

**BILL C-32: AN ACT TO IMPLEMENT THE
FREE TRADE AGREEMENT BETWEEN
THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE REPUBLIC OF COSTA RICA**

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LEGISLATIVE HISTORY OF BILL C-32

HOUSE OF COMMONS

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

Legislative history by Peter Niemczak

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BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF
THE REPUBLIC OF COSTA RICA *

BACKGROUND

On 20 September 2001, the Minister for International Trade, Pierre Pettigrew, tabled Bill C-32, An Act to Implement the Free Trade Agreement Between the Government of Canada and the Government of the Republic of Costa Rica, for First Reading in the House of Commons.

The Canada-Costa Rica Free Trade Agreement (CCRFTA), along with two parallel accords on environment and labour, were signed on 23 April 2001, and will go into effect in January 2002 pending legislative approval in both countries. The purpose of Bill C-32 (the Act) is to enact the CCRFTA in Canada.

The CCRFTA was designed to account for the differences in the size and level of development of the two countries. Under the agreement, Canadian tariff rates are scheduled to be eliminated at a faster pace than that of Costa Rica. Specifically, Costa Rica will immediately eliminate all duties on two-thirds of its tariff lines and will lift the remainder over a 14-year period. By comparison, Canada will immediately remove tariffs on 86% of its tariff lines and will do away with the remainder within 8 years.

The CCRFTA will improve exporters' access to Costa Rican markets for many key Canadian products, including auto parts, plastics, wood and paper products, as well as fish and agricultural goods. Tariffs on most industrial products will be eliminated at once, and about 94% of agricultural products will realize market access benefits. The CCRFTA will give

* 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.

Canadian producers an advantage over their main competitors in the Costa Rican market, including the United States and various suppliers in Europe and Asia. It also puts Canada on a level playing field with Costa Rica's other preferred trading partners, such as Mexico and Chile.

The value of Canadian exports to Costa Rica is relatively small – just under \$86 million in 2000. To place this in context, total worldwide Canadian exports were valued at about \$413 billion that year. However, Costa Rica is among Canada's fastest-growing export destinations; in fact, exports to that country have nearly quadrupled in the past ten years. Canada's main export commodities to Costa Rica in 2000 were wheat, paper products, potassium chloride, and certain rubber and plastics products. Saskatchewan and Ontario were the two largest exporting provinces.

Not all export products are included in the CCRFTA. Negotiations for liberalized trade in services are currently underway as part of the Free Trade Area of the Americas (FTAA) discussions, but are not included in the CCRFTA aside from a general commitment to broaden Canada's relationship with Costa Rica in this area. Certain goods are also excluded from the deal, including supply-managed agricultural products such as dairy, poultry, egg and beef products. As well, Costa Rica reserves the right to exclude certain other import-sensitive products such as potatoes and other fresh and frozen vegetable products. As in the case of Canada's previous free trade agreements, cultural industries are exempted from tariff reductions.

Also in keeping with the trend established by other trade agreements, the CCRFTA offers some protection to domestic producers if import surges are found to have profoundly adverse effects. A three-year safeguard action may be taken on any product no more than twice during the transition period – usually seven years, but up to 14 years in the case of some Costa Rican products.

Canada and Costa Rica both consider this free trade agreement as a potential model for future trade agreements, including the FTAA. Indeed, the CCRFTA was heavily based upon a similar agreement that Canada signed with Chile (CCFTA) in 1997, which itself was based upon the North American Free Trade Agreement (NAFTA) signed by Canada, the United States and Mexico.

However, the CCRFTA goes a step beyond these previous agreements. The innovations include: more liberal rules of origin for some products; and unprecedented bilateral agreements on trade facilitation – making access to Costa Rican markets faster and easier than ever before.

The chapter on competition policy in the CCRFTA also expands on other free-trade agreements and is intended by both parties to serve as a precedent in the FTAA. It includes an obligation for both countries to:

- legally prohibit anti-competitive behaviour;
- establish an independent competition authority;
- provide that competition laws are transparent and non-discriminatory; and
- create a concrete framework for cooperation and consultation.

