WTO AGREEMENT IMPLEMENTATION ACT

DEPARTMENT OF FOREIGN AFFAIRS
AND INTERNATIONAL TRADE

WORLD TRADE ORGANIZATION AGREEMENT IMPLEMENTATION ACT

CLAUSE BY CLAUSE GUIDE TO BILL C-57

NOVEMBER 1994

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INTRODUCTION

This book is intended to provide a clause-by-clause guide to the bill entitled *An Act to Implement the Agreement Establishing the World Trade Organization*. The bill approves the Agreement signed by Canada, the other governments and the European Communities that participated in the Uruguay Round of Multilateral Trade Negotiations under the GATT on April 15, 1994, and makes the legislative changes required to give effect in Canadian law to the provisions of the World Trade Organization Agreement ("WTO Agreement").

The bulk of the bill consists of:

(a) amendments to various existing statutes, made necessary by the WTO Agreement provisions;

(b) Schedule I which contains Canadian tariff provisions, Schedules II and III which relate to the *Western Green Transportation Act*, and finally, Schedule IV which contains miscellaneous consequential amendments.

Clause-by-clause notes are not provided for any part of the schedule.

Under the Canadian constitution, the federal government has the exclusive authority to enter into international treaties, but legislation is needed to give them legal effect in domestic law.

The Bill does all that is immediately necessary, by way of legislation, to ensure that Canada's obligations under the WTO Agreement will have been met by January 1, 1995.

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PREAMBLE

CLAUSES 1 TO 7

An Act to implement the Agreement Establishing the World Trade Organization

Preamble

WHEREAS the Government of Canada together with the other governments and the European Communities that participated in the Uruguay Round of Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade (herein referred to as GATT) have entered into the Agreement Establishing the World Trade Organization;

WHEREAS free, fair and open trade is essential for the future of the Canadian economy and for securing the competitiveness and long-term sustainable development of Canada;

WHEREAS trade expansion contributes to job creation, achieves higher standards of living, offers greater choices for consumers and strengthens the Canadian economic union;

WHEREAS the multilateral trading system of mutually agreed upon market access conditions and non-discriminatory trade rules applicable to all, is the cornerstone of Canadian trade policy;

WHEREAS the trade agreements achieved under the Uruguay Round of Multilateral Trade Negotiations under the GATT will lead to a significantly more open and stable international trading environment for Canadian agriculture, resources, manufacturing, services, technology and investment;

WHEREAS the World Trade Organization will provide for integrated management of the new and strengthened multilateral trading system, particularly for the resolution of trade disputes;

WHEREAS the World Trade Organization, as successor to the GATT, will also provide the forum for future trade negotiations aimed at furthering trade liberalization world-wide and the development of new global trade rules;

AND WHEREAS it is necessary, in order to give effect to the Agreement, to make related or consequential amendments to certain Acts;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Loi portant mise en oeuvre de l'Accord instituant l'Organisation mondiale du commerce

Préambule

Attendu :

que le gouvernement du Canada conjointement avec les autres gouvernements et la Communauté européenne qui ont participé aux négociations commerciales multilatérales du cycle d'Uruguay menées sous l'égide du GATT — Accord général sur les tarifs douaniers et le commerce — ont conclu l'Accord instituant l'Organisation mondiale du commerce;

que le commerce doit être libre, équitable et ouvert pour garantir l'avenir de l'économie canadienne et pour assurer la compétitivité et le développement durable à long terme du Canada;

que l'expansion du commerce contribue à la création d'emplois, rehausse le niveau de vie, permet d'offrir de meilleurs choix aux consommateurs et renforce l'union économique canadienne;

qu'un régime commercial multilatéral basé sur des conditions d'accès aux marchés mutuellement convenues et sur des règles commerciales non discriminatoires applicables à tous est la pierre angulaire de la politique commerciale canadienne;

que les accords commerciaux issus des négociations commerciales multilatérales du cycle d'Uruguay créeront un environnement commercial international beaucoup plus ouvert et stable pour l'agriculture, les ressources, le secteur manufacturier, les services, la technologie et l'investissement canadiens;

que l'Organisation mondiale du commerce (OMC) permettra la gestion intégrée du nouveau système renforcé de commerce multilatéral, notamment en ce qui a trait au règlement des différends commerciaux;

que l'OMC, successeur du GATT, servira également de forum pour les futures négociations commerciales destinées à poursuivre la libéralisation des échanges à l'échelle planétaire et à établir de nouvelles règles commerciales mondiales;

qu'il est nécessaire, pour donner effet à l'Accord, d'apporter des modifications connexes à certaines lois,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

