

**BILL C-23: CANADA-COLOMBIA FREE TRADE
AGREEMENT IMPLEMENTATION ACT**

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28 April 2009



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LEGISLATIVE HISTORY OF BILL C-23

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 26 March 2009

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

This bill did not become law before the 2nd Session of the 40th Parliament ended on 30 December 2009.

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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PUBLIÉ EN FRANÇAIS

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BILL C-23: CANADA-COLOMBIA FREE TRADE
AGREEMENT IMPLEMENTATION ACT*

BACKGROUND

Bill C-23, An Act to implement the Free Trade Agreement between Canada and the Republic of Colombia, the Agreement on the Environment between Canada and the Republic of Colombia and the Agreement on Labour Cooperation between Canada and the Republic of Colombia (short title: Canada–Colombia Free Trade Agreement Implementation Act), was introduced in the House of Commons by the Honourable Stockwell Day, MP, Minister of International Trade and Minister for the Asia-Pacific Gateway, and received first reading on 26 March 2009.⁽¹⁾

Bill C-23 implements three agreements and their respective annexes signed by Canada and the Republic of Colombia (Colombia) on 21 November 2008. The first of these is a bilateral free trade agreement (FTA) between Canada and Colombia. The Canada–Colombia FTA (CCOFTA) provides for the liberalization of various types of economic activities: trade in goods, trade in services, foreign investments, and government procurements.⁽²⁾ The two other agreements dealt with in the bill are side agreements to the FTA: the Agreement on the Environment between Canada and the Republic of Colombia (“Environment Agreement”) and the Agreement on Labour Cooperation between Canada and the Republic of Colombia (“Labour Agreement”). The Environment Agreement seeks to ensure that each party enforces its

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Further information about Bill C-23 is available on the Library of Parliament’s LEGISINFO website, <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=22&query=5769&List=toc>.

(2) The text of CCOFTA is available on the website of Foreign Affairs and International Trade Canada, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/can-colombia-toc-tdm-can-colombie.aspx>.

environmental laws; the Labour Agreement seeks to ensure that the domestic law of both states respects basic labour rights and is duly enforced. The latter agreement also provides for the possibility of resorting to arbitral panels to settle trade-related disputes that involve a persistent pattern of failure to comply with obligations under the Labour Agreement, an option that is not created in the Environment Agreement.

It is standard practice for an FTA concluded and signed by Canada to be implemented through an Act of Parliament. Currently, Canada is party to five FTAs, all of which have been implemented through legislation. These are the Canada–US FTA, the North American FTA (NAFTA), the Canada–Chile FTA, the Canada–Israel FTA and the Canada–Costa Rica FTA. There are also two other FTAs signed by Canada and in relation to which implementing legislation has been introduced before Parliament: the Canada–European Free Trade Association FTA⁽³⁾ and the Canada–Peru FTA.⁽⁴⁾

DESCRIPTION AND ANALYSIS

Bill C-23 implements the three agreements between Canada and Colombia through a set of provisions that will form the core of a stand-alone piece of legislation, the proposed Canada–Colombia Free Trade Agreement Implementation Act. It also contains amendments to a number of existing pieces of legislation, i.e., the *Canadian International Trade Tribunal Act*, the *Commercial Arbitration Act*, the *Crown Liability and Proceedings Act*, the *Customs Act*, the *Customs Tariff*, the *Department of Human Resources and Skills Development Act*, the *Export and Import Permits Act*, and the *Financial Administration Act*.

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- (3) See Bill C-2, An Act to implement the Free Trade Agreement between Canada and the States of the European Free Trade Association (Iceland, Liechtenstein, Norway, Switzerland), the Agreement on Agriculture between Canada and the Republic of Iceland, the Agreement on Agriculture between Canada and the Kingdom of Norway and the Agreement on Agriculture between Canada and the Swiss Confederation (the proposed Canada–EFTA Free Trade Agreement Implementation Act). Further information about Bill C-2 is available on the Library of Parliament’s LEGISINFO website, <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=22&query=5651&List=toc>.
- (4) See Bill C-24, An Act to implement the Free Trade Agreement between Canada and the Republic of Peru, the Agreement on the Environment between Canada and the Republic of Peru and the Agreement on Labour Cooperation between Canada and the Republic of Peru (the proposed Canada–Peru Free Trade Agreement Implementation Act). Further information about Bill C-24 is available on the Library of Parliament’s LEGISINFO website, <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=22&query=5770&List=toc>.

A. Definitions, Purpose and General Provisions

Clause 2 sets out definitions that provide some of the key elements and parameters of the bill. For the purposes of this summary, a few are worth noting. First, CCOFTA is referred to as the “Agreement,” whereas “related agreement” refers alternatively to the Environment Agreement or the Labour Agreement. Second, references to the “Minister” are to the Minister [of] International Trade. Finally, the “Joint Commission” referred to in the bill is the commission set up pursuant to Article 2001 of CCOFTA.