DESCRIPTION AND ANALYSIS

A. Preamble, Introduction and General Implementation (clauses 1-8)

1. Preamble

The preamble to the Act outlines the basic objectives of, and values espoused in, the CCRFTA. These range from strengthening the bonds of friendship and cooperation between the two countries to creating new job opportunities and contributing to the harmonious expansion of world and regional trade. A statement reiterating the view that the CCRFTA will contribute to the negotiation of the FTAA is a significant item in this list of objectives and values.

2. Short Title, Interpretation and Purpose of the Act (clauses 1-5)

Clauses 1 through 5 of Bill C-32, the Canada-Costa Rica Free Trade Agreement Implementation Act, lay out the foundation for the remainder of the Act. Clause 1 introduces its title, and the second clause provides definitions for a number of key terms. The third clause ensures that Bill C-32, and all other affected Acts, are interpreted in a manner consistent with the CCRFTA itself.

Clause 4 elaborates on the basic purpose of the Act – to enact the CCRFTA. The objectives of this Agreement include:

- setting up bilateral free trade between the two countries;
- promoting regional integration across the Americas by lowering barriers to trade and investment and by contributing to the process of establishing a free-trade zone spanning the two American continents;
- deepening the relationship between Canada and Costa Rica by creating opportunities for mutual investment and economic development;
- facilitating the cross-border movement of goods and services;
- promoting conditions of fair competition in the free trade area;
- establishing a framework for future cooperation; and
- creating a set of procedures for the administration of the Agreement and for the operation of a dispute resolution mechanism.

Although facilitating the movement of services was explicitly mentioned as one of the chief objectives of the CCRFTA and therefore the Act, it is important to note that no agreement was reached on trade in services. Similarly, no agreement was reached on investment, in that case because an adequate Foreign Investment Protection Agreement already existed between the two countries.

Clause 5 makes the Act legally binding on the Queen in the name of Canada.

3. General (clauses 6-8)

Clauses 6 through 8 are general statements designed to clarify selected aspects of the Agreement.

The first of these three clauses can also be found in Canada's other recent trade agreements. It states that no private claims or grievances may be undertaken because of or arising out of Part 1 of the Act, or the CCRFTA itself, without the permission of the Attorney General of Canada.

The seventh clause explicitly states, for greater certainty, that the CCRFTA does not apply to fresh water in any state, including both underground and surface sources.

The final clause in this section is a reminder that nothing in the wording of the Act is to be interpreted in a manner inconsistent with the CCRFTA or its implementation.

B. Part 1: Implementation of the CCRFTA Generally
(clauses 9-18)

This set of clauses outlines the way in which the CCRFTA is to be implemented. Clause 9 gives Parliamentary approval to the CCRFTA, and clause 10 allows the Governor in Council to choose any Privy Council member to be the Minister responsible for the Act.

1. Administrative and Institutional Provisions
(clauses 11-16)

Clauses 11 through 16 address Canada's contribution to the regulatory and administrative bodies created through the CCRFTA. The first three clauses:

- appoint the Minister for International Trade as the principal representative for Canada on the new Free Trade Commission;
- commit Canada to paying its share of Commission expenses; and
- assign the Minister for International Trade the responsibility to designate a government body to provide administrative support to the Commission and trade panels created by the CCRFTA.

2. Panels, Committees, Sub-committees and Other Bodies
(clauses 14-16)

Clauses 14 to 16 deal with appointments to panels, committees and other bodies required to administrate the CCRFTA. According to clauses 14 and 15, the Governor in Council may, in accordance with the Agreement, appoint whomever he chooses to sit on any panel or committee. Clause 16 commits Canada to paying its appropriate share of any costs accrued through the operations of these bodies, including remuneration, travel costs and other expenses.

Nowhere in clauses 11 through 16 is mention made of what Canada's "appropriate" share of expenses might be or of the criteria to be used by the Minister in assigning staff to the Commission.

3. Orders and Regulations (clauses 17 and 18)

Clause 17 deals with the application of the Act in areas of provincial jurisdiction. Sub-clauses 1 and 2 permit the Governor in Council to create and enforce regulations on any province if it is deemed necessary to do so in order to implement the CCRFTA. If adequate

provisions already exist in any province, the Governor in Council may waive this right. According to sub-clause 3, however, provinces shall be consulted prior to the introduction of any such regulation. If regulations are imposed, sub-clause 4 specifies that they shall be only for a fixed period of time. This suggests that these penalties are enacted for only as long as is necessary to ensure provincial complicity. Sub-clause 5 makes these regulations binding in the provinces.

