

**BILL C-2: CANADA–EFTA FREE TRADE  
AGREEMENT IMPLEMENTATION ACT**

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## LEGISLATIVE HISTORY OF BILL C-2

### HOUSE OF COMMONS

Bill Stage	Date
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Second Reading: 5 February 2009

Committee Report: 4 March 2009

Report Stage: 12 March 2009

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### SENATE

Bill Stage	Date
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Second Reading: 22 April 2009

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Report Stage:

Third Reading: 28 April 2009

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Statutes of Canada 2009, c. 6

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

Legislative history by Michel Bédard

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BILL C-2: CANADA–EFTA FREE TRADE  
AGREEMENT IMPLEMENTATION ACT \*

BACKGROUND

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, was introduced in the House of Commons by the Honourable Stockwell Day, Minister of International Trade and Minister for the Asia-Pacific Gateway, on 28 January 2009. Bill C-2 is identical to an earlier Bill C-2, which died on the *Order Paper* when the 1<sup>st</sup> Session of the 40<sup>th</sup> Parliament was prorogued on 4 December 2008, and is practically identical to Bill C-55, which went through first reading and second reading before the 2<sup>nd</sup> Session of the 39<sup>th</sup> Parliament was dissolved on 7 September 2008; the only differences are the dates of entry into force of tariffs and other provisions.

Bill C-2 implements four treaties and their respective annexes signed by Canada. The first treaty implemented through the bill is a multilateral free trade agreement (FTA) between Canada and the member states of the European Free Trade Association (EFTA) – Iceland, Liechtenstein, Norway, and Switzerland. The other, bilateral, treaties deal specifically with trade in agriculture. They involve Canada and the same EFTA states, with the exception of Liechtenstein, **which is included in the Canada-Switzerland agreement on agriculture.**

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\* 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.

The Canada–EFTA (“CEFTA”) and the bilateral agreements focus exclusively on the liberalization of trade in goods. They do not deal with other forms of economic exchange, such as trade in services or foreign investments.

It is standard practice for an FTA concluded and signed by Canada to be implemented through an Act of Parliament.

## DESCRIPTION AND ANALYSIS

Bill C-2 implements the four treaties identified above through a set of provisions that will form the core of a stand-alone piece of legislation, the Canada–EFTA Free Trade Agreement Implementation Act. It also contains amendments to three existing pieces of legislation, i.e., the *Canadian International Trade Tribunal Act*,<sup>(1)</sup> the *Customs Act*<sup>(2)</sup> and the *Customs Tariff*.<sup>(3)</sup>

### 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, three are worth noting. First, CEFTA is referred to as “the Agreement,” whereas the other three treaties on agriculture are designated by the term “bilateral agreements.” Second, references to the “Minister” are to the Minister of International Trade. Finally, the “Joint Committee” referred to in the bill is the committee set up pursuant to article 26 of CEFTA.

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 and the bilateral agreements.

Clause 4 states the purposes of the Act, which are to (a) establish a free trade area; (b) promote the harmonious development of the economic relations between Canada and the EFTA states; (c) provide fair conditions for competition in trade; (d) establish a framework for further cooperation, “in particular with the aim of liberalizing trade in services and increasing investment opportunities”; and (e) contribute to the expansion of world trade through the removal of trade barriers.

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(1) 1985, c. 47 (4<sup>th</sup> Supp.).

(2) 1985, c. 1 (2<sup>nd</sup> Supp.).

(3) 1997, c. 36.

Clause 5 provides that the bill “is binding on Her Majesty in right of Canada.”

Clause 6 restricts the extent of causes of action and the right to initiate proceedings on their basis. First, it provides that no person can claim a right of action and undertake proceedings under the main provisions of the Canada–EFTA Free Trade Agreement Implementation Act, 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, it 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 bilateral agreements.

Clause 7 specifies that the nothing in the bill, Agreement or bilateral agreements applies “to natural surface or ground water in liquid, gaseous or solid state.”

#### B. General Implementation Provisions

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

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

Clauses 10 to 14 deal with administrative and institutional matters. Article 26 of CEFTA establishes a Joint Committee with representation from all parties to the Agreement. Clause 10 provides that the Minister for International Trade is Canada’s principal representative on the Joint Committee, and clause 11 provides that Canada is to pay its share of the expenditures of the Joint Committee. Clause 12 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 tribunals set up under Chapter VIII of the Agreement. Chapter VIII of CEFTA contains provisions dealing with dispute settlement mechanisms, which include as options, in addition to the establishment of an arbitral panel, resort to the dispute settlement body of the World Trade Organization.

Clause 13 creates a ministerial power to appoint a Canadian representative on the Subcommittee on Rules of Origin and Trade in Goods, created under article 9 of CEFTA, and on any subcommittee or working group established by the Joint Committee under article 26 of CEFTA.

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 is provided for under article 31 of CEFTA. 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 an EFTA state or to goods of such states under the Agreement or bilateral agreements; modification or suspension of federal law enacted in Part 2 (i.e., the amendments brought to the *Canadian International Trade Tribunal Act*, the *Customs Act* and the *Customs Tariff*); and extension of the application of federal law to an EFTA state or to goods of such state.