PREAMBLE

CLAUSES 1 TO 7

Preamble

The Preamble expresses the Canadian political will underlying the World Trade Organization Agreement. It sets out the reasons which led Canada to enter into the Agreement and explains the role of the World Trade Organization. Finally, it provides that it is necessary, in order to give effect to the Agreement, to amend a number of Acts.

SHORT TITLE

Short title

1. This Act may be cited as the *World Trade Organization Agreement Implementation Act.*

TITRE ABRÉGÉ

Titre abrégé

1. *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce.*

INTERPRETATION

Definitions

2. (1) In this Act,

"Agreement" means the Agreement Establishing the World Trade Organization, including

(*a*) the agreements set out in Annexes 1A, 1B, 1C, 2 and 3 to that Agreement, and

(*b*) the agreements set out in Annex 4 to that Agreement that have been accepted by Canada,

all forming an integral part of the Final Act Embodying The Results Of The Uruguay Round Of Multilateral Trade Negotiations, signed at Marrakesh on April 15, 1994;

"Agreement" «*Accord*»

"federal law" means the whole or any portion of any Act of Parliament or any regulation, order or other instrument issued, made or established in the exercise of a power conferred by or under an Act of Parliament;

"federal law" «*texte législatif fédéral*»

"Minister", in respect of any provision of this Act, means the member of the Queen's Privy Council for Canada designated as the Minister for the purposes of that provision under section 9;

"Minister" «*ministre*»

"World Trade Organization" means the World Trade Organization established by Article I of the Agreement;

"World Trade Organization" «*Organisation mondiale du commerce*»

"WTO Member" means a Member of the World Trade Organization.

"WTO Member" «*membre de l'OMC*»

(2) The Agreement shall be published in the *Canada Treaty Series.*

Publication of Agreement

DÉFINITIONS

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

« Accord » L'Accord instituant l'Organisation mondiale du commerce — y compris les accords figurant à ses annexes 1A, 1B, 1C, 2 et 3, ainsi que, à l'annexe 4, les accords acceptés par le Canada —, le tout faisant partie intégrante de l'Acte final reprenant les résultats des négociations commerciales multilatérales du cycle d'Uruguay, signé à Marrakech le 15 avril 1994.

« Accord » *"Agreement"*

« membre de l'OMC » Membre de l'Organisation mondiale du commerce.

« membre de l'OMC » *"WTO Member"*

« ministre » Le membre du Conseil privé de la Reine pour le Canada chargé aux termes de l'article 9 de l'application de telle disposition de la présente loi.

« ministre » *"Minister"*

« Organisation mondiale du commerce » L'Organisation mondiale du commerce instituée par l'article I de l'Accord.

« Organisation mondiale du commerce » *"World Trade Organization"*

« texte législatif fédéral » Tout ou partie d'une loi fédérale ou d'un règlement, décret ou autre texte pris dans l'exercice d'un pouvoir conféré sous le régime d'une loi fédérale.

« texte législatif fédéral » *"federal law"*

(2) L'Accord est publié dans le *Recueil des traités du Canada.*

Publication de l'Accord

PURPOSE

Purpose

3. The purpose of this Act is to implement the Agreement.

OBJET

Objet

3. La présente loi a pour objet la mise en oeuvre de l'Accord.

HER MAJESTY

Binding on Her Majesty

4. This Act is binding on Her Majesty in right of Canada.

SA MAJESTÉ

Obligation de Sa Majesté

4. La présente loi lie Sa Majesté du chef du Canada.

Clause 1

Self-explanatory.

