

Hon. Stockwell Day
Minister of International Trade
Foreign Affairs and International Trade Canada
Office of the Minister for International Trade
125 Sussex Drive
Ottawa, Ontario K1A 0G2

April 30, 2009

RE: PDAC Response to Federal Government CSR Strategy

Dear Minister:

The Prospectors and Developers Association of Canada (PDAC) is pleased that the Government of Canada has responded to the report of the multi-stakeholder Advisory Group of the National Roundtables on Corporate Social Responsibility (CSR), submitted to the government in March, 2007.

The PDAC has had an opportunity to review the proposed CSR Strategy for the Canadian International Extractive Sector entitled “Building the Canadian Advantage” (the Government CSR Strategy) and appreciates the opportunity to provide commentary and recommendations, which are contained in the attached document.

Yours sincerely,

Anthony Andrews
Executive Director
Prospectors & Developers Association
of Canada (PDAC)

Copy:

Hon. Lisa Raitt, Minister of Natural Resources
Hon. Beverley J. Oda, Minister of International Cooperation

PDAC Response to Federal Government CSR Strategy
April 30, 2009

Executive Summary

The PDAC is a national trade association whose members are involved in the mineral exploration and development industry both in Canada and around the world. Our membership includes over 1,000 corporate and 6,000 individual members, comprising mining companies, junior exploration companies, service and consulting firms, executives, geoscientists, prospectors, government representatives, lawyers, accountants and the financial and investment sectors.

The PDAC was involved in the federal *National Roundtable Process on CSR and Canadian Extractive Industries in Developing Countries* and participated in the detailed discussions of the multi-stakeholder Advisory Group which took place over a period of more than a year.

The PDAC holds the view that social responsibility, environmental stewardship and health and safety are essential aspects of mineral exploration and mine development. We share the same goal as that of the Federal Government and that of our stakeholders: to encourage and enable performance improvements in CSR for Canadian companies operating both domestically and abroad, in a transparent and accountable manner. Canadian exploration and mining companies have a strong presence worldwide, with projects located in many different cultural, social and geographic locations, some of which represent highly complex and difficult environments in which to operate.

Canada is recognized as a global centre for financing, exploration and development expertise. It is thus critical for Canadian companies to operate with the highest levels of corporate social responsibility, tailored to the particular circumstances of individual project sites and the needs of local communities. Many of Canada's leading mining companies are investors of choice in the jurisdictions in which they operate because of their strong commitment to responsible practices.

CSR however, is only one part of the necessary equation. The other critical component is host-country governance capacity-building. Reducing the risk of conflict and optimizing the benefits of exploration and mining in developing countries will require attention to both areas if meaningful progress in this complex area is going to be achieved.

**Summary of PDAC recommendations on the Federal Government's
CSR Strategy for the Canadian international extractive sector:**

CSR Performance Guidelines and Reporting

1. *That industry and government work closely together in the design and implementation of their CSR strategies in order to avoid duplication of effort and enhance coordination for the most effective results.*
2. *That, in particular, the federal government work with PDAC to explore with GRI, the possibility of developing a special supplement for junior mining and exploration companies, scaled to the nature, size and potential impact of their operations.*

3. *That the Federal Government provide general support for e3 Plus, help promote its use by the mineral exploration industry and key stakeholders around the world and initiate a process that will lead to its official endorsement by the federal government.*

Host Country Capacity Building

4. *That a strategic review and cost-benefit analysis of the federal government's mining-related, capacity building programs for developing countries be initiated (also keeping in mind provincial/territorial programs) with the objectives of evaluating efficiency and effectiveness, increasing integration and coordination among programs areas and considering ways and means to significantly leverage the capacity of the federal government in this general area.*
5. *That Canada participate in an initiative to review existing international programs focused on capacity-building relevant to mining, with a view to increased levels of collaboration and coordination among the key players and with the objective of improved organization, efficiencies and program delivery.*
6. *That the federal government increasingly seek out and support the longer term, more systematic approaches for assessing and prioritizing the capacity-building needs of developing countries, now emerging, that are based on broad, single to multi-country cost-benefit analysis.*

