courses of action taken by Responsible Authorities must be consistent with the Cabinet's direction.

For each type of environmental assessment described above, a Responsible Authority or the Minister of Environment must by law consider the following environmental effects of a proposed project:

- (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(a) of the Species at Risk Act,
- (b) any effect of any change referred to in paragraph (a) on:
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage,
 - (iii) the current use of lands and resources for traditional purposes by Aboriginal persons, or
 - (iv) any structure, site or thing that is of historical, archaeological, palaeontological or architectural significance, or
- (c) any change to the project that may be caused by the environment, whether any such change occurs within or outside Canada; (Respondent's emphasis; see definition of "environmental effect" under CEAA).

In addition to the above, section 47 of CEAA provides authority to the Ministers of the Environment and of Foreign Affairs, upon receipt of a request or a petition, or at their discretion, to jointly refer a proposed project to mediation or a review panel if they deem that the project may cause significant adverse transboundary effects across international boundaries. The referral of a proposed project to mediation or panel review can only take place when there is no federal involvement in the project as described in paragraph 2 above. Moreover, the Ministers cannot refer a project for review by a mediator or review panel under this provision if an arrangement has been reached between the Minister and all interested provinces on another manner of conducting an assessment of the project's international transboundary effects. The Minister of the Environment typically requests the Canadian Environmental Assessment Agency (the Agency) to review requests and petitions made under section 47 and to make recommendations on whether or not proposed projects should be referred to mediation or review panel. This investigation usually involves the Agency seeking advice from expert federal authorities on the nature of the

transboundary effects of the project. Consultations may also take place with officials in other jurisdictions.

b. How a change to an activity is considered as a “major” change;

The Canadian Environmental Assessment Act, through which the Espoo Convention is implemented, incorporates a definition of “project” that includes for the consideration of environmental effects resulting from changes to a project. Under section 2 of Canadian Environmental Assessment Act (CEAA), the definition of project reads as follows:

“(a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work, or

(b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to regulations made under paragraph 59(b);”

This definition requires a Responsible Authority to consider the environmental effects of a proposed modification to a project to which CEAA applies. Large-scale project modifications that are likely to have adverse environmental effects and to which CEAA applies are usually subject to a Comprehensive Study under CEAA, while a screening level assessment would apply to minor project modifications unless these have been excluded from assessment requirements. As noted in the preceding response (see 5.a.) a Responsible Authority is required to consider the environmental effects of a project whether these effects take place in or outside of Canada. As such, if the project proposal is a modification to an existing project, under CEAA, the Responsible Authority would have to give consideration to transboundary effects of the modification proposal.

c. How such an activity, or such a change to an activity, is considered likely to have a “significant” adverse transboundary impact (Art. 2.5, Guidelines in Appendix III); and

Under the Canadian Environmental Assessment Act (CEAA), when a Responsible Authority is involved in a proposed project (see response to question 5-a), the Responsible Authority proceeds either with a self-directed screening or a comprehensive study of the proposed project to determine whether it is likely to cause significant adverse environmental effects (see response to question 5-a and below for further details on these levels of assessment.) These requirements of CEAA apply to a broad range of projects covered by the Inclusion List Regulations and the Comprehensive Study List Regulations that support CEAA. The types of projects covered by the Comprehensive Study List Regulations are generally commensurate with those listed under Appendix I to the Espoo Convention. The Canadian Environmental Assessment Agency has developed a reference guide for Responsible Authorities that sets out a framework for deciding whether a project is likely to cause significant environmental effects under CEAA. These guidelines are issued under section 58 of CEAA. The reference guide can be consulted at the Agency’s Web site at http://www.ceaa-acee.gc.ca/013/0001/0008/guide3_e.htm#Reference%20Guide

The concept of significance is extremely important in CEAA. One of the stated purposes of CEAA is “to ensure that projects that are to be carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out” (Reference: section 4 (c) of CEAA).