Clause 3 provides that the bill, the legislation amended through it, and any other future implementing legislation are to be interpreted in a way that is consistent with the Agreement or related agreements.

Clause 4 specifies that nothing in the bill, Agreement or bilateral agreements applies to “natural surface or ground water in liquid, gaseous or solid state.”

Clause 6 provides that the bill “is binding on Her Majesty in right of Canada.”

Clause 7 states the purposes of the Act, which are to

1. establish a free trade area;
2. promote the harmonious development of the economic relations between Canada and Colombia;
3. provide fair conditions of competition in trade;
4. substantially increase investment opportunities between the two countries;
5. contribute to the expansion of world trade through the removal of trade barriers;
6. enhance and enforce environmental laws and regulations and strengthen cooperation on environmental matters;
7. protect, enhance and enforce basic workers’ rights and build cooperation and respective commitments on labour matters;
8. promote sustainable development.

Clause 8 restricts the extent of causes of action and the right to initiate proceedings under the bill. First, it provides that no person can claim a right of action and undertake proceedings under the main provisions of the proposed Canada–Colombia Free Trade Agreement Implementation Act (Part 1 of the bill), or of a regulation adopted pursuant to it, except with the consent of the Attorney General of Canada. However, this limitation does not

apply to Part 2 of the bill, which contains provisions amending other statutes. Second, the clause provides a similar limitation (i.e., no right of action without the consent of the Attorney General) with regard to the enforcement or determination of any right or obligation under the Agreement or the related agreements. This second principle is, however, subject to “Section B of Chapter Eight of the Agreement [which deals with the settlement of disputes between an investor and the Host Party] and Part Three [which deals with procedures for the review of obligations] and Annex 4 [which deals with monetary assessments] of the Agreement on Labour Cooperation.”

B. General Implementation Provisions

Part 1 of the bill, which deals with general implementation, contains seven clauses.

Clause 9 provides for the “approval” of the Agreement and related agreements, which is standard practice in legislation implementing trade agreements.

Clauses 10 to 15 deal with administrative and institutional matters. Article 2001 of CCOFTA establishes a Joint Commission with representation from both parties to the Agreement. Clause 10 provides that the Minister of International Trade is Canada’s principal representative on the Joint Commission, and clause 11 provides that Canada is to pay its share of the expenditures of the Joint Commission.

Clause 12 creates a ministerial power to appoint a Canadian representative on any committee or subcommittee referred to in Annex 2001 (i.e., the Annex to Article 2001) of the Agreement, to appoint panelists, and to propose chairs for panels.

Clause 13 provides for the designation, by the Minister, of a governmental agency, division or branch for the purposes of facilitating the operations of and providing administrative assistance to arbitral panels set up under Chapter Twenty-one of CCOFTA. That chapter contains provisions dealing with dispute settlement mechanisms; these include the establishment of arbitral panels, as well as recourse to the dispute settlement body of the World Trade Organization if applicable.

Clause 14 provides that Canada will bear its proportion of certain costs associated with the work of panels, committees, subcommittees and working groups.

Finally, clause 15 creates a power for the Governor in Council to make a series of orders for the purpose of suspending benefits or obligations, as provided for under Article 2114

of CCOFTA. In addition to a residual power to take any other measures necessary for that purpose, three specific measures are listed in paragraphs (1)(a) to (c): suspension of rights or privileges granted by Canada to Colombia or to Colombian goods under the Agreement or federal law; modification or suspension of federal law with respect to Colombia or to Colombian goods; and extension of the application of federal law to Colombia or to Colombian goods.

C. Amendments to Various Statutes

In addition to the general provisions for implementation found in Part 1 of the bill, Part 2 contains provisions that amend existing federal legislation.

1. Amendments to the *Canadian International Trade Tribunal Act*

Clauses 16 to 22 of Bill C-23 amend various provisions of the *Canadian International Trade Tribunal Act* (CITTA). First, definitions are added to CITTA to designate tariffs applicable to Colombia (the “Colombia Tariff”). Second, clause 17 adds a new provision (19.0121) to CITTA to enable the Canadian International Trade Tribunal (“the Tribunal”) to inquire into and report on whether reductions to applicable tariffs for goods from Colombia lead to imports in increased quantities to a point where such increased quantities constitute a principal cause of serious injury, or threat of serious injury, to domestic producers. Referral to the Tribunal is to be made by the Governor in Council on the recommendation of the Minister, and the Tribunal reports to the Governor in Council.