Extractive Sector CSR Counsellor

7. *That the function of the CSR Counsellor include the monitoring and assessment of the CSR performance of the extractive sector as a whole, measured against a set of carefully selected, agreed-upon criteria, and that this information be included in the annual report to Ministers, with indications of areas of progress and areas that require improvement.*
8. *That the Counsellor's annual report to Ministers list all complaints received, including those cases where a) a review did not proceed due to the withholding of consent by one of the parties, the identification of the withholding parties and their reasons for doing so and b) complaints were dismissed due to their frivolous or vexatious nature.*
9. *That a set of procedures be developed to ensure that the parties involved in a dispute regarding CSR compliance are guaranteed minimum standards of procedural fairness while avoiding excessive costs and delays.*

CSR Centre of Excellence

10. *That the Centre, working in cooperation with the Canadian Embassies and the Trade Commissioner Service, maintain a country database designed to support the process of due diligence and risk assessment.*

Continuous Improvement and Stakeholder Involvement

11. *That a multi-stakeholder group be formed (including government, industry, civil society, indigenous representatives, academia, and labor), to foster a more coordinated, collaborative approach to a) assisting in the development and implementation of the Government CSR Strategy, b) providing continuous improvement on CSR concepts and practice over time and c) attempting progress on difficult, complex issues.*

PDAC Response to Federal Government CSR Strategy: Analysis and recommendations

CSR Performance Guidelines and Reporting

- A core recommendation of the CSR Roundtable Advisory Group Report (the AG Report) requested that the Government of Canada establish and promote a Canadian CSR Framework for all Canadian extractive sector companies operating in developing countries, including principles, guidelines, best practices, incentives, performance criteria, reporting and compliance mechanisms.
- There was significant debate on whether the Framework should be mandatory, based on standards that would be legally enforced, or voluntary, based on internationally accepted and respected guidance. Two key factors influenced the PDAC's views in this respect. The first was a clear message from the exploration community that what they needed the most was not more regulatory requirements and rigidly enforced standards, but clarity on the meaning of CSR and the evolving expectations associated with it and most important, practical guidance on how best to meet those evolving expectations. Second, was the recognition that exploration and mining projects are conducted in a wide variety of geographic, cultural and environmental milieu and that a CSR framework needed to be more flexible than prescriptive, allowing for the application of measures tailored to the particular circumstances encountered at individual project sites.

As well, the notion of extraterritorial application of Canadian regulations raises serious issues regarding potential conflict with customary international law, the undermining of Canadian foreign policy objectives and respect for the sovereignty and equality of host countries.^[1]

- Given these realities, together with industry's strong commitment to continually improving CSR practices, it is the PDAC's view that the application of a rigid, legally enforced framework to a situation that is characterized by fluidity and variability is neither practical nor effective. We strongly support the voluntary approach as the most effective in terms of facilitating progress and continuous improvement of CSR performance.

We are pleased, therefore, that the proposed Government CSR Strategy indicates continued support for the voluntary approach and its development based on the endorsement of the OECD Guidelines and the promotion of the IFC Performance Standards, the Voluntary Principles on Security and Human Rights and the Global Reporting Initiative (GRI), in line with the recommendations of the AG report.

- It is clearly the responsibility of the exploration and mining industries to develop their own CSR strategies for the purpose of continually improving CSR performance at the sites of their operations and following along the lines suggested in the AG report. It is important that industry and government work closely together in the design and implementation of their CSR strategies in order to avoid duplication of effort and enhance coordination for the most effective results.

^[1] Legal Memorandum on International Law and CSR Regulation; prepared for Prospectors and Developers Association of Canada by Robert Wisner, Counsel, Appleton and Associate International Lawyers, 2006; a formal submission by PDAC to the CSR National Roundtable process; available at <http://www.pdac.ca/pdac/advocacy/csr/international-law-csr-regulation.pdf>