Clause 18 lays out the rights, powers and restrictions held by the Governor in Council in enforcing the trade agreement. According to sub-clause 1, if it is believed that recommendations and rulings made under the CCRFTA are not carried out on schedule or in a reasonable period of time, the Governor in Council retains the right to:

- suspend rights and privileges given to Costa Rica or to its goods, service providers, suppliers, investors or investments under the CCRFTA or any other federal law;
- modify or suspend the application of any federal law enacted by Part 2 – other Canadian laws changed as a result of the CCRFTA;
- apply any Canadian federal law to Costa Rica or to its producers, suppliers, investors or investments;
- do anything else deemed necessary for that purpose.

Sub-clause 2 specifies that any such restriction is binding for the duration specified, but can be revoked earlier.

C. Part 2: Related and Consequential Amendments
(clauses 19-59)

Part 2 of Bill C-32 makes necessary amendments to other laws to ensure that they conform with the obligations set out by the CCRFTA. The amended laws are:

- the *Canadian International Trade and Tribunal Act*;
- the *Customs Act*;
- the *Customs Tariff*;
- the *Exports and Imports Permits Act*;
- the *Financial Administration Act*;
- the *Importation of Intoxicating Liquors Act*; and
- the *National Energy Board Act*.

1. *Canadian International Trade Tribunal Act*
(clauses 19-25)

The significant changes made to this Act are contained in clauses 20 and 22. The former creates a new section – 19.013 – which outlines the provisions to safeguard domestic industry in the event of “excessive” import penetration. In the event of such a claim, a Tribunal reporting to the Governor in Council will be created on the recommendation of the Minister of International Trade. The latter, clause 22, amends Section 23 of this Act by adding that Canadian producers expressing a grievance over damaging levels of competitive imports from Costa Rica may file a written complaint with the International Trade Tribunal.

2. *Customs Act* (clauses 26-30)

The changes made to the *Customs Act* are of little consequence and essentially incorporate the CCRFTA into the discussion of Canada’s other free trade agreements.

- Clause 26 adds the CCRFTA to the list of Canadian free trade agreements and provides a definition of the Agreement.
- Clause 27 includes the CCRFTA to clauses relating to Canada’s other free trade agreements and into sources of definitions.
- Clause 28 includes Costa Rica in the NAFTA and the CCFTA with respect to import controls.
- Clause 29 adds Costa Rica to a clause stating that people who paid an unnecessary tariff on imports are entitled to a refund.
- Clause 30 states that on the recommendation of the Minister, the Governor in Council may make regulations for the uniform interpretation, application and administration of Chapters III and V of the CCRFTA.

3. *Customs Tariff* (clauses 31-46)

Clause 34 includes some of the more significant changes made to the *Customs Tariff*, specifically to Section 16. Sub-section 16(2) grants the Governor in Council, on the recommendation of the Minister, the right to make regulations with respect to the origin of goods. Previously, the Governor in Council could deem goods that were produced outside the country to originate in that country for the purposes of the Act. The amendment adds a

paragraph which allows the Governor in Council to do the opposite as well – to deem goods that are at least partially produced in the country not to have originated in the country. This would make them ineligible under the CCRFTA.

Clause 37 adds to Section 49 of the *Customs Tariff* by formally setting out the tariff reduction rates of the CCRFTA. It also gives the Governor in Council (in section 49.2) the right to extend the Costa Rica Tariff (CRT) to any non-included product. Finally, in section 49.3, it allows the Governor in Council to reserve the right to limit the import of a few specific products until 2010.

Clause 38 lays out the groundwork/restrictions under which domestic industries can be protected against damaging levels of import penetration in section 71.1 of the *Customs Tariff*. In the event that the Canadian International Trade Tribunal makes such a finding, the Governor in Council may suspend the schedule of customs duty reductions or add a temporary duty to the product in question.

However, the size of the temporary duty is subject to some restrictions. For most goods, the temporary duty – in combination with the existing tariff on that product – cannot exceed the lesser of two options: the Most-Favoured-Nation tariff in place before the clause was written; or the Most-Favoured-Nation tariff in place before the CCRFTA was signed. In the case of seasonal goods such as fruit and vegetable products, only the former temporary duty option is available. Although these restrictions limit the protective options available to Canadian producers, they are in line with Canada's other free trade agreements.