#### C. Amendments of 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.

#### D. Amendments to the *Canadian International Trade Tribunal Act*

Clauses 16 to 22 of Bill C-2 amend various provisions of the *Canadian International Trade Tribunal Act* (CITTA). First, definitions are added to CITTA to designate tariffs applicable to the four EFTA states. Second, clause 17 adds three provisions (19.014 to 19.016) 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 one of the four EFTA countries lead to imports in increased quantities to a point where such increased quantities constitute a principal cause or a threat of serious injury. 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 a 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 or threat of serious injury to domestic producers. Amendments to CITTA brought under clauses 18 to 22 seek to extend such mechanisms in relation to imported goods entitled to the tariffs of one of the EFTA states.

#### E. Amendments to the *Customs Act*

Clauses 23 to 29 provide amendments to the *Customs Act*. First, definitions of the *Customs Act* are amended to include references to the EFTA states, CEFTA and the notion of preferential treatment under CEFTA.

Second, clause 24 provides for amendments to article 42.1 of the *Customs Act*, which deals with the method of verification of the origin of goods, with a view to ensuring the proper tariff classification of imported goods. For most trade agreements that Canada has signed and implemented, verification is made under the terms of section 42.1(1), and the President of the Canada Border Services Agency designates officers capable of undertaking the necessary verification. However, Bill C-2 does not extend such a verification system to goods imported from an EFTA state. Rather, subclause 24(1) of Bill C-2 excludes goods from an EFTA state from the verification powers normally applicable to states with which Canada has signed an FTA. Bill C-2 sets out a slightly different method of verification, which complies with the terms of CEFTA. By this method, verification of the origin of goods imported from an EFTA state requires that Canadian officials request in writing that the customs administration of the EFTA state in question conduct a verification and provide an opinion “as to whether the goods are originating within the meaning of Annex C of CEFTA” (subclause 24(2) of Bill C-2). A new paragraph 42.1(3) of the *Customs Act* provides for the circumstances in which preferential tariff treatment under CEFTA can be denied: namely, if the EFTA state fails to conduct the verification requested or to provide an opinion on whether the goods originate from that state; if the Canadian officer is unable to determine if the goods are originating; and in other prescribed circumstances.

Other measures of the *Customs Act* that are applicable to goods imported from a state with which Canada is party to an FTA are more simply extended to goods imported from an EFTA state. For instance, an exporter of goods from an EFTA state who relied in good faith on a ruling made by the Canada Border Services Agency or by the customs authorities of an EFTA state to benefit from a preferential tariff will be affected only with regard to future exports in case of redetermination of the origins of goods (clause 25). According to amendments made to another provision, duties paid unnecessarily on goods imported from an EFTA state can be reimbursed to the person who paid such duties (clause 27).

Clause 28 adds a new section 97.201 to the *Customs Act*. In a sense, this new provision mirrors the one adopted under clause 24 of Bill C-2. Its effect is to provide for the possibility for the customs administration of an EFTA state to request verification of the origin of goods and the formulation of an opinion on this issue by the Canada Border Services Agency.

Finally, clause 29 creates a regulatory power “for the purpose of the uniform interpretation, application and administration” of the “Trade in goods” chapter (Chapter II, articles 3 to 11) of CEFTA and of CEFTA’s Annex C, which sets up the rules governing the origin of goods and the terms of administrative cooperation in that regard.

#### F. Amendments to the *Customs Tariff*

The *Customs Tariff* is highly technical, as are the amendments brought to it by Bill C-2. Basically, these amendments introduce in the *Customs Tariff* the tariff rates agreed upon and figuring in the annexes of CEFTA. Tariff modifications are to be phased out progressively over many years, from three years after the entry into force of the bill to as many as 15 years after such entry into force in certain cases. The Schedules to the *Customs Tariff* are amended.

The *Customs Tariff* is also harmonized with the changes to the *Canadian International Trade Tribunal Act* to provide for the possibility of temporary tariff suspension or other tariff measures resulting from a positive 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 a threat of serious injury.

#### COMMENTS

The conclusion of CEFTA itself attracted attention, given that it was the first free trade agreement to be signed by Canada in **several** years.<sup>(4)</sup> The absence of an assessment of the impact of CEFTA on the Canadian economy has been highlighted and deplored.<sup>(5)</sup> However, Bill C-55, the predecessor to Bill C-2, attracted relatively little media coverage or public debate.

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(4) See “Canada in the World – Free Trade, the Sequel,” *The Globe and Mail*, 18 June 2007.

(5) See “Take a Long, Clear-eyed Look at Trade Deals,” *Embassy*, 7 May 2008, p. 6.

Three factors may explain this general lack of controversy.<sup>(6)</sup> First, there are precedents relative to the conclusion of FTAs. CEFTA is a fairly classic free trade agreement aimed at the liberalization of the trade in goods through the elimination of tariffs. In other words, this type of agreement is not novel, except perhaps with respect to its mechanisms for determining the origin of goods and the very long phasing-out of some tariffs. Second, the treaty partners with which Canada has signed the CEFTA are not likely to pose serious problems. None face the kind of domestic situation, notably with respect to human rights, that could otherwise raise the question of whether it is an appropriate partner with whom to enter into a free trade arrangement. Third, the value of trade between Canada and EFTA states **was \$13.2 billion** for exports and imports combined **in 2008**. Although Canada's trade with these states is not insignificant, it is not of the same magnitude as that with key trading partners such as the United States or Mexico.

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(6) Department of Foreign Affairs and International Trade, *Canada–European Free Trade Association*, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/efta-aele.aspx?lang=en>.