- For more than 10 years now the PDAC has been developing guidance on leading practice for exploration teams working on projects around the world. In 2003, the PDAC introduced *Environmental Excellence in Exploration* (e3), a comprehensive, internet-based compendium that offered good practice guidance and leading examples of environmental stewardship and community engagement in mineral exploration and development. e3 has been very well received by the global exploration business, including junior companies, small, intermediate and large producing companies, government agencies, communities, NGOs and academia. Since its launch in 2003, the site has accumulated over 3,000 registered users in about 40 countries. It has now been officially translated into French, Spanish, Portuguese and Russian.
- Building on the success of e3, in March, 2009, PDAC launched *e3 Plus: A Framework for Responsible Exploration*^[2]. This CSR Framework is a systematic, structured approach to providing comprehensive knowledge and guidance in the areas of social responsibility, environmental stewardship and health and safety. The first version consists of principles, guidance and comprehensive toolkits covering social responsibility, environmental stewardship and health and safety. The second phase of development scheduled for 2009 and 2010, is focused on the generation of performance objectives, performance criteria, reporting guidelines and verification. The *e3 Plus* content has been designed to complement established norms for corporate behavior, including the OECD Guidelines, the United Nations Global Compact, the Universal Declaration of Human Rights, the IFC Performance Standards, the Extractive Industries Transparency Initiative, the Voluntary Principles on Security and Human Rights and the Equator Principles.
- PDAC's *e3 Plus*, designed specifically for the exploration and development stages of the mining cycle, the Mining Association of Canada's *Towards Sustainable Mining (TSM)*, focused on mining operations, reclamation and closure, and the proposed Government CSR Strategy, combine to provide a comprehensive CSR Framework for the Canadian exploration and mining industries. Together, they deliver on the recommendations of the AG Report and positions the Canadian extractive sector to continue as a global leader in CSR.

Recommendations

1. *That industry and government work closely together in the design and implementation of their CSR strategies in order to avoid duplication of effort and enhance coordination for the most effective results.*
2. *That, in particular, the federal government work with PDAC to explore with GRI, the possibility of developing a special supplement for junior mining and exploration companies, scaled to the nature, size and potential impact of their operations.*
3. *That the Federal Government provide general support for e3 Plus, help promote its use by the mineral exploration industry and key stakeholders around the world and initiate a process that will lead to its official endorsement by the federal government.*

Host Country Capacity Building

- Our members are conducting mineral exploration programs in many countries characterized by weak systems of governance, often lacking in one or more of;
 - transparency and elimination of bribery and corruption

^[2] www.pdac.ca/e3plus

- existence and enforcement of fiscal regimes
 - existence and enforcement of mining laws
 - existence and enforcement of environment and social laws
 - regional and local governance capacity
- The PDAC is encouraged to see that host country capacity-building is given high priority in the proposed Government CSR Strategy. The AG report, being concerned primarily with the responsibilities of industry, placed the focus of its commentary and recommendations on corporate social responsibility, with a relatively limited treatment of host-country governance capacity-building. Our research in preparation for the CSR Roundtable process revealed that conflict related to resource projects in developing countries invariably involves external drivers over which the companies have little or no control (eg: corruption, civil unrest, indigenous peoples rights issues)^[3]. Thus, improving company performance in the absence of improving host country governance will not be effective in addressing the root causes of conflict. Attention and resources must be given to both in order to achieve sustainable progress in this complex area.
 - The ultimate goal of CSR is responsible development that will optimize the benefits of mining to societies in host countries, contributing to the alleviation of poverty and strengthening of national, regional and local economies. However, the mining industry cannot accomplish this alone. As demonstrated by recent comprehensive studies on this subject^[4], success will depend on partnerships involving the other stakeholders who will play a key role in achieving “social responsibility”. Partners will include host country governments, home country governments, communities, international institutions, donor organizations and NGOs.
 - Host-country governance capacity-building is a formidable challenge that will require long-term commitment involving considerable human and financial resources. Whereas the federal government has been and continues to be engaged in a broad scope of activities and initiatives in this general area, our sense is that a relatively limited amount of resources are being dispersed among quite a large and diverse number of initiatives. We suggest the initiation of a strategic review and cost-benefit analysis of the federal government’s current capacity building programs for developing countries, related to mining, with the objectives of evaluating efficiency and effectiveness, increasing integration and coordination among programs areas and considering ways and means to significantly leverage the capacity of the federal government in this general area. It would make the most sense to conduct such a review in the context of similar programs and initiatives being delivered by Canadian provincial/territorial government departments.