Clause 2

Sub-clause 1 contains a number of definitions of key terms applied throughout the Act.

The definition of "WTO Member" as meaning any member of the World Trade Organization is a generic one that will enable accession by other countries to be effected without the necessity of amending this *Act*.

Sub-clause 2 provides that the Agreement will be published in the *Canada Treaty Series*.

Clause 3

This clause serves as an expression of the Government's purpose in introducing this bill, namely to implement the Agreement.

Clause 4

In order for the Crown to be bound by an enactment, according to the interpretation given to section 17 of the *Interpretation Act* by the Supreme Court of Canada, the enactment must contain an express provision to that effect. Clause 4 provides that the Act binds Her Majesty in right of Canada, i.e. the federal government and its agents.

GENERAL

Prohibition of private cause of action under Part I

5. No person has any cause of action and no proceedings of any kind shall be taken, without the consent of the Attorney General of Canada, to enforce or determine any right or obligation that is claimed or arises solely under or by virtue of Part I or any order made under Part I.

Prohibition of private cause of action under Agreement

6. No person has any cause of action and no proceedings of any kind shall be taken, without the consent of the Attorney General of Canada, to enforce or determine any right or obligation that is claimed or arises solely under or by virtue of the Agreement.

Non-application of Agreement to water

7. (1) For greater certainty, nothing in this Act or the Agreement, except the Canadian Schedule to the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the Agreement, applies to water.

Definition of "water"

(2) In this section, "water" means natural surface and ground water in liquid, gaseous or solid state, but does not include water packaged as a beverage or in tanks.

DISPOSITIONS GÉNÉRALES

Restriction du droit d'action : partie I

5. Le droit de poursuite, relativement aux droits et obligations uniquement fondés sur la partie I ou ses décrets d'application, ne peut être exercé qu'avec le consentement du procureur général du Canada.

Restriction du droit d'action : Accord

6. Le droit de poursuite, relativement aux droits et obligations uniquement fondés sur l'Accord, ne peut être exercé qu'avec le consentement du procureur général du Canada.

Non-application de l'Accord aux eaux

7. (1) Il demeure entendu que ni la présente loi ni l'Accord, à l'exception de la Liste canadienne intégrée à l'Accord général sur les tarifs douaniers et le commerce de 1994 figurant à l'annexe 1A de l'Accord, ne s'appliquent aux eaux.

Définition de « eaux »

(2) Au présent article, « eaux » s'entend des eaux de surface ou souterraines naturelles, à l'état liquide, gazeux ou solide, à l'exclusion de l'eau mise en emballage comme boisson ou en citerne.

Clause 5

The purpose of clause 5 is to prevent a private party from bringing a civil action based on a power or duty arising from Part I of the bill, without the consent of the Attorney General of Canada. This will prevent lawsuits brought by private parties against federal and provincial legislative or administrative bodies. However, an action brought to force an administrative authority to respect a duty or obligation imposed on it by Part II of the bill would not be prevented.

Clause 6

The purpose of this clause is to prevent a private party from bringing a civil action based on a power or duty arising from the Agreement, without the consent of the Attorney General of Canada. This will prevent lawsuits brought by private parties against federal and provincial legislative or administrative bodies.

Clause 7

This clause tracks the *FTA Implementation Act* provision added by the Legislative Committee of the House of Commons and a similar clause in the *NAFTA Implementation Act* to make it clear that large-scale transfers of water are not part of the World Trade Organization Agreement or the *Act.*

Sub-clause 7(1) establishes for greater certainty that nothing in the *Act* or Agreement applies to water as defined, except the Canadian Schedule to the General Agreement on Tariffs and Trade 1994 set out in Annex IA to the Agreement. The reference to that list is intended to ensure that the commitment to remove tariffs on all goods imported into Canada will not be inadvertently affected by clause 6.

Sub-clause 7(2) defines water. It recognizes that water that is packaged as a beverage or in tanks *is* covered by the Agreement.