Under CITTA, there is also a mechanism for complaint by domestic producers of goods that are similar to or directly compete with goods being imported into Canada and that are subject to a tariff set under an FTA. The ground of complaint is the same as for referrals, i.e., the increase in quantity of imports of goods subject to a tariff constitutes in itself a principal cause of serious injury, or threat of serious injury, to domestic producers. Amendments to CITTA made under clauses 18 to 22 seek to extend such mechanisms in relation to imported goods entitled to the Colombia Tariff.

2. Amendments to the *Commercial Arbitration Act*

The *Commercial Arbitration Act* (CAA) gives legal effect in Canada to the *Commercial Arbitration Code* (based on the model law adopted by the United Nations Commission on International Trade Law on 21 June 1985), an instrument that regulates various

aspects of the conduct of commercial arbitration between states. Clause 23 of Bill C-23 amends section 5(4) of the CAA to include, among the types of claims that qualify as “commercial arbitration” within the meaning of the *Commercial Arbitration Code*, claims under Article 819 or 820 of CCOFTA.

3. Amendments to the *Crown Liability and Proceedings Act*

Clauses 24 to 29 of Bill C-23 amend the part of the *Crown Liability and Proceedings Act* (CLPA) that deals with environmental and labour cooperation treaties. Basically, that part of the CLPA creates an avenue of enforcement, through the Federal Court, for panel determinations made pursuant to a side agreement to an FTA where such agreements exist.

Clauses 24 to 29 amend the heading of section 20.1 of the CLPA, repeal a series of definitions found in that section, and introduce a new definition of “panel” and “panel determination,” as well as a definition of a new expression: “appropriate party.” The end result is to replace the term “appropriate Commission” (referring to the environmental and labour commissions linked with the Canada–Chile FTA and NAFTA) with the term “appropriate party,” and to modify many provisions of the CLPA accordingly. While “appropriate party” refers to the above-mentioned commissions explicitly, it also includes “any other party to whom Canada is required to pay a monetary assessment as a result of a panel determination” – i.e., determinations of panels established under an environmental or labour cooperation treaty. The Labour Agreement between Canada and Colombia is listed as such a treaty in Schedule 1 (added to the CLPA through clause 30 of Bill C-23), which makes its panel determinations subject to the regime of the CLPA.

4. Amendments to the *Customs Act*

Clauses 31 to 35 provide amendments to the *Customs Act*. First, definitions in the *Customs Act* are amended to include references to Colombia, CCOFTA and the notion of preferential tariff treatment under CCOFTA. Second, and in line with those amended definitions, other measures of the *Customs Act* that are applicable to goods imported from a state with which Canada is party to an FTA are extended to goods imported from Colombia:

- Article 42.4 of the *Customs Act* is amended so as to extend to goods from Colombia the possibility of denial or withdrawal of preferential tariff treatment to imported goods, in case

of false representation as to their eligibility (representations are made on the basis of goods' being identical to goods eligible for preferential tariff treatment) (clause 32).

- The provision dealing with advance rulings on a series of questions affecting tariffs (e.g., tariff classification, applicable rate of customs duty, any tax applicable on importation, information about the application of quotas, effect of re-entry after temporary export, and whether a good is originating under the Agreement) now apply to goods from Colombia (clause 33, replacing section 43.1(1)(b) of the *Customs Act*).
- Section 74(1)(c.11) of the *Customs Act* is amended to provide for the refund of tariffs paid on goods from Colombia that are entitled to preferential tariff treatment, in cases where no such treatment was requested when the goods were accounted for (clause 34).
- Finally, clause 35 creates a regulatory power “for the purpose of the uniform interpretation, application and administration of Chapter Four of CCOFTA,” which sets up rules governing the origin of goods and the terms of administrative cooperation in that regard.

5. Amendments to the *Customs Tariff*

The *Customs Tariff* is highly technical, as are the amendments made to it by Bill C-23 (clauses 36 to 48). Basically, these amendments incorporate into the *Customs Tariff* the agreed-upon tariff rates that figure in the annexes of CCOFTA. Tariff modifications are to be phased out progressively over many years, beginning upon the entry into force of the relevant amended provisions of the *Customs Tariff*. There are three categories of tariff reduction and elimination: some items will be tariff-free in 2012, others in 2016 and a third set in 2026. The Schedules to the *Customs Tariff* are amended accordingly.

The *Customs Tariff* is also harmonized with the changes to CITTA to provide for the possibility of temporary tariff suspension or other tariff measures resulting from a determination by the Canadian International Trade Tribunal that an increase in imported goods resulting from tariff reduction constitutes a principal cause of serious injury, or threat of serious injury, to domestic producers.