Similarly, on the international level, a large amount of governance capacity-building work is being conducted by a variety of players, including government departments of developed countries, international institutions, private organizations, not-for-profit organizations and individuals. Many of these initiatives are conducted in isolation of each other, giving rise to the probability of considerable duplication and a lack of the optimum efficiency and effectiveness. We would suggest that an existing international body, such as the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, review those programs of relevance to mining and find ways to increase the level of coordination for the purpose of improved organization, efficiencies and program delivery.

^[3] Explorers on the Front Lines; The truth behind human rights complaints and corporate social responsibility; Carol Odell and Carolina de Silva, 2007. Based on an internal report prepared for PDAC, in preparation for the CSR Roundtable process; available at <http://www.pdac.ca/pdac/advocacy/csr/042-047-sustainability-feature.pdf>

^[4] Resource Endowment Project, International Council on Mining and Metals (ICMM): accessible at <http://www.icmm.com/page/1409/resource-endowment-initiative>

- The needs of most developing countries, particularly those on the lower end of the poverty scale, are defined by an array of serious challenges and governance capacity is only one area of their need. Other areas that often require critical attention fall under the categories of health, nutrition, education, infrastructure, technology and economy, all of which are interdependent in one way or another.

The fundamental reality is that for any given country or region, there are not enough resources available, from any source, to solve all the problems at the same time. In recognition of this, some organizations are now advocating a broad, needs-analysis approach based on applying cost-benefit analysis across regions, involving one or more countries. The objective is to develop rational strategies for prioritizing, coordinating and optimizing the efforts, thus enabling limited resources to be used to the maximum effect in a staged, systematic approach^[5].

We recognize that the federal government will be involved in providing different types of support driven by different needs and circumstances, including those which are quite specific and targeted in nature. However, we suggest that the federal government increasingly seek out and support the longer term, more systematic approaches to defining developing country needs that are now emerging, based on cost-benefit analysis and priority setting.

Recommendations

4. *That a strategic review and cost-benefit analysis of the federal government's mining-related, capacity building programs for developing countries be initiated (also keeping in mind provincial/territorial programs) with the objectives of evaluating efficiency and effectiveness, increasing integration and coordination among programs areas and considering ways and means to significantly leverage the capacity of the federal government in this general area.*
5. *That Canada participate in an initiative to review existing international programs focused on capacity-building relevant to mining, with a view to increased levels of collaboration and coordination among the key players and with the objective of improved organization, efficiencies and program delivery.*
6. *That the federal government increasingly seek out and support the longer term, more systematic approaches for assessing and prioritizing the capacity-building needs of developing countries, now emerging, that are based on broad, single to multi-country cost-benefit analysis.*

Extractive Sector CSR Counsellor

- In its response to the AG Report, the PDAC expressed qualified support for the concept of an ombudsman, pointing out that the transformation from concept to a successful reality would depend critically on how it was structured, resourced and implemented. The primary, potential benefits we saw were the creation of a mechanism for dispute resolution and mediation services, the provision of expert, constructive advice to companies in need of assistance and a wake-up call for those who were not taking the implementation of good CSR practices seriously. Also important to us was the intended mandate of the ombudsman to receive complaints from all parties, including companies, the latter in recognition of the great reputational harm that frivolous or unfounded allegations from anti-mining interests can cause.

^[5] See for example the work of the Copenhagen Consensus Center, accessible at <http://www.copenhagenconsensus.com/CCC%20Home%20Page.aspx>

We also felt that there were some valuable lessons offered by the Compliance Advisor Ombudsman (CAO) of the IFC, in determining, over the years of their operations, that the facilitation and dispute resolution approach to an ombudsman function was more practical and generally more successful than one focused on adjudication and the application of sanctions.