As noted above, a central test under CEAA is whether a project is likely to cause significant adverse environmental effects. All decisions about whether or not projects are likely to cause significant adverse environmental effects must be supported by findings based on the requirements set out in CEAA.

The details below briefly outline the considerations that a Responsible Authority must undertake when proceeding with an environmental assessment.

The definitions of “environment” and “environmental effect” are the starting point when considering whether a project is likely to cause significant adverse environmental effects. CEAA defines the environment as:

“the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);” (Reference: section 2(1) of CEAA).

Environmental effect means, in respect of a project,

- (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(a) of the Species at Risk Act,

- (b) any effect of any change referred to in paragraph (a) on:

- (i) health and socio-economic conditions,
- (ii) physical and cultural heritage,
- (iii) the current use of lands and resources for traditional purposes by Aboriginal persons, or

- (iv) any structure, site or thing that is of historical, archaeological, palaeontological or architectural significance, or

- (c) any change to the project that may be caused by the environment, whether any such change occurs within or outside Canada (Reference: section 2 (1) of CEAA) (Respondent’s emphasis).

Bearing in mind these key definitions, the Canadian Environmental Assessment Agency has developed the following framework for guiding Responsible Authorities and the Minister of the Environment in determining whether environmental effects are “adverse”, “significant”, and “likely” within the context of CEAA. It should be noted that the framework does not exclude the consideration of other criteria such as the general criteria listed under Appendix III of the Espoo Convention.

The framework consists of three general steps:

Step 1: Deciding Whether the Environmental Effects are Adverse

Step 2: Deciding Whether the Adverse Environmental Effects are Significant

Step 3: Deciding Whether the Significant Adverse Environmental Effects are Likely
Each step consists of a set of criteria that Responsible Authorities and the Minister of the Environment should use to address these three questions, as well as examples of methods and approaches that can be applied. The Responsible Authority and the Minister apply the criteria to information provided by the proponent. This information is generally provided in the form of an Environmental Impact Statement.

Step 1: Deciding Whether the Environmental Effects are Adverse

The Canadian Environmental Assessment Agency guidance material lists the major criteria that should be used to determine whether environmental effects are adverse. Obviously, the relative importance of individual characteristics will vary depending upon the context of the particular environmental assessment in question. The criteria are listed in the table below.

Step 2: Deciding Whether the Adverse Environmental Effects are Significant

The Canadian Environmental Assessment Agency's guidance material also outlines several criteria that should be taken into account in deciding whether the adverse environmental effects are significant. These are:

- Magnitude of the adverse environmental effects;
- Geographic extent of the adverse environmental effects;
- Duration and frequency of the adverse environmental effects;
- Degree to which the adverse environmental effects are reversible or irreversible; and
- Ecological context.

Step 3: Deciding Whether the Significant Adverse Environmental Effects Are Likely
Finally, the Canadian Environmental Assessment Agency's guidance material recommends that when deciding the likelihood of significant adverse environmental effects, there are two criteria to consider:

- Probability of occurrence; and
- Scientific uncertainty

Once a Responsible Authority completes the screening process, it must make a determination on whether to exercise its powers in relation to the project or to require the project to be subject to further assessment by mediation or a review panel. This determination is based on consideration of the significance of the adverse environmental effects taking into account the implementation of mitigation measures as well as the public concerns in relation to the proposed project. It should be noted, however, that at any time during a screening, a Responsible Authority can refer the project to the Minister of the Environment for mediation or panel review, if the Responsible Authority considers that the proposed project may cause significant adverse environmental effects or if warranted by public concerns about the project. Early in the comprehensive study process, following public consultation, the Minister of the Environment is required to determine if the project should continue on the comprehensive study assessment track or instead be referred to a mediator or independent review panel. The Minister's decision must take into account a report and recommendations from the Responsible Authority that describes, among other things, public concerns about the project, potential for adverse environmental effects and the ability of the comprehensive study process to address issues related to the project.

