

Statement

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STATEMENT BY THE

MINISTER FOR INTERNATIONAL TRADE

JOHN C. CROSBIE

CONCERNING GOVERNMENT AMENDMENTS TO BILL C-130

OTTAWA

July 28, 1988

Minister for
International
Trade

Ministre du
Commerce
extérieur

Canada

The Legislative Committee on Bill C-130 is moving into the final stages of its work with the tabling of amendments today by members of the Committee. The Committee is to report by August 10. I wish today to indicate that the government will accept amendments regarding water and the override clause 8 to be tabled by Mr. John McDermid.

Water

There has been a great deal of hullabaloo in recent weeks about the alleged impact of the Canada-U.S. Free Trade Agreement on Canada's water resources. This concern, although genuinely felt by some, is misplaced and is the result of misinterpretation of the Agreement.

I have explained that the FTA clearly involves no obligation on Canada's part to export water to the United States. Furthermore, the FTA does not apply to large scale water diversions in any event. Such diversions have never been an issue in the GATT. The Minister of the Environment set out the government's policy prohibiting the export of water by interbasin diversions in a statement tabled in the House of Commons on November 5, 1987. However, I want Canadians to understand clearly that the Free Trade Agreement places no constraints on our ability to manage our water resources.

For greater clarity, however, the government will support the amendment to be proposed by government members of the Legislative Committee examining Bill C-130 to state expressly that the Free Trade Agreement does not apply to water, except for provisions for removal of existing tariffs on imports of water by Canadians from the United States. "Water" is defined to mean "natural surface and ground water in liquid, gaseous or solid state, but does not include water packaged as a beverage or in tanks". No other provision of the Agreement, whether it be the national treatment article or the proportional access article, applies to water. Thus, the amendments make clear that Canada's only obligation regarding water is to eliminate existing tariffs on imports of U.S. water.

This, I hope, will put an end to the arguments and concerns that Canada's water resources are threatened by the FTA. As well, legislation incorporating the prohibition against exports of water by interbasin transfers will be tabled in Parliament in the near future.

Override

Clause 8 of Bill C-130 is intended to ensure that the legislation will have precedence over any other federal Act. It has been criticized on the grounds that the U.S. does not have a similar provision in its implementing legislation and for being "quasi-constitutional" in effect because it supposedly overrides all other federal legislation.

On the relationship of clause 8 to the U.S. legislation, I have explained that the fact that they do not have a similar clause is more a matter of different legal traditions to accomplish the same objective rather than a difference in substance. We have adopted this technique to catch inconsistent provisions in other legislation that might be overlooked while the Americans have extended their fast track provisions for a further thirty months to achieve the same objective. Each expects the other to meet its international obligations under the FTA. How that is accomplished is a matter for internal decision.

As for the suggestion that clause 8 is quasi-constitutional, this is just not so. Such a provision is not unusual in federal legislation. For existing and future legislation, it is operative only where there is a conflict and only to the extent of the inconsistency. Furthermore, a future Parliament is free to legislate to limit the effect of clause 8 when enacting new legislation if there is any concern about its operation on the particular Bill. Finally, clause 8 itself can be amended by a future Parliament because one Parliament cannot bind its successor.

However, since there is a good deal of concern over this issue, I am prepared to delete the override clause. Simply deleting the override will have the effect of (a) leaving it to the courts to interpret conflicts between the Free Trade Act and other federal acts according to the normal rules of statutory interpretation, and (b) ensuring that the Agreement itself has no effect on other federal laws, except to the extent that the Free Trade Act and the Acts amended by it refer to the Agreement.

In short, deletion of clause 8 may result in Parliament having to legislate in the future should any inconsistencies be found in other federal legislation that were not discovered in our review to date. However the FTA can now truly be considered just as any other ordinary Act which cannot in any way bind this or any future Parliament.

Other Amendments

Government members will table only these two substantive amendments (and several technical amendments) which I have indicated I will accept. As for any amendments, opposition members may table, we will review these carefully in the context of my statement to the Committee on July 11.

"The Committee has an important function in reviewing the legislation to see whether it accurately implements the free trade agreement. In any case in which the legislation fails to implement the agreement accurately, the government would be open to amendments."