Paragraphs 3 through 6 of section 71.1 outline the rules on the duration of the protective measures. Any such measure can be implemented no more than twice during the first seven years of the CCRFTA, and no protective measure can last longer than three years at a time. Temporary duties can also be implemented after the first seven years, but must be based on an agreement between the Government of Canada and the Government of Costa Rica.

No protective tariff may be re-applied immediately after the expiry of the initial measure. Before a second protective measure can be taken, enough time must have passed to equal at least one-half of the duration of the initial protective measure. For example, if the first measure was three years in length, at least 1½ years must pass before a second temporary duty may be applied. As well, the rate of duty in the first year of the second action cannot exceed the tariff rate in place at the time before the *first* action was taken. In subsequent years, the

temporary duty must fall at such a rate that at the time of expiry, it equals the rate that would have prevailed had no action been taken at all.

According to paragraphs 5 and 6, after an order for protective duties expires, the rate of duty which applies for the remainder of that calendar year is the same rate that would have been in place one year after the original order. On 1 January of the following year, the Minister has two options for getting back on the tariff reduction schedule.

- The first is to simply begin the year with the same tariff rates that would have been in place had no action been taken at all.
- The second is to accelerate the pace of tariff removal (in linear annual increments) so that at the time of expiry, the final rate equalled that which would have prevailed had no action been taken at all.

Paragraphs 7 and 8 define principal cause and define the Most-Favoured-Nation customs duty rates that apply to seasonal products – fruits and vegetables. These are found in chapters 8 and 7 of the List of Tariff Provisions, respectively.

Clause 39 adds a new section – 76.1 – to the *Customs Tariff* dealing with bilateral emergency measures which may be taken if the Canadian International Trade Tribunal finds that sudden growth in imports of textiles and related products excessively damages domestic industries. These provisions differ little from those set out for other non-seasonal goods in section 71.1 with the following exceptions: (1) the Minister can immediately invoke an order for up to 180 days, even while waiting for a report from the Canadian International Trade Tribunal; (2) the Tribunal can more easily find in favour of protective action in the case of textiles and apparel than with other goods. Although most products require evidence of “a principal cause of serious injury or a threat of serious injury” before protective action may be taken, textiles and apparel products require only that there be evidence of conditions that “cause or threaten serious damage.” Protective action for these products may only be taken during the seven-year period.

Finally, clause 46 amends the List of Tariff Provisions in the Customs Tariff by including the provisions of the CCRFTA.

4. *Export and Import Permits Act* (clauses 47-50)

Clauses 47 through 50 make small changes to the *Export and Import Permits Act* by including in it various mentions of the CCRFTA where appropriate.

5. *Financial Administration Act* (clause 51)

The amendment to this Act applies the CCRFTA and its provisions to Canada's Crown Corporations and enables the Governor in Council to give directives and make regulations to that end.

6. *Importation of Intoxicating Liquors Act*
(clauses 52 and 53)

Clauses 52 and 53 amend this Act by stating that businesses involved in distilling are entitled to the benefits of the Costa Rica Tariff as it applies to them, but the Governor in Council reserves the right to make regulations defining the terms "distilled spirits," "in bulk" and "bottling."

7. *National Energy Board Act* (clauses 54-59)

This Act is amended to incorporate mention of the CCRFTA where applicable and obliges the National Energy Board to give effect to the Agreement where applicable.

D. Part 3: Coming Into Force (clause 60)

This final clause of Bill C-32 states that the provisions of this Act and any other amended as a result of the CCRFTA will come into effect on a set date by order of the Governor in Council, provided that Costa Rica is also taking satisfactory steps towards implementing the CCRFTA.

COMMENTS

As with Canada's previous Acts to implement the Canada-Israel and Canada-Chile free trade agreements, the purpose of Bill C-32 is to enact the Canada-Costa Rica Free Trade Agreement and to make the appropriate changes to other Canadian legislation. The

CCRFTA itself has already been signed and cannot be amended without re-opening negotiations with Costa Rica. As such, the role of Parliament is to accept or reject the bill as it stands.