If the assessment continues as a comprehensive study, the project may not be subsequently referred to a mediator or review panel. The Responsible Authority must provide a further opportunity for the public to participate in the conduct of the comprehensive study itself. In addition, once completed, the comprehensive study report is subject to a public comment period of at least 30 days. The Minister of the Environment, after taking into account the comprehensive study report and any public comments, then issues a decision statement on whether the project is likely to cause significant adverse environmental effects. At this time, the Minister of the Environment may set out mitigation measures and requirements for a follow-up programme. The Minister also has the authority to request further information or require that action be taken to address public concerns. Finally, the Responsible Authority must design a follow-up programme for projects that have undergone a comprehensive study assessment and ensure its implementation.

Where it is considered that a project may cause significant adverse environmental effects, or where warranted by public concerns, a project may be referred to the Minister of the Environment for a review by a panel appointed by the Minister. Panel reviews offer large numbers of groups and individuals with different points of view a chance to present information and express concerns at public hearings. The panel

report is submitted to the Responsible Authority and the Minister of the Environment. A government response to panel recommendations is considered by the federal Cabinet. Subsequent courses of action taken by Responsible Authorities must be consistent with the Cabinet's direction.

In addition to the above, section 47 of CEEA provides authority to the Ministers of the Environment and of Foreign Affairs, upon receipt of a request or a petition, or at their discretion, to jointly refer a proposed project to mediation or a review panel if they deem that the project may cause significant adverse transboundary effects across international boundaries. The referral of a proposed project to mediation or panel review can only take place when there is no federal involvement in the project. Moreover, the Ministers cannot refer a project for review by a mediator or review panel under this provision if an arrangement has been reached between the Minister and all interested provinces on another manner of conducting an assessment of the project's international transboundary effects.

The Minister of the Environment typically requests the Canadian Environmental Assessment Agency (the Agency) to review requests and petitions made under section 47 and to make recommendations on whether or not proposed projects should be referred to mediation or review panel. This investigation usually involves the Agency seeking advice from expert federal authorities on the nature of the transboundary effects of the project. Consultations may also take place with officials in other jurisdictions.

CANADIAN CRITERIA FOR DETERMINING WHETHER ENVIRONMENTAL EFFECTS ARE ADVERSE

Changes in the Environment:

- Negative effects on the health of biota including plants, animals, and fish;
- Threat to rare or endangered species;
- Reductions in species diversity or disruption of food webs;
- Loss of or damage to habitats, including habitat fragmentation;
- Discharges or release of persistent and/or toxic chemicals, microbiological agents, nutrients (e.g., nitrogen, phosphorus), radiation, or thermal energy (e.g., cooling wastewater);
- Population declines, particularly in top visual amenities (e.g., views);
- The removal of resource materials (e.g., or resources; peat, coal) from the environment;- Transformation of natural landscapes;
- Obstruction of migration or passage of wildlife;
- Negative effects on the quality and/or quantity of the biophysical environment (e.g., surface water, groundwater, soil, land, and air).

Effects on people resulting from environmental changes:

- Negative effects on human health, well-being, or quality of life; Increase in unemployment or shrinkage in the economy;
- Reduction of the quality or quantity of recreational opportunities or amenities;
- Detrimental change in the current use of lands and resources for traditional purposes by Aboriginal persons;
- Negative effects on historical, archaeological, palaeontological, or architectural resources;
- Decreased aesthetic appeal or changes in predator, large, or long-lived species;

- Loss of or damage to commercial species;
- Foreclosure of future resource use or production;

d. *How you would decide whether it is “likely” to have such an impact. (Art. 2.3)*

Refer to Step 3 described in the response to question 5-c.

