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Department of External Affairs | Ministère des Affaires extérieures

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NOTES FOR A STATEMENT BY THE

MINISTER FOR INTERNATIONAL TRADE

JOHN C. CROSBIE

TO THE HOUSE OF COMMONS LEGISLATIVE COMMITTEE

STUDYING BILL C-130

(LEGISLATION TO IMPLEMENT THE

CANADA-U.S. FREE TRADE AGREEMENT)

OTTAWA

August 2, 1988.

Minister for International Trade | Ministre du Commerce extérieur

Canada

Mr. Chairman,

On July 11, I appeared before this Committee as its first witness. Since then, the Committee has received over 50 submissions and heard from 53 witnesses in approximately 85 hours of testimony. Canadians owe a debt of gratitude to members of the Committee for their diligence, and to those who made submissions to the Committee for their participation, in this important step in Parliament's consideration of the FTA implementing legislation.

This Committee's work comes at the end of a decade of study and debate on the concept of free trade, starting with the Senate Foreign Relations Committee's recommendation of Canada-U.S. free trade in June 1978. Since the release of the FTA legal text in December 1987, we have had eight months of study and debate on the free trade agreement. And, it has been more than two months since the legislation to implement the agreement was tabled in Parliament.

Mr. Chairman, the Committee is about to begin clause by clause consideration of Bill C-130. A number of amendments have been proposed. Let me speak first about those amendments that the government supports.

Water

The FTA does not oblige Canada to export water to the U.S., nor could it be used to compel us to do so. That is implicit in the agreement, and has been recognized publicly by both parties to the agreement.

The confusion and distortion that has been thrown up by opponents of the FTA regarding an imaginary threat to our water resources has centered on the reference to water under tariff heading 22.01. The amendment proposed on behalf of the government provides a definition encompassing this reference in line with accepted international practice.

The amendment expressly states that the FTA does not apply to water, except water packaged as a beverage or in tanks. Specifically, the FTA does not apply to natural water, except to require Canada to eliminate existing tariffs on imports from the U.S. No other provision of the agreement, not the National Treatment Article, nor the Proportional Access Article, applies to natural water.

Put simply, the Free Trade Agreement places no constraints on Canada's ability to manage its water resources. We remain free to prohibit large scale water exports. It is this government's policy to prohibit such exports. Soon legislation will be introduced in Parliament to incorporate that prohibition in statute.

"Over-ride" (Section 8)

Sub-section 8(1) of the implementing legislation was intended to catch any inconsistent provisions in other legislation. Sub-section 8(2) was intended to safeguard against the use of discretionary powers by federal officials in a manner inconsistent with the Free Trade Agreement.

Such an "over-ride" is not extra-ordinary. It appears in many federal statutes. But it is only one means for the government to meet its obligations under the Free Trade Agreement.

Another is to address any inconsistency that may arise by express legislative enactment and to use administrative means to control the exercise of discretionary powers. This is what will follow from the proposed deletion of section 8.

FTA opponents have improperly characterized section 8 as "quasi-constitutional", as placing in question an imaginative range of programs and policies set out in other legislation. That assertion can no longer be made.

Other Government Amendments

Ten other amendments have been proposed on behalf of the government. That relating to Section 58 (Retransmission Rights), like the water amendment, is proposed so that the implementing legislation more accurately reflects the agreement. The others remove inconsistencies between the English and French versions of the legislation.

Before turning to other proposed amendments, I would like to refer briefly to the "Baucus-Danforth" provisions in the U.S. implementing legislation.

"Baucus-Danforth"

When the "Baucus-Danforth" provision first appeared in drafts of the U.S. implementing legislation, there was concern that it would detract from the security of access achieved through various provisions of the FTA, particularly binding dispute settlement for countervail cases. These concerns were met through specific amendments to the draft provision, made in response to our representations.

The "Baucus-Danforth" provision, as it appears in the U.S. implementing legislation tabled in Congress on July 25, simply spells out a process for information gathering on subsidies. It does not create any new trade remedies under U.S. law. As well, it may apply to any country with which the U.S. enters a trade liberalization agreement after January 1, 1989.

In this final version, "Baucus-Danforth" only spells out a process with powers for information gathering on subsidies and the possible use of this information in the context of existing U.S. trade law. These powers are similar to those that the Canadian government has under existing laws, such as Section 48 of the Special Import Measures Act and Sub-section 59(2) of the Customs Tariff Act and other Canadian trade laws.

In light of the foregoing, the government concluded that no amendment to Bill C-130 was needed.

Opposition Amendments

Most of the amendments proposed by opposition members on the Committee fall into three categories. The first category consists of amendments that conflict with the Free Trade Agreement. As I said on July 11, Bill C-130, because it implements an international agreement, is not legislation where Parliament can pick and choose among the pieces. The agreement as a whole must be approved or rejected. To amend the legislation so that it conflicts with the agreement would amount to "tearing up the deal". Therefore, the government does not support these amendments.

The second category consists of amendments that purport to exempt from the legislation and the FTA matters such as social programs, environmental protection and native issues.

Such amendments arise from a mis-reading of the Free Trade Agreement. Canada remains, after as before the FTA, free to decide on such matters as social programs and native issues. The Free Trade Agreement is about commercial relations, not these matters. Moreover, the environmental protections built into the GATT have been incorporated in the FTA as well.

I must say Mr. Chairman that there are also a number of entirely frivolous amendments. I am disappointed that some members have obviously chosen not to take a responsible approach to the amendment to this historic bill.

Mr. Chairman, that is all that I would like to say in my opening remarks regarding amendments. The Committee will now review each clause and should be prepared to adopt amendments which ensure that the legislation accurately implements the Free Trade Agreement.

Before concluding, I am pleased to report that the U.S. implementing legislation was tabled in Congress while this Committee is carrying on its work of considering the Canadian implementing legislation.

On July 28, members of the Committee were provided with an analysis of the U.S. implementing legislation prepared by Canada's legal counsel in the U.S.

I would note legal counsel's conclusion:

"... subject to a potential inconsistency (regarding plywood), our review has identified nothing in the implementing legislation proposed by the United States that is inconsistent with the Agreement or that would prevent the U.S. from complying fully with its obligations under the Agreement".

Mr. Chairman, in closing let me say that I am confident that in the American analysis of Canada's implementing legislation, a similar conclusion will be reached.