As set out in the Preamble to the Act, one of the intentions of the CCRFTA is to promote regional integration across the Americas through a trade agreement that both parties view as a step towards the establishment of the Free Trade Area of the Americas (FTAA). This free trade agreement with Costa Rica is based on a similar deal with Chile, which itself was patterned after the NAFTA. As such, all three agreements have a similar structure, scope and coverage.

Because templates from previous agreements greatly simplify new negotiations, there are some expectations that the CCRFTA will itself serve as a basis for the ongoing negotiation of a future free trade agreement with other Central American countries – namely Guatemala, Nicaragua, Honduras and El Salvador (the CA-4) – and eventually the FTAA. Critics of the CCRFTA have argued that perceived flaws in those earlier agreements have been carried over to this free trade deal in addition to the specific issues of contention with the CCRFTA itself.

Among the main issues carried over from the NAFTA and other agreements is the perception that trade deals are designed to benefit private corporations at the expense of private citizens and democratic governments. The provisions contained within Chapter 11 of the NAFTA allow private companies to sue governments if there is a loss of profit or opportunity for profit resulting from the actions of that government. The CCRFTA does not itself include any such investment-protection provisions, but it explicitly refers to a 1998 agreement (the FIPA) signed by the two countries which does.

Protests in Seattle and Quebec bear witness to a growing perception that the public has little voice in free trade negotiations and that sovereignty and democracy are slowly being whittled away with each agreement. It seems likely that this issue – and the differing opinions associated with it – will continue to be a matter of public debate.

In response to another growing concern arising out of the NAFTA, Bill C-32 includes a clause explicitly excluding the export of fresh water from the Agreement. Although this does not prohibit outright the sale of fresh water, it does eliminate any ambiguity on the matter for the purposes of this trade agreement. It also represents an important step in future FTAA negotiations. The inclusion of clause 7 in Bill C-32 confirms Canada's position at FTAA negotiations, and suggests that it has the support of Costa Rica in this matter.

As for the matter of Bill C-32 itself, the most significant issue revolves around the export of refined sugar. Under the CCRFTA, both countries will eliminate their tariffs on refined sugar to zero over an eight-year period. Currently, Canada's tariff sits at 8% while Costa Rica's is 50%. The Canadian sugar industry believes that the CCRFTA heavily favours Costa Rican producers, which are already supported at home by being paid above-market prices for their product.

As it stands today, Costa Rica does not produce refined sugar of sufficient quality to penetrate the Canadian market. However, if Costa Rica does upgrade its refining capacity, it is ensured greater access to the Canadian market over the transition period than the reverse situation. For example, by the ninth year of the agreement, Costa Rica will be permitted to export up to 40,000 metric tonnes (MT) of refined sugar into Canada duty-free. Conversely, Canadian refiners have been granted a quota of less than 7,000 MT. These volumes are based on equal percentage shares of their respective domestic markets. In the tenth year, no duties will be applied to any country.

Offsetting this potential imbalance, to a limited extent, is the fact that Canada succeeded in negotiating more liberal Rules of Origin for refined sugar than existed in the CCFTA or the NAFTA. Typically, the only Canadian refined sugar eligible for preferential access into Costa Rica would have to be produced from Costa Rican sugar cane or Canadian sugar beets. This would exclude the vast majority of Canada's production from the CCRFTA (because Canadian sugar beets make up only a small percentage of the raw material used in the production of refined sugar in Canada).

The negotiated exception allows some degree of access to Canadian sugar produced from third-party raw product based on Costa Rica's exports to Canada the previous year. By the tenth year of the agreement, Canada will be able to export 4,000 MT of such non-originating refined sugar, plus the equivalent of 10% of Costa Rican exports to Canada over 40,000 MT the previous year. For its part, Costa Rican refined sugar would only be allowed access to Canadian markets duty-free if it was produced from local raw sugar.

At this time, Costa Rica does not represent a threat to Canadian sugar producers; however, there is a greater concern about the CCRFTA serving as a precedent for future negotiations. In particular, Costa Rica's neighbours represented in the CA-4 discussions, i.e., Guatemala, Nicaragua, Honduras and El Salvador, already export 1.5 times as much high-quality refined sugar as Canada's total production volume. If similar provisions were to apply to future agreements with those countries, there are concerns that Canada's domestic sugar beet growing and refining industries could be adversely affected.