PUBLIC PARTICIPATION

6. *Do you have your own definition of “the public” in your national legislation, compared to Article 1(x)? How do you, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your own public as required in Article 2, paragraph 6?*

As noted in the response to question 5(a), the Canadian Environmental Assessment Act provides several opportunities for public participation in environmental assessment. These opportunities are not limited only to Canadians, but extend as well to the public and authorities of an affected Party.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

7. *Describe how you determine when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure do you usually notify the affected Party? (Art. 3.1)*

For some activities, notification would be provided during the initial planning stages of the environmental assessment under the Canadian Environmental Assessment Act when, for example, the likelihood of significant adverse transboundary environmental effects may be obvious based on the initial information provided by the proponent of the activity. For other activities, notification would be provided during the preparation of the environmental assessment itself, when more information about the likelihood of significant adverse transboundary environmental effects becomes known to the federal Responsible Authority. Scoping occurs both with and without public participation. Under the Canadian Environmental Assessment Act, public participation at the scoping phase is mandatory for the comprehensive study process and panel reviews. In both instances, arrangements are made by the Responsible Authority or the Minister of the Environment to make the scoping documents publicly available. As described above, in response to question 5(a), the extent of public participation in screening, if any, is determined on a case-by-case basis by the Responsible Authority and would take place prior to the Responsible Authority exercising any power, function or duty in respect of the project.

8. *Describe how you determine the content of the notification? (Art. 3.2)*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

9. *Describe the criteria you use to determine the time frame for the response to the notification from the affected Party (Art 3.3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

10. Describe when you provide relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in Article 3, paragraph 5. Already with the notification or later in the procedure?

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

11. How do you determine whether you should request information from the affected Party (Art. 3.6)? When do you normally request information from the affected Party? What kind of information do you normally request? How do you determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (Art. 3.6)?

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

12. How do you consult with the authorities of the affected Party on public participation (Art. 3.8)? How do you identify, in cooperation with the affected Party, the “public” in the affected area? How is the public in the affected Party notified (what kinds of media, etc are usually used)? What is normally the content of the public notification? Does the notification to the public of the affected Party have the same content as the notification to your own public? If not, describe why not. At what stage in the EIA procedure do you normally notify the public of the affected Party?

Although Canada has had no requirement to date to apply the Espoo Convention, Canada would undertake to communicate and consult with the point of contact of the affected Party to seek advice and develop arrangements for the identification and notification of the public in the affected area.

Appropriate means of communications would be employed such as: newspaper advertisements, Internet postings, mail notification to stakeholders and, where circumstances warrant, local radio or television notices. A flexible approach is taken in light of Canada’s diverse cultural and geographical make-up, allowing for appropriately tailored communications strategies.

Although Canada has had no requirement to date to apply the Espoo Convention, Canada would provide public notification in a manner consistent with the information elements set out in Table 3 of the decision of the Meeting of the Parties regarding the format for notification (ECE/MP.EIA/2).

Yes, the two notifications would contain the same information. Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question. Canada notes, however, that it would expect all of its external communication materials to be consistent regarding information content regardless of public location.

Notification would be provided in a manner consistent with the requirements for public consultation under the Canadian Environmental Assessment Act.

13. Do you make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and listed on the Convention website at http://www.unece.org/env/eia/points_of_contact.htm?

Yes, the points of contact are made use of in this way.

14. Do you provide any information to supplement that required by Article 3, paragraph 2? Do you, furthermore, follow the proposed guidelines in the report of the first meeting of the Parties (ECE /MP/2, decision I/4)? If not, in what format do you normally present the notification?

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

QUESTIONS TO AFFECTED PARTY

15. *Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?*

Canada has no experience in this regard given that it has not been required to apply the Espoo Convention in an operational context.

16. *When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is “reasonably obtainable” information to include in your response; and (b) describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “promptly” in the context of responding to a request for information? (Art. 3.6)*

Canada has no experience in this regard given that it has not been required to apply the Espoo Convention in an operational context. In practice, however, Canada would undertake to transmit the requested information to the Party of origin without undue delay once the collation of the information had been completed by Canada.

Article 4

Preparation of the EIA documentation

QUESTIONS TO PARTY OF ORIGIN

17. *What is the legal requirement for the content of the EIA documentation (Art. 4.1)?*

See response to question 5(a).