6. Amendments to the *Department of Human Resources and Skills Development Act*

Bill C-23 (clauses 49 and 50) amends the *Department of Human Resources and Skills Development Act* by introducing into it a new provision to deal with financial awards resulting from panel determinations made under the Labour Agreement.

7. Amendments to the *Export and Import Permits Act*

Clauses 51 to 53 of Bill C-23 amend the *Export and Import Permits Act* in relation to orders to include goods on the Import Control List. Section 5(3) of that Act states that such orders can be made in relation to items “imported into Canada at such prices, in such quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods.” The amendments permit goods imported from Colombia to be excluded from such orders, in certain circumstances and pursuant to a report of the Canadian International Trade Tribunal.

8. Amendments to the *Financial Administration Act*

Clause 54 of Bill C-23 amends the *Financial Administration Act* by adding a provision permitting the Governor in Council to give a directive to any parent Crown corporation for the purpose of implementing a provision of CCOFTA.

COMMENTS

The extent of trade in goods between Canada and Colombia is relatively modest. It has been summed up as follows:

In 2008, two-way merchandise trade between Canada and Colombia totalled more than \$1.3 billion.

Canadian merchandise exports to Colombia totalled \$703.8 million in 2008; major exports include agricultural goods such as wheat, barley and lentils, as well [as] industrial products, paper products and heavy machinery.

Canadian merchandise imports from Colombia totalled \$643.7 million in 2008[.] Major imports consist of coffee, bananas, coal, oil, sugar and flowers.⁽⁵⁾

Bill C-23 has attracted considerable attention from the media and various civil society groups, many of which are opposed to Canada’s implementing a free trade agreement with Colombia because of that country’s human rights record, and also because of the feared

(5) Foreign Affairs and International Trade Canada, “Canada–Colombia Free Trade Agreement,” <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/andean-andin/can-colombia-colombie.aspx>.

impact of free trade and investments on the environment. Key concerns relating to Colombia's human rights record include: the ongoing violence among government forces, paramilitary groups, rebels and criminal cartels; violence against union members; population displacement; and lack of accountability for human rights abuses.

In June 2008, the House of Commons Standing Committee on International Trade tabled a report entitled *Human Rights, the Environment and Free Trade with Colombia*, which discussed the pros and cons of a free trade agreement between Canada and Colombia, at a stage prior to the signature of CCOFTA.⁽⁶⁾ Three dissenting reports were appended to the main committee report. The main report contained the following recommendations:

Recommendation 1:

The Committee recommends that the Government of Canada should not sign and implement a free trade agreement with the Government of Colombia until the Canadian government has taken into account the recommendations contained in this report, including those of the dissenting reports.

Recommendation 2:

The Committee recommends that the Government of Canada maintain close ties with Colombia without signing a free trade agreement until there is confirmation that the improvements noted are maintained, including continued improvement as regards displacement, labour law and accountability for crime, and until the Colombian government shows a more constructive attitude to human rights groups in the country.

Recommendation 3:

The Committee recommends that the Government of Canada draw on the work of the organization Rights and Democracy to give an independent body the mandate to conduct studies regarding the impact on rights and the environment when it is negotiating economic agreements with countries at risk, as in the case of the agreement with Colombia.

Recommendation 4:

The Committee recommends that an independent, impartial, and comprehensive human rights impact assessment should be carried out by a competent body,

(6) House of Commons Standing Committee on International Trade, *Human Rights, the Environment and Free Trade with Colombia*, June 2008, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3580301&Language=E&Mode=1&Parl=39&Ses=2>.

which is subject to levels of independent scrutiny and validation; the recommendations of this assessment should be addressed before Canada considers signing, ratifying and implementing an agreement with Colombia.

Recommendation 5:

The Committee recommends that any trade agreement with Colombia ensure that separate deals on labour and the environment exceed the template of the North American Free Trade Agreement (NAFTA) in order to set a higher standard for future negotiations.

Recommendation 6:

The Committee recommends that any trade agreement with Colombia must be accompanied by legislated provisions on corporate social responsibility and reporting mechanisms to monitor the implementation of universal human rights standards by Canadian entities investing in Colombia.

Recommendation 7:

The Committee recommends to the Government of Canada (a) that any trade agreement with Colombia include a compliance and enforcement mechanism for both the environment and human rights, comparable to the Commission for Environmental Cooperation (CEC) model, exceeding the template set by NAFTA; (b) that such mechanisms must be independent and objective, receiving adequate funding to complete their tasks and include a built-in inflation escalator; (c) that they should include a process that ensures public monitoring and input through such mechanisms as citizenship submissions.

Recommendation 8:

The Committee recommends that the Government of Canada develop new social responsibility standards for corporations as regards compliance with universal human rights standards. Non-compliance with these basic standards could lead to Canada imposing penalties on these corporations.