

Committee on Regional Trade Agreement

CANADA-CHILE FREE TRADE AGREEMENT

Questions and Replies

This document reproduces questions addressed to the Parties and the joint responses provided by them. The questions and replies set out below are organized in accordance with document WT/REG38/2.

I. BACKGROUND INFORMATION ON THE AGREEMENT

3. Scope

It is envisaged that trade in a number of products will be liberalized under the Agreement over a period longer than ten years. The WTO Understanding on Article XXIV provides that the reasonable period of time foreseen in Article XXIV:5(e) for the formation of free-trade areas should exceed ten years only in exceptional cases. What products are affected by transitional periods longer than ten years and how is this exceptional treatment justified?

The CCFTA identifies products on which Chile will exceptionally remove its tariffs over a period longer than 10 years. These products are:

- Beef (15 years)
- Wheat and wheat meal (18 years)
- Meat sausages (15 years)
- Sugar (16 years)

These products are very sensitive given the high distortions created in the international market by subsidies granted by other countries. Despite their sensitivity, the Parties agreed it was preferable to have these products included in the Canada-Chile Free Trade Agreement (CCFTA) disciplines and subject to a longer phase-out period, rather than excluded from coverage altogether.

Could the Parties provide data on the proportions of trade for each item which has a phase-in period of more than ten years? What are the reasons for having these extended implementation periods? Do the Parties envisage accelerating these implementation periods?

Refer to the response to question 1, and to Annex III to this document which provides additional data. The CCFTA does contain provisions (Article C-02) enabling the Parties to agree to accelerate the tariff elimination timetables, which would be pursued on the basis of joint industry agreement. No discussions are currently underway in this regard.

Statistics provided in WT/REG38/2 suggest that 99 per cent of two-way trade is covered by the CCFTA. Could the Parties confirm the proportions of trade for which:

- **duties are eliminated**
- **other regulations of commerce are eliminated (with details of what these "other regulations of commerce" are).**

The CCFTA incorporates comprehensive provisions concerning tariff and non-tariff barriers to trade between the Parties, including tariff elimination, disciplines in respect to import and export restrictions, prohibitions against the use of customs user fees and export taxes, and so forth. Annex I to this document provides details on the proportion of trade subject to duty elimination. As Members well know, there is currently no agreed definition of the term "other regulations of commerce" in the context of Article XXIV, which continues to be the subject of discussion under the Committees' consideration of systemic issues. It is therefore not possible to provide data which presupposes a common understanding of the meaning of this term.

4. Trade Data

The Trade statistics provided by the parties cover data for the years 1994-96. Can the parties update the data with trade figures for 1997?

Please see Annex I to this document for 1997 figures.

Have the Parties undertaken any studies which point to possible effects of the CCFTA on third parties? If so, what were their findings?

Please refer to Annex II to this document for statistics on trade between CCFTA Parties and with non-parties. The Parties have not undertaken any studies specifically addressing the impact of the CCFTA on third parties. Such assessments would in any case be difficult to undertake given that the CCFTA has been in effect for only one year. However, the Parties are of the view that the higher incomes generated by the trade liberalization provisions of the CCFTA should stimulate higher demand for imports from third countries given the high degree of openness of the Canadian and Chilean economies.

Could the Parties provide information on trade creation effects, i.e., data on trade (volume) of major products with third countries before and after the formation of the Agreement?

See Annex I to this document, and the response to question 5.

II. TRADE PROVISIONS

1. Import Restrictions

1.1 Duties and charges

Please provide details of bilateral trade in poultry, egg and dairy products. Is trade in these products excluded entirely from the coverage of the agreement, or just from the programme of tariff elimination?

In the last four years there have been very small volumes of trade in items not destined for complete tariff elimination. These items are certain dairy, poultry and egg products. Annex II to this document provides details of bilateral trade in these products.

All products are covered by the CCFTA, including dairy, poultry and egg products. For example, Article C-00 makes it clear that the Chapter on National Treatment and Market Access applies to goods of a Party including dairy, poultry and eggs. However, the specific provisions related to tariff elimination vary from product to product in accordance with each Party's Schedule to Annex C-02.2. In the case of dairy, poultry and egg products, Canadian in-quota tariffs are being eliminated. Canada will retain its MFN tariff quotas and MFN over-quota tariffs for certain dairy, poultry and egg products, while Chile will retain its MFN tariffs for the same products.

What are the precise arrangements with regard to durum wheat, milling wheat and wheat flour? When will restrictions on trade in these goods be removed? Will Chile's system of price bands remain?