- We believe that the proposed mandate of the CSR Counsellor, focused on facilitation, assessment, dispute resolution and reporting, gives due consideration to the discussion and recommendations of the AG Report. Given the significant concerns and differences of opinion expressed by various sectors with the proposal presented in the AG Report and the inherent complexity involved in establishing a full ombudsman function that would meet all of the objectives envisaged, we believe that the proposed approach is a prudent first step and as the office gains experience, adjustments can be made to accommodate any necessary changes.
- We understand that the mandate of the Counsellor will include 1) a review of the CSR practices of the Canadian extractive sector companies operating outside of Canada and 2) provision of advice to stakeholders on the implementation of endorsed CSR performance guidelines. We believe that an additional useful function would be the monitoring and assessment of the CSR performance of the extractive sector as a whole, measured against a set of selected criteria. The results should be included in the annual report to Ministers, with indications of areas of progress and areas that require improvement.
- It makes sense to us that, given an approach based on mediation and dispute resolution, the CSR Counsellor should undertake reviews only with the consent of all of the parties involved. This is standard procedure. However, we recommend that the Counsellor's annual report to Ministers list all complaints received, including those cases where a) a review did not proceed due to the withholding of consent by one of the parties (including the identification of the withholding parties and their reasons for doing so) and b) complaints were dismissed due to their frivolous or vexatious nature.
- The new Counsellor will not have any legal powers to make binding decisions or policies. However, the reports issued by the Counsellor may have a serious impact (either positive or negative) on the reputation of the parties that have consented to a review. As well, such reports could be introduced as evidence in subsequent legal proceedings in the host state. For these reasons, we recommend that a set of procedures be developed to ensure that the parties involved in a dispute regarding CSR compliance are guaranteed minimum standards of procedural fairness while avoiding excessive costs and delays. A preliminary set of procedural issues are included in Appendix 1 for your consideration.

Recommendations

7. *That the function of the CSR Counsellor include the monitoring and assessment of the CSR performance of the extractive sector as a whole, measured against a set of carefully selected, agreed-upon criteria, and that this information be included in the annual report to Ministers, with indications of areas of progress and areas that require improvement.*
8. *That the Counsellor's annual report to Ministers list all complaints received, including those cases where a) a review did not proceed due to the withholding of consent by one of the parties, the identification of the withholding parties and their reasons for doing so and b) complaints were dismissed due to their frivolous or vexatious nature.*

9. *That a set of procedures be developed to ensure that the parties involved in a dispute regarding CSR compliance are guaranteed minimum standards of procedural fairness while avoiding excessive costs and delays.*

CSR Centre of Excellence

- The AG Report, while recognizing that the responsibility for developing and promoting expertise on CSR rests with the private sector, argued that the creation of a government CSR Centre of Excellence would more effectively employ and enhance the government's internal capacity, provide support and guidance to extractive companies and other stakeholders and help address some of the challenges that have been identified.

We enthusiastically support the government's proposal to establish a CSR Centre of Excellence, with the objective of supporting government and industry clients through the provision of information, education programs and tools. The provision of such support and service could play a very significant role in establishing Canada as a world leader in CSR, particularly as it applies to the extractive sector. We agree that the Canadian Institute of Mining, Metallurgy and Petroleum (CIM), should be considered as a prime candidate for taking on this role.

- We believe that an appropriate role for the Centre, working in cooperation with the Canadian Embassies and the Trade Commissioner Service, would be to maintain a country database designed to support the process of due diligence and risk assessment. This would be of value to the mining industry and agencies such as CIDA and EDC. It would be of particular value to junior companies with limited resources.

Recommendation

10. *That the Centre, working in cooperation with the Canadian Embassies and the Trade Commissioner Service, maintain a country database designed to support the process of due diligence and risk assessment.*

Continuous Improvement and Stakeholder Involvement

- Members of the CSR Roundtable Advisory Group included people from many different backgrounds, experiences and perspectives. At the beginning of the process, many participants presented fixed positions on issues that were in some cases diametrically opposed to one another. As the process continued, the Advisory Group experienced some difficult times with regard to complex, conflictive issues, but in general, there was a movement towards less defending of fixed positions and more listening, learning and appreciating the points of view of others. In this way, consensus was achieved on many important points which resulted in the completion of the report of the Advisory Group.
- The PDAC supports continued dialogue and collaboration across stakeholder groups (including government, industry, civil society, indigenous representatives, academia, and labor) as a means of a) assisting in the development and implementation of the Government CSR Strategy, b) providing continuous improvement on CSR concepts and practice over time and c) attempting progress on the difficult, complex issues. Remaining engaged in this manner will provide the opportunity for continuing the process of building relationships, understanding and trust and helping to foster a more coordinated, collaborative approach.