C

PART I: IMPLEMENTATION OF THE AGREEMENT GENERALLY

CLAUSES 8 - 13

PART I: IMPLEMENTATION OF THE AGREEMENT GENERALLY

CLAUSES 8 - 13

General Comments

This Part is the result of the obligation, created under Articles XIV (2) *Acceptance, Entry into Force and Deposit* and XVI (4) *Miscellaneous Provisions* of the Agreement, to take the steps required to implement the Agreement Establishing the World Trade Organization.

PART I

IMPLEMENTATION OF AGREEMENT GENERALLY

Approval of Agreement

Agreement approved

8. The Agreement is hereby approved.

Designation of Minister

Order designating Minister

9. The Governor in Council may, by order, designate any member of the Queen's Privy Council for Canada to be the Minister for the purposes of any provision of this Act.

World Trade Organization

Ministerial Conference

10. The Governor in Council may appoint any member of the Queen's Privy Council for Canada to be the representative of Canada in respect of the Ministerial Conference established under Article IV of the Agreement.

Committees and bodies

11. The Minister may appoint any person to be the representative of Canada on any committee, council or body, other than the Ministerial Conference referred to in section 10, that is or may be established under the Agreement.

Payment of expenditures

12. The Government of Canada shall pay its appropriate share of the aggregate of any expenditures incurred by or on behalf of the World Trade Organization.

PARTIE I

MISE EN OEUVRE DE L'ACCORD

Approbation de l'Accord

Approbation

8. L'Accord est approuvé.

Désignation du ministre

Désignation du ministre

9. Le gouverneur en conseil peut, par décret, désigner tout membre du Conseil privé de la Reine pour le Canada à titre de ministre chargé de l'application de telle disposition de la présente loi.

Organisation mondiale du commerce

Conférence ministérielle

10. Le gouverneur en conseil peut nommer tout membre du Conseil privé de la Reine pour le Canada à titre de représentant du Canada à la Conférence ministérielle établie par l'article IV de l'Accord.

Nomination aux comités

11. Le ministre peut nommer les représentants du Canada aux comités, conseils et autres organes — à l'exception de la Conférence ministérielle visée à l'article 10 — constitués, ou à l'être, aux termes de l'Accord.

Paiement des frais

12. Le gouvernement du Canada paie sa quote-part du total des frais supportés par l'Organisation mondiale du commerce ou en son nom.

Clause 8

This section is a standard clause of general approval of an international agreement by Parliament, without directly giving it the force of law in domestic law.

Clause 9

The purpose of this clause is simply to authorize the Governor in Council to appoint a responsible Minister for the purposes of administration of the *Act*.

Clause 10

Article IV of the Agreement provides for the creation of a Ministerial Conference responsible for carrying out the functions of the WTO and taking actions necessary to this effect. This section authorizes the Governor in Council to appoint a member of Cabinet as a Canadian representative for the Ministerial Conference.

Clause 11

The purpose of this clause is to specify that, other than the representative of Canada in respect of the Ministerial Conference who has to be appointed by the Governor in Council, the Minister is the person who has the authority to appoint representatives of Canada on any other committee, council or body.

Clause 12

This clause provides the legislative authority required for payment of the Canadian share of expenses related to the World Trade Organization.

Orders

Orders re suspension of concessions

13. (1) The Governor in Council may, for the purpose of suspending in accordance with the Agreement the application to a WTO Member of concessions or obligations of equivalent effect pursuant to Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes set out in Annex 2 to the Agreement, by order, do any one or more of the following:

(*a*) suspend rights or privileges granted by Canada to that Member or to goods, service providers, suppliers, investors or investments of that Member under the Agreement or any federal law;

(*b*) modify or suspend the application of any federal law with respect to that Member or to goods, service providers, suppliers, investors or investments of that Member;

(*c*) extend the application of any federal law to that Member or to goods, service providers, suppliers, investors or investments of that Member; and

(*d*) take any other measure that the Governor in Council considers necessary.