18. *Describe your country’s procedures for determining the content of the EIA documentation (Art. 4.1).*

See response to question 5(a).

19. *How do you identify “reasonable alternatives” in accordance with Appendix II, alinea (b)?*

See response to question 5(a).

20. *How do you identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance to Appendix II, alinea (c), and the definition of “impact” in Article 1(vii)?*

See response to question 5(a).

21. *Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?*

Yes, subject to any personal privacy or access to information requirements, Canada would generally provide all of the EIA documentation.

22. *How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)*

The determination of the transfer and reception of the information would be made on a case-by-case basis in consultation with the point of contact of the affected Parties, or other responsible government officials as appropriate.

23. *Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words “within a reasonable time before the final decision” (Art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

The Canadian Environmental Assessment Act (CEAA) provides several opportunities for public participation in environmental assessments. CEAA has been structured so as to ensure that such participation takes place well in advance of any final decision about a proposed project. These opportunities for public participation are not limited only to Canadians, but extend as well to the public and authorities of affected Parties.

24. *What material do you provide, together with the affected Party, to the public of the affected Party?*

The public of the affected Party has access to the same wide range of documentation that is publicly available to Canadians within the context of an environmental assessment under the Canadian Environmental Assessment Act. The documents range from: public notices, project description documents, scoping documents for the environmental assessment, the environmental analysis documentation prepared by the proponent, the environmental analysis documentation prepared by government officials, the screening report, comprehensive study report, the mediation report, the public review panel report, the decisions of the Responsible Authorities and/or the Minister of the Environment in relation to the environmental assessment procedures and the project itself, and follow-up or monitoring programme documentation.

25. *Do you initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

Yes, the public of the affected Party, public authorities, organizations or other individuals can come to Canada to participate, subject to the normal Canadian entry requirements. Canada would not seek to limit the participation of the affected Party’s public in a joint hearing, if hearings were held in Canada. Normal Canadian entry requirements would apply, however, to those individuals wishing to enter Canada to participate in the hearing sessions in Canada.

QUESTIONS TO AFFECTED PARTY

26. *Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (Art. 4.2)?*

While Canada has no specific legislation for the determination of “reasonable time before the final decision”, as noted earlier, the Canadian Environmental Assessment Act (CEAA) provides several opportunities for public participation in environmental assessments. CEAA has been structured so as to ensure that such participation takes place well in advance of any final decision about a proposed project. These opportunities for public participation are not limited only to Canadians, but extend as well to the public and authorities of affected Parties.

27. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, or with the legislation of the Party of origin, or with ad hoc procedures, or with bilateral or multilateral agreements?*

Canada has no experience in this regard given that it has not been required to apply the Espoo Convention in an operational context.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

28. *At which step of the EIA procedure does the consultation in accordance with Article 5 generally take place? Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “undue delay”, with regard to the timing of entry into consultation? Do you normally set the duration for consultations beforehand? If there seems to be no need for consultation, how do you determine not to carry out consultations?*

The Canadian Environmental Assessment Act (CEAA) provides several opportunities for public participation in environmental assessments. CEAA has been structured so as to ensure that such participation takes place well in advance of any final decision about a proposed project. While Canada does not yet have operational experience with the application of the Espoo Convention, the timing of consultation would likely occur in a manner that is consistent with domestic requirements, that is, well in advance of any final decisions.

29. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

The consultations would involve, as a minimum, officials of the federal government and depending on the circumstances and the issues at hand officials at the provincial and municipal levels of government, and possibly Aboriginal representatives.

The participants in the consultations would vary depending on the complexity of the issues involved in the consultation initiatives. The participants may include senior level government officials for the Department of Foreign Affairs and International Trade, the Canadian Environmental Assessment Agency, the federal Responsible Authority under the Canadian Environmental Assessment Act, and technical professionals from federal expert government departments. Other participants could include provincial and municipal government officials, Aboriginal organizations and/or experts. Project proponents may also be called upon to become a participant in the consultation.