Recommendation

11. *That a multi-stakeholder group be formed (including government, industry, civil society, indigenous representatives, academia, and labor), to foster a more coordinated, collaborative approach to a) assisting in the development and implementation of the Government CSR Strategy, b) providing continuous improvement on CSR concepts and practice over time and c) attempting progress on difficult, complex issues.*

Conclusions

The mining industry can be a significant force for good and an engine for wealth generation that can alleviate poverty and help to build local and national economies of developing countries. Such benefits are already being realized in many regions of the world as a result of Canadian exploration and mining operations and have been for some time. However, improvements need to be made on a number of different but interrelated fronts.

Continuous progress must be made on CSR practices. This will be based on increased clarity and consensus on the definition of CSR, the availability of well-crafted, comprehensive guidance on how to deliver on its expectations and government and industry working more closely together to coordinate their respective CSR activities. The initiatives outlined in the Federal Government's strategy, *Building the Canadian Advantage* will be critical drivers for progress in this regard. The PDAC will play its part on a number of fronts and with a particular focus on the implementation and further development of *e3 Plus: A Framework for Responsible Exploration*.

However, progress on CSR by itself will not be enough. In order that the potential benefits of responsible exploration and mining are more fully realized in developing countries, there must be a concerted effort to make parallel progress on host country, governance capacity building. Significant improvements in this area could be derived through a strategic review of existing programs of relevance to mining, efforts at increased coordination and collaboration both domestically and internationally, and supporting approaches which place emphasis on cost-benefit analysis and prioritization. Partnerships formed among home governments, host governments, industry, communities, international institutions, donor organizations and civil society will be critical.

Moving forward on the CSR front will be best accomplished on the basis of multi-stakeholder collaboration involving government, industry, civil society, indigenous representatives and academia. This is an approach that Canada has successfully implemented in the past and one for which it has gained worldwide respect with regard to its innovation and leadership.

APPENDIX 1: Procedural Issues Regarding the CSR Counsellor’s Review Process

The report identifies five stages of the Counsellor’s review process. Issues that may arise at each stage include:

- i. initial assessment: Will the Counsellor have the discretion to immediately dismiss complaints that are frivolous, vexatious, in bad faith or manifestly outside of the Counsellor’s jurisdiction? Will the Counsellor give notice of such complaints to the party against whom they are directed and allow that party to make submissions at the outset? What is a reasonable timeframe to perform this assessment?
- ii. informal mediation: What is the difference between “informal” and “formal” mediation? How will the Counsellor perform “informal mediation”? What procedures will safeguard the confidentiality and privileged nature of any offers that may be made during this process for the purpose of settling a CSR compliance dispute? What is a reasonable timeframe to perform this mediation?
- iii. fact-finding: How will the Counsellor undertake fact-finding? Will it be based on written submissions and documents only or will it involve a hearing with witnesses? Who will be entitled to notice and copies of evidence submitted during this process? What procedures will be undertaken to safeguard confidential information?
- iv. access to formal mediation: When will the Counsellor seek to provide such access? Will there be a roster of mediators? What qualifications and/ or accreditations will mediators be expected to have?
- v. reporting: Which of the many applicable CSR guidelines will be applied by the Counsellor? Will affected parties have an opportunity to review and comment on reports before a final report is released? What safeguards will be adopted to prevent or limit inappropriate reliance on the Counsellor’s reports in subsequent legal proceedings, either in Canada or abroad? Will the Counsellor’s reports be subject to judicial review in the Federal Court of Canada, or other external reviews?

Canadian administrative law has developed a number of legal standards to address these questions. There are also guidelines published by other federal investigative or fact-finding bodies that may provide useful precedents. The PDAC would be pleased to review this material with the federal government in greater detail as part of the development of appropriate procedures for conducting reviews and developing reports.