Suspension of concessions to non-WTO Members

(2) The Governor in Council may, with respect to a country that is not a WTO Member, by order, do any one or more of the following:

(*a*) suspend rights or privileges granted by Canada to that country or to goods, service providers, suppliers, investors or investments of that country under any federal law;

(*b*) modify or suspend the application of any federal law with respect to that country or to goods, service providers, suppliers, investors or investments of that country;

(*c*) extend the application of any federal law to that country or to goods, service providers, suppliers, investors or investments of that country; and

(*d*) take any other measure that the Governor in Council considers necessary.

Period of order

(3) Unless repealed, an order made under subsection (1) or (2) shall have effect for such period as is specified in the order.

Definition of "country".

(4) In this section, "country" includes any state or separate customs territory that may, under the Agreement, become a WTO Member.

Décrets

Décrets : suspension de concessions

13. (1) Le gouverneur en conseil peut par décret, en vue de suspendre conformément à l'Accord — aux termes de l'article 22 du Mémorandum d'accord sur les règles et procédures régissant le règlement des différends figurant à l'annexe 2 de l'Accord — l'application à un membre de l'OMC de concessions ou d'obligations dont l'effet est équivalent :

a) suspendre les droits ou privilèges que le Canada a accordés à ce membre ou à des produits, prestataires de services, fournisseurs, investisseurs ou investissements de celui-ci en vertu de l'Accord ou d'un texte législatif fédéral;

b) modifier ou suspendre l'application d'un texte législatif fédéral à ce membre ou à des produits, prestataires de services, fournisseurs, investisseurs ou investissements de celui-ci;

c) étendre l'application d'un texte législatif fédéral à ce membre ou à des produits, prestataires de services, fournisseurs, investisseurs ou investissements de celui-ci;

d) prendre toute autre mesure qu'il estime nécessaire.

Suspension de concessions aux pays non-membres de l'OMC

(2) Le gouverneur en conseil peut par décret, en ce qui concerne un pays qui n'est pas membre de l'OMC :

a) suspendre les droits ou privilèges que le Canada a accordés à ce pays ou à des produits, prestataires de services, fournisseurs, investisseurs ou investissements de celui-ci en vertu d'un texte législatif fédéral;

b) modifier ou suspendre l'application d'un texte législatif fédéral à ce pays ou à des produits, prestataires de services, fournisseurs, investisseurs ou investissements de celui-ci;

c) étendre l'application d'un texte législatif fédéral à ce pays ou à des produits, prestataires de services, fournisseurs, investisseurs ou investissements de celui-ci;

d) prendre toute autre mesure qu'il estime nécessaire.

Durée d'application

(3) Un décret pris en vertu des paragraphes (1) ou (2) s'applique, sauf révocation, pendant la période qui y est spécifiée.

Définition de « pays »

(4) Pour l'application du présent article, sont compris parmi les pays les États et les territoires douaniers distincts qui peuvent, aux termes de l'Accord, devenir membres de l'OMC.

Clause 13

Sub-clause 13 (1) sets forth special cases where the Governor in Council has the power to suspend the concessions granted to a WTO member pursuant to Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes set out in Annex 2 to the Agreement.

Sub-clause 13 (2) gives the same powers to the Governor in Council with respect to non-WTO members.

Sub-clause 13 (3) is self explanatory.

Sub-clause 13 (4) specifies that in section 13, "country" also means any state or separate custom territory that may, under the Agreement, become a WTO member.

D

PART II: RELATED AND CONSEQUENTIAL AMENDMENTS

1

E

BANK ACT

CLAUSES 14 - 26

BANK ACT

CLAUSES 14 - 26

Overview

The *Bank Act* regulates banking in Canada. The Act contains comprehensive rules regarding the incorporation, ownership, powers and regulatory supervision of banks. Of particular importance to the *World Trade Organization Agreement Implementation Act* is the fact that the *Bank Act* contains numerous limitations on the ability of non-residents to own banks. In addition there are limits on the share of the Canadian market that can be occupied by foreign bank subsidiaries; i.e. banks incorporated under Schedule II of the *Bank Act* that are controlled by foreign banks.