QUESTIONS TO AFFECTED PARTY

30. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means do you usually communicate in consultations, for example by meeting or by the exchange of written communications? How do you indicate if there is no need for consultations?*

Canada has no experience in this regard given that it has not been required to apply the Espoo Convention in an operational context.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

31. Describe what is regarded as the “final decision” to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?

See response to question 5(a).

32. How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity? (Art. 6.1)

See the response to question 34.

33. Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and public in your country (Art. 6.1)?

Although Canada has had no requirement to date to apply the Espoo Convention in an operational context, Canada would likely give equal consideration to the comments received from the public and authorities of an affected Party.

34. How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (Art. 6.2)

The Canadian Environmental Assessment Act requires that for each screening, comprehensive study, mediation, and review panel undertaken a report on the environmental effects of the proposed project be prepared. The report will contain the findings and conclusions concerning the environmental effects of the project and will serve to inform the decision(s) to be taken by the Minister of the Environment and/or a federal responsibility authority in regard to a proposed project. These reports are publicly available. Generally the report will address the following subject areas:

- The description of the proposed project (activities included in the project and when these are to be carried out);
- Project alternatives (alternative means of carrying out the project, and/or alternatives to the project);
- The scope of the environmental assessment (scope of the project assessed, factors considered in the environmental assessment, scope of the factors considered);
- The public consultation programme (how was public input solicited, who was consulted, what information came forward from the public, how was this information incorporated in the environmental assessment process);
- Description of the existing environment (general environmental context, environmental components in the study area, the relationship among environmental components, sensitivities to disturbance, potential environmental hazards to the project);
- Predicted environmental effects of the proposed project (effects of the project on environmental components, environmental changes on: human health, socio-economic conditions, physical and cultural heritage, the current use of lands for traditional purposes by Aboriginal persons, cumulative effects of the project, effects on the sustainable use of renewable resources, effects of the environment on the project, effects of possible malfunctions, methods used to predict effects);
- Mitigation measures (planned mitigation measures, effectiveness of planned mitigation measures);
- Determination of the significance of the environmental effects (are the residual environmental effects adverse, significant and likely to occur?);
- Follow-up programme (objectives of the follow-up programme, elements of the follow-up programme, responsibility for the implementation of the follow-up programme);

- Conclusions and recommendations (recommendation about the project, outstanding issues and concerns, conditions for approval).

35. *If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)*

Canada has no experience in this regard given that it has not been required to apply the Espoo Convention in an operational context.

Article 7

Post-Project Analysis

36. *How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?*

Canada has no experience in this regard given that it has not been required to apply the Espoo Convention in an operational context.

37. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how do you inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to Article 7, paragraph 2?*

The determination on the ways and means to communicate the information would be made on a case-by-case basis. The responsibility for the communication of the information would vary depending on the circumstances and issues at hand. Generally, the responsibility could rest with one of the following: the Department of Foreign Affairs and International Trade (for the Minister of Foreign Affairs), the Canadian Environmental Assessment Agency (for the Minister of the Environment), the Responsible Authority under the Canadian Environmental Assessment Act, and the President of the Canadian Environmental Assessment Agency.

Article 8

Bilateral and multilateral agreements

38. *Do you have any bilateral or multilateral agreements based on the EIA Convention (Art. 8, Appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on Appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

No.

39. *Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

No, a supplementary point of contact has not been established.

Article 9

Research programmes

40. *Are you aware of any specific research in relation to the items mentioned in Article 9 in your country? If so, describe it briefly.*

The Canadian Environmental Assessment Agency has a programme in place to support research and development in the field of environmental assessment. The purpose of the programme is to help the federal government meet future challenges and improve the practice of environmental assessment in a manner that is relevant, credible, efficient, and

encourages innovation and excellence. To date, research reports have been produced in the following areas of study:

- Climate Change and Environmental Assessment;
- Follow-Up;
- Regional Environmental Effects Frameworks; and
- Significance.