Durum wheat is in schedule B which covers a period of 6 years for tariff elimination. According to this schedule, by 1 January 2002 trade in durum wheat will be completely tariff free. Since 1 January 1998, the tariff level on durum wheat has been 6.5 per cent and is not subject to the system of price bands.

For wheat and wheat flour, items subject to the system of price bands, tariffs will be phased out over a period of 18 years reaching zero tariff by 1 January 2014. The specific schedule for tariff elimination will be defined before 2004.

The system of price bands, which has been in place since mid-1980s, was designed to minimize the effects of fluctuations in international prices on the domestic economy. It covers imports such as wheat, wheat flour, sugar, and vegetable oils for human consumption. No additional products have been added to this list and there are no plans to do so in the near future.

In Chile, imports of commodities under the price band system represent a high proportion of domestic demand. For example, in 1996 this included 27 per cent for sugar, 37.4 per cent for wheat and 92.1 per cent for oil for human consumption. These statistics should suggest that the price band system is not used as a protectionist device against imports.

A number of goods are exempt from the CCFTA (e.g. dairy, poultry and egg products). Do the parties envisage including exempt products in the agreement at some time in the future? When will in-quota tariffs be removed? Will out-of-quota tariffs remain? If so, at what level and how would the parties justify their continuation?

All products are covered by the CCFTA, including dairy, poultry and egg products. For example, Article C-00 makes it clear that the Chapter on National Treatment and Market Access applies to goods of a Party including dairy, poultry and eggs. However, the specific provisions related to tariff elimination vary from product to product in accordance with each Party's Schedule to Annex C-02.2. For most dairy, poultry and eggs products, duties on in-quota tariff items were eliminated immediately upon implementation of the agreement; the remaining 3 lines, at the 8 digit H.S. level, will be duty free no later than 1 January, 2003. Canada will retain its MFN tariff quotas and MFN over-quota tariffs for dairy, poultry and egg products, while Chile will retain its MFN tariffs for the same products. The volume of trade on which duties will not be eliminated by the end of the transition period accounts for less than half of one percent of bilateral trade in the last four years. The CCFTA is fully consistent with Article XXIV:8(b) as substantially all trade between the parties will be duty free at the end of the transition period.

2. Export Restrictions

2.2 Quantitative restrictions

Could Chile please explain the rationale for maintaining export restrictions on the export of copper and other resources for national industry. What definition is given to the concept of "other resources for national industry"? Are there any plans to lift these restrictions?

Law 16624 requires enterprises qualifying as "Gran Minería" (i.e. enterprises with production of copper greater than 75,000 tons per year) to reserve copper for supply to the national industry. This law was promulgated in 1967 to ensure that copper volumes were available for domestic manufacturing and semi-manufacturing industries and it was compatible with the development model of that period which was based on industrialization via import substitution. It should be noted that Law 16624 refers only to copper and does not mention the possibility of restraining exports of other resources. In the current development model, which relies on market freedom, openness of the economy and external orientation, law 16624 is less relevant and its elimination in the near future is currently under discussion. Annex C-08 of the CCFTA already provides that Chile will bring Law 16624 into conformity with the CCFTA within two years of the entry into force of the CCFTA.

3. Rules of origin

Have the Parties raised local content ratios to grant origin, in the process of harmonization of rules of origin?

After the formation of the free-trade area, have the Parties introduced rules of origin which require that the raw material or parts be sourced within the free-trade area in order that the final product could be exported duty-free into the other Party?

Have the Parties put in place new rules of origin with local content or value-added requirements which had not existed prior to the formation of the free-trade area?

As, prior to the implementation of the CCFTA, there were no rules of origin between the Parties to the Agreement, there were no local content ratios to raise nor were there rules of origin to harmonize. Prior to implementation of the Agreement, goods from Chile entered Canada under either the GATT-negotiated non-preferential Most-Favoured-Nation Tariff or the unilaterally applied Generalized System of Preferences and, in both instances, cumulative origin is allowed. For purposes of the bilateral CCFTA, new rules of origin, based on the Harmonized System of tariff classification, were developed.

In order that a good exported from one Party may receive preferential tariff treatment under the Agreement upon entry into the other Party, the good must qualify as an originating good under the rules of origin set out in the Agreement. The rules of origin applicable to some goods require that certain of the raw materials or parts qualify in their own right under the rules of origin as goods originating in the free trade area.