WTO Commitments

Pursuant to the General Agreement on Trade in Services, which is one of the agreements that made up the WTO Agreement, Canada made a number of commitments in the area of financial services. Chief among these were the commitments to provide WTO members with national treatment and most-favoured-nation treatment. National treatment means providing to financial institutions owned by non-Canadians and to non-Canadian investors in financial institutions the same treatment as provided to Canadian owned institutions or to Canadian investors in financial institutions. Most-favoured-nation treatment means providing to financial institutions owned by WTO members and to WTO investors the same treatment as provided to institutions owned by residents of any other country or provided to investors from any other country.

It should be noted that in our Schedule to the General Agreement on Trade in Services we reserved the rule that a foreign bank subsidiary, other than a NAFTA country foreign bank subsidiary, must receive the approval of the Minister of Finance for each branch it opens in addition to its head office and one branch. The reservation means that we do not have to change this rule despite the fact that it does not accord national treatment when compared with the treatment given to Canadian controlled banks and despite the fact that it does not accord most-favoured-nation treatment when compared to the treatment given to our NAFTA partners.

Summary of the Amendments

These amendments implement national treatment and most-favoured-nation treatment by doing three things: the removal of the 10/25 ownership constraints on non-residents; the

1993, c. 44, s. 29

26. Subsections 508(2.1) to (3) of the Act are replaced by the following:

Accessing accounts

(3) Nothing in subsection (1) shall be construed as prohibiting a foreign bank from entering into any arrangement with one or more Canadian financial institutions whereby customers of the foreign bank who are natural persons who are not ordinarily resident in Canada may access in Canada their accounts located outside Canada through the use of automated banking machines located in Canada and operated by the Canadian financial institution or institutions.

1993, ch. 44, art. 29

26. Les paragraphes 508(2.1) à (3) de la même loi sont remplacés par ce qui suit :

Accès aux comptes

(3) Le paragraphe (1) n'a pas pour effet d'interdire à la banque étrangère de conclure, avec une ou plusieurs institutions financières canadiennes, une entente permettant à ceux de ses clients qui sont des personnes physiques ne résidant pas habituellement au Canada d'avoir accès à leurs comptes situés à l'étranger grâce à des guichets automatiques situés au Canada et exploités par cette ou ces institutions.

Section 422.3 imposes these rules on non-NAFTA country foreign bank subsidiaries. Sections 423 and 424 imposed these rules with respect to non-United States foreign bank subsidiaries and were suspended by section 423.4 as enacted pursuant to the *North American Free Trade Agreement Implementation Act*. The repeal of these sections involves both the elimination of the rules themselves and the exception to those rules for either NAFTA country foreign bank subsidiaries or United States foreign bank subsidiaries, as the case may be.

Clause 26 - Replacement of sections 508(2.1) to (3)

Foreign banks, as opposed to foreign bank subsidiaries, are generally prohibited from carrying on banking business in Canada. Subsections 508(2.1) to (3) is an exception to this general prohibition. It allows a foreign bank to service its customers who are natural persons and non-residents by allowing such customers to access their accounts through automated banking machines located in Canada. This can occur if the foreign bank enters an arrangement with one or more Canadian financial institutions with respect to using automated banking machines operated by such institutions.

Because of the way "non-resident" has been defined for purposes of the ownership constraints, we have always had to clarify in this provision that we meant to include U.S. residents and NAFTA country residents, as the case may be, as being included as non-residents who could benefit from this provision. As the definition of "non-resident" is being deleted we now need only refer to a natural person who is not ordinarily resident in Canada. Thus we can substitute this phrase and repeal subsection 508(3) which made the clarification with respect to NAFTA country residents, subsection (2.1) which suspended the U.S. resident clarification while NAFTA was in force and subsection (3) which is the clarification specific to U.S. residents.

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CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

CLAUSES 27 - 47

CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

CLAUSES 27 - 47

Overview

The *Canadian International Trade Tribunal Act (CITT Act)*, proclaimed in September 1988, established the Canadian International Trade Tribunal (CITT), an independent quasi-judicial body which reports to Parliament through the Minister of Finance. The Tribunal, which began operations on January 1, 1989, assumed responsibility for all of the trade remedy inquiry, and customs duties and excise tax appeal, functions of the Tariff Board, the Canadian Import Tribunal and the Textile and Clothing Board. In 1993, the Tribunal also assumed responsibility for the functions of the Procurement Review Board.