Further information on the Agency's research and development programme can be obtained at the following Internet site: http://www.ceaa-acee.gc.ca/015/index_e.htm

Ratification of the amendments to the Convention and of the Protocol on SEA

- 41. If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

- 42. If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

- 43. If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

PART II – PRACTICAL APPLICATION DURING THE PERIOD 2003-2005

Please report on your practical experiences of applying the Convention (not your procedures described in Part I), whether as Party of origin or affected Party. The focus here is on identifying the best practice as well as difficulties Parties encountered in applying the Convention in practice to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve application of the Convention.

CASES DURING THE PERIOD 2003-2005

44. *Do you have any practical experience of applying the Convention in this period (yes/no)? If you do not have any such experience, why not?*

No. Canada has not encountered a situation in which the Convention was applicable. The remaining questions in this section of the report have been left blank as they do not apply.

45. *Does your national administration have information on the transboundary EIA procedures that were underway during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.*

46. *Are there other projects than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

47. *Provide information on the average durations of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

EXPERIENCE OF THE TRANSBOUNDARY EIA PROCEDURE IN 2003-2005

48. *If you have had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

49. *How have you interpreted in practice the various terms used in the Convention, and what criteria have you used to do this? Key terms include the following: “promptly” (Art. 3.6), “a reasonable time” (Art. 3.2(c), Art. 4.2), “a reasonable time-frame” (Art. 5), and “major change” (Art. 1(v)). If you are experiencing substantial difficulties interpreting particular terms, do you work together with other Parties to find solutions? If not, how do you overcome the problem?*

50. Share with other Parties your experience of using the Convention. In response to each of the questions below, either provide one or two practical examples or describe your general experience. You might also include examples of 'lessons learned' in order to help others.

- a. How in practice have you identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?
- b. Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How do you determine how much information to include in the EIA documentation?
- c. What methodology do you use in impact assessment in the (transboundary) EIA procedure (for example, impact prediction methods and methods to compare alternatives)?
- d. Translation is not addressed in the Convention. How have you addressed the question of translation? What do you usually translate? What difficulties have you experienced relating to translation and interpretation, and what solutions have you applied?
- e. How have you organized transboundary public participation in practice? As Party of origin, have you organized public participation in affected Parties and, if so, how? What has been your experience of the effectiveness of public participation? Have you experienced difficulties with the participation of your public or the public of another Party? (For example, have there been complaints from the public about the procedure?)
- f. Describe any difficulties that you have encountered during consultations, for example over timing, language and the need for additional information.
- g. Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public.
- h. Have you carried out post-project analyses and, if so, on what kinds of projects?
- i. Do you have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your experiences describing, for example, any bilateral agreements, institutional arrangements, and how practical matters are dealt with (contact points, translation, interpretation, transmission of documents, etc.).

- j. *Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would you like to introduce your case in a form of Convention's fact sheet?*

CO-OPERATION BETWEEN PARTIES IN 2003-2005

51. *Do you have any successful examples of how you have overcome difficulties arising from different legal systems in neighbouring countries?*

EXPERIENCE IN USING THE GUIDANCE IN 2003-2005

52. *Have you used in practice the following guidance, recently adopted by the Meeting of the Parties and available on-line? Describe your experience of using these guidance documents and how they might be improved or supplemented.*
- a. *Guidance on public participation in EIA in a transboundary context;*
 - b. *Guidance on subregional cooperation; and*
 - c. *Guidelines on good practice and on bilateral and multilateral agreements.*

CLARITY OF THE CONVENTION

53. *Have you had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in Part I or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which you encounter when actually applying the Convention.*

AWARENESS OF THE CONVENTION

54. *Have you undertaken activities to promote awareness of the Convention among your stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*
55. *Do you see a need to improve the application of the Convention in your country and, if so, how do you intend to do so? What relevant legal or administrative developments are proposed or on-going?*

SUGGESTED IMPROVEMENTS TO THE REPORT

56. *Please provide suggestions for how the report may be improved.*