As indicated in the reply to the first part of this question, new rules of origin, based on the Harmonized System of tariff classification, were developed for purposes of the bilateral CCFTA. Some of these rules may require that certain of the materials used to produce the good in question qualify in their own right as originating in the free trade area, while other rules may require that, in addition to satisfying a required change in tariff classification, the good must also satisfy a regional value-content requirement.

5. Safeguards

It is stated that the Parties would apply safeguards among themselves when "the quantities of goods from the partner accounted for a substantial share of the total imports and when the goods from the partner contributed significantly to the injury" (WT/REG38/M/1).

Could the Parties clarify the meaning of "substantial share which contributed significantly" as this expression seems to be vague?

What is the legal justification for not applying safeguards among parties but only applying them against third countries, especially if imports from the other Party contribute to the injury?

Under Article F-02, either party taking an emergency action under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards shall exclude imports of the party unless: imports from the other Party account for a substantial share of total imports; i.e. imports will not be considered accounting for a substantial share if imports from the Party are not among the top five suppliers, measured over the most recent three year period; and imports from the other Party contribute importantly to the serious injury, or threat thereof. In making that determination, investigating authorities shall consider such factors as change in the import share of the other Party and the level and change in the level of imports from the other Party. Imports from the other Party shall not normally be considered as contributing importantly if the growth of such imports during the period of the injurious surge in total imports is appreciate lower than the growth rate of total imports during that period.

The Parties are of the view that in accordance with the provisions outlined above, the application of a bilateral safeguard action and/or the exclusion from another CCFTA Party's application of a global safeguard action under certain circumstances, does not conflict with GATT Article XIX and the WTO Agreement on Safeguards in the context of a free-trade agreement under GATT Article XXIV. The provisions of CCFTA Articles F.01 and F.02 are consistent with the practices in place under other Article XXIV arrangements that provide for the application of a bilateral safeguard action and/or the exemption of Parties to a free-trade arrangement from global safeguard actions.

III. GENERAL PROVISIONS OF THE AGREEMENT

3. Dispute Settlement Procedures

In respect of Dispute Settlement, could the parties please explain the rationale for allowing a complaining party to settle any matter which arises under both the Free Trade Agreement and the WTO Agreement in either forum. How are the rights of other WTO Members preserved, if dispute settlement takes place in the bilateral forum?

Article N-05 provides that a complaining Party retains the discretion to settle any matter, arising under both the CCFTA and the WTO Agreement, in either forum. Article N-05.4 further provides that once dispute settlement procedures have been initiated either under Article N-07 or under the WTO Agreement, the forum selected shall be used to the exclusion of the other, unless the Party claims that its action is subject to Article A-04 (relation to Environmental and Conservation Agreements) and requests that the matter be considered under the CCFTA: in such case, the party has sole recourse to dispute settlement under the CCFTA. WTO Agreement dispute settlement proceedings are deemed to be initiated by a Party's request for a panel, such as under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*. Where an obligation is unique to an Agreement, Parties will avail themselves of the Dispute Settlement provisions of the

affected Agreement. Where the coverage of Agreements overlaps, the Parties may choose. In respect of disputes between the Parties respecting antidumping measures and countervailing duty measures, the CCFTA parties have agreed in CCFTA Article M-07(3) that subject to some exceptions, disputes shall be settled in accordance with the WTO Agreement.

It is the view of the CCFTA Parties that the Agreement concluded is fully consistent with WTO obligations, and does not raise potential for conflict. Such intention is clear from the CCFTA Preamble which indicates that the Parties resolved, among other things, to "Build on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization and other multilateral and bilateral instruments of cooperation". Thus, the Parties were mindful of the need to reach an agreement which was entirely consistent with WTO obligations.

Finally, the CCFTA Parties would note that WTO rights of third parties are not affected in any way by the CCFTA: any such parties are free to pursue WTO dispute settlement proceedings.

Why is a dispute settlement relating to actions subject to Article A-04 (Environmental and Conservation Agreements) reserved automatically to the bilateral rather than the multilateral forum, even where WTO rights and obligations may be involved?

Paragraph (2) of Article N-05 is a reflection of the importance the Parties placed on environment-related matters in the negotiation of the CCFTA. Paragraph (2) reflects the Parties' sensitivity to environmental issues and their commitment to ensuring high levels of cooperation in meeting conservation and environmental objectives. Building on existing WTO rules, the CCFTA's dispute resolution rules and institutions are particularly responsive to these unique and specialized CCFTA obligations.

Paragraph (2) was established to provide a responding Party with the means to ensure that a complaining Party could not avoid its Article A-04 commitment by choosing the WTO forum. Article A-04 was established to ensure that CCFTA would not derogate from a Party's right to take action under the specific trade obligations in the environmental and conservation agreements set out in Article A-04. The WTO had no equivalent rule to that set out in Article A-04. The Parties determined that where Article A-04 could be applied, it would be appropriate that disputes on such actions would be pursued under the CCFTA.

It should be noted that paragraph (2) does not provide that only CCFTA dispute settlement procedures may be invoked. Rather, a complaining Party has the initial choice of forum, subject to a responding Party's right to request that the matter be considered under the CCFTA (which would result in the complaining Party having recourse to dispute settlement solely under the CCFTA in that case).

The Parties simply wanted to ensure that a Party would not be precluded from recourse to the CCFTA dispute settlement process, in respect of those matters involving obligations unique to the CCFTA, unless the parties to a dispute agreed otherwise.

IV. OTHER

Can the Parties provide any comment on the possible effects of the CCFTA on their overseas investment, particularly in the Asian region?

The CCFTA is not expected to result in changes in the patterns of investment of either Party in third countries.

ANNEX I

Update of Trade Figures Provided in WT/REG38/2

Trade Covered by the CCFTA

Data for 1997 (millions of Cdn \$):

- (a) Total two-way trade covered by the Agreement: 920.4
- (b) Total two-way trade: 923.8
- (c) Percentage of trade covered by the CCFTA with respect to total bilateral trade: 99.6%

Trade Data

Table 1
Canada Imports from Chile
(CDN \$ millions)

	Total	Covered by the CCFTA	% of Total Covered
1995	279	279	100
1996	342	342	100
1997	325	325	100

Table 2
Canada's Imports from Chile: Major Products
(CDN \$ millions)

	1995	1996	1997
Copper Ores and Concentrates (HS 2603)	12.5	82.8	32.5
Grapes, fresh or dried (HS 0806)	76.7	78.7	78.7
Wine of fresh grapes (HS 2204)	27.5	38.5	51.2
Fruit and vegetable Juices (HS 2009)	10.3	20.2	16.2
Apples, pears and quinces, fresh (HS 0808)	12.9	18.3	14.9

Note: Figures are calculated using Canada's imports reported in Canadian dollars and Chile's imports reported in US dollars. The overall figures are converted to Canadian dollars by multiplying by an average exchange rate for each year.

Table 3
Chile: Imports from Canada
(US \$ millions)

	Total	Covered by the CCFTA	% of Total Covered
1995	315.1	314.4	99.8
1996	408.1	406.2	99.5
1997	432.5	430.1	99.5

Table 4
Chile's Imports from Canada: Major Products
(US \$ millions)

	1995	1996	1997
Wheat and Meslin (HS 1001)	42.9	119.2	51.6
Coal and solid fuels from coal (HS 2701)	25.7	31.1	36.0
Transmission apparatus, etc. (HS 8525)	15.7	14.3	12.9
Line telephony electr appar (HS 8517)	6.4	14.3	12.7
Newsprint, roll/sheets (HS 4801)	3.2	10.9	6.9

Percentage of 1997 Trade Subject to Immediate Tariff Elimination,
Phased Tariff Elimination and Not Subject to Tariff Elimination

Details of 1997 Bilateral Trade:

Table 5
Canada: 1997 Imports from Chile
(CDN \$ million)

	Value	%
Imports Subject to Tariff Elimination on Implementation	218	88
Imports Subject to Phased Tariff Elimination (less than 10 years in all cases)	38	12
Imports not Subject to Tariff Elimination	0	0
Total 1997 Imports from Chile	325	100

Table 6
Chile: 1997 Imports from Canada
(US \$ million)

	Value	%
Imports Subject to Tariff Elimination on Implementation	292.8	67.7
Imports Subject to Phased Tariff Elimination (2 - 10 years)	89.7	20.8
Imports Subject to Phase out of longer than 10 years	47.6	11.0
Imports not Subject to Tariff Elimination	2.4	0.5
Total 1997 Imports from Canada	432.5	100.0

Sources: Chilean imports to Canada - Statistics Canada
Canadian imports to Chile - Comercio Exterior del Banco Central de Chile

Trade Between CCFTA Parties and Non-Parties: 1995 - 1997¹

Table 7
Canada: Imports from Chile: 1995-1997
(CDN \$ million)

	Total	% Growth
1995	279	n/a
1996	342	22.58
1997	325	-4.97

Table 8
Canada: Imports from Rest of World 1995-1997
(CDN \$ million)

	Total	% Growth
1995	225,629	n/a
1996	232,648	3.32
1997	272,101	16.72

¹All figures are based on import data provided by Canada and Chile. Canadian statistics are provided in Canadian dollars and are based on Canadian sources (Statistics Canada). Chilean statistics are provided in U.S dollars and are based on statistics from Comercio del Banco Central de Chile.

Table 9
Chile: Imports from Canada: 1995 - 1997
(US \$ million)

	Total	% Growth
1995	315.1	n/a
1996	408.1	29.51
1997	432.5	5.98

Table 10
Chile: Imports from Rest of World: 1995 – 1997
(US \$ million)

	Total	% Growth
1995	14,588	
1996	16,402	12.4
1997	17,679	7.8

ANNEX II

Details of Bilateral Trade in Dairy, Poultry and Egg Products²

Table 11
Chile's Imports from Canada, 1996 & 1997 - Dairy, Poultry and Egg Products
(Imports not Subject to Tariff Elimination)
(US \$ thousands)

HS Code	Description	1996	1997
0105.11.00	Fowls of the Species Gallus domestic weighing not more than 185g	33	73
0105.12.00	Live poultry: turkeys	18	0.00
0402.10.00	Milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5%	0.00	58
0403.90.00	Powdered Buttermilk, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa	41	0.00
0404.10.00	Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter	131	41
0405.10.00	Butter	411	0.00
0405.90.00	Butter and other fats and oils derived from milk; dairy spreads. Other	346	0.00
1806.20.00	Other preparations with cocoa of content exceeding 2 kg	0	77
2106.90.90	Remaining food preparations not elsewhere specified or included	864	1,123.00
2309.90.10	Dairy substitutes used in feeding calves	0.00	22.00
2309.90.90	Other Preparations of a kind used in animal feeding	77.00	974

Note: for trade in products of the 0407.00.00 classification (Bird's eggs, in shell, fresh, preserved or cooked), subject to tariff phase out longer than 10 years, see Annex III.

²As with all other bilateral trade statistics provided in this submission, the Parties have used Canadian sources (Statistics Canada) for Canadian imports from Chile, and Chilean sources (Comercio Exterior del Banco Central de Chile) for Chilean imports from Canada.

Table 12
Canada's Imports from Chile 1996 & 1997 - Dairy, Poultry and Egg Products
(CDN \$ thousands)

HS Code	Description	1996	1997
0105.11.00	Fowls of the Species Gallus domesticus weighing not more than 185g	0	0
0105.12.00	Live poultry: Turkeys	0	0
0402.10.00	Milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5%	0	0
0403.90.00	Powdered Buttermilk, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa	0	0
0404.10.00	Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter	0	0
0404.90.20	Blended dairy powders - over access	0	0.951
0405.10.00	Butter	0	0
0405.90.00	Butter and other fats and oils derived from milk; dairy spreads. Other	0	0
0407.00.00	Bird's eggs, in shell, fresh, preserved or cooked	0	0
2309.90.10	Preparation of a kind used in animal feeding – other	0	0

ANNEX III

Table 13
Chile: 1997 Imports from Canada of Products Subject to Phase Out Longer than 10 years

HS Code	Description	Imports from Canada (\$US thousands)	% of Total Imports from Canada
0407.00.00	Bird's eggs, in shell, fresh, preserved or cooked	416	0.10
0710.10.00	Potatoes, frozen, uncooked/steamed boiled in water	16	0.00
0713.10.00	Dried leguminous vegetables, shelled, whether or not skinned or split	1697	0.39
1105.20.00	Potato Flakes	95	0.02
1601.00.00	Sausages and similar products, except those containing meat	123	0.03
2004.10.00	Potatoes, prepared or preserved o/t by vinegar or acetic acid, frozen	3245	0.75
0203.22.00	Hams, shoulders and cuts thereof; of swine, bone-in, frozen	99	0.02
0203.29.00	Swine spare ribs, frozen	999	0.23
0209.00.00	Pig fat lean meat free & poultry fat unrendered, fresh, chilled, frozen or cured	269	0.06
2710.00.10	Motor gasoline (including aviation spirits)	16	0.00
2710.00.63	Finished lubricated oil	152	0.04
2710.00.64	Lubricated oil	120	0.03
4012.20.00	Used, pneumatic tires	5	0.00
1001.90.00	Wheat nes and meslin	40335	9.33