WTO Commitments

GATT/WTO Article XIX permits a Contracting Party to adopt a temporary "safeguard" measure such as a surtax, to protect domestic producers from increased imports which are causing, or threatening to cause, serious injury. The *WTO Agreement on Safeguards* clarifies and strengthens the rights and obligations associated with recourse to safeguard measures. It should be noted that the Agreement does not apply to textile and clothing products which have not yet been integrated into the GATT/WTO framework pursuant to the Agreement on Textiles and Clothing, or to agricultural goods subject to import measures which have been converted to tariffs pursuant to the *Agreement on Agriculture*.

The following provides a synopsis of the key provisions of the *WTO Agreement on Safeguards*.

Article 1 is a general provision establishing rules for the application of safeguard measures.

Article 2 sets out the conditions under which a WTO member may take a safeguard action; specifically, if a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive goods.

Article 3 requires that, prior to taking a safeguard action, a member ensure that an investigation is conducted by its competent authority, in a transparent manner accessible to all interested parties, and that it publish a report of its findings. The Canadian International Trade Tribunal is the competent Canadian authority.

Article 4 defines "serious injury", "threat of serious injury" and "domestic industry". It also sets out the factors to be considered by the competent authority in its investigation. A positive injury determination can only be made if there is a causal link between increased imports of a good and serious injury or threat thereof to the domestic producers.

Article 5 limits the application of a safeguard measure only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. It also sets out conditions pertaining to the use of a quantitative restriction as a safeguard measure, i.e., that the quota be set at a level not less than the average quantity of imports in the last three representative years. If the quota is allocated among supplying countries, the member taking the action may seek agreement on allocation with all other members having an interest in supplying the product concerned or, if not practicable, allot the shares on a proportional basis. A member may depart from this rule if it is able to justify to the WTO Committee on Safeguards that circumstances warrant such departure.

Article 6 permits in critical circumstances, a provisional safeguard measure to be adopted for a period not exceeding 200 days. Any such measure must be in the form of a tariff increase. It is required that, during the 200 day period, the competent authority must conduct an inquiry and all usual requirements for implementing a safeguard measure must be met. If a safeguard measure is deemed to be necessary, the duration of the provisional measure must be counted as part of the total period of application of the safeguard (i.e., the initial period and any extension thereto, as set out in Article 7). If a safeguard measure is not deemed necessary, the provisional surtax must be promptly reimbursed.

Article 7 contains provisions relating to the duration, review and extension of safeguard measures. Any safeguard measure cannot exceed four years unless it is extended following an inquiry by the competent authority. The total period of application of a measure for a particular product (including any extensions) may not exceed eight years. A measure may only be extended where it is determined that it continues to be necessary to prevent or remedy serious injury, and there is evidence that the industry is adjusting.

If a safeguard measure is of a duration exceeding one year, it must be progressively liberalized at regular intervals. If it is of a duration exceeding three years, it must be reviewed by the mid-term in order to determine whether it should be maintained, withdrawn or liberalized. Except in limited circumstances, a lapsed safeguard measure may not be re-applied until a period equal to the greater of two years or the duration of the previous measure has passed.

Article 8 obliges a member taking a safeguard measure to endeavour to maintain a substantially equivalent level of trade concessions with exporting members affected by the measure. Such equivalent concessions may take the form of reduced duties on products of interest to the exporting member(s) and shall be negotiated between interested members. If no agreement is reached on concessions, the affected members will be allowed to exercise their right to retaliate (by suspending the application of substantially equivalent concessions) only after the third year of the measure.

Article 9 provides that products originating from developing countries shall not be subject to safeguard measures unless their import share exceeds the levels established in the Agreement. Furthermore, it allows developing country members to apply safeguard measures for up to 10 years (compared to 8 years for other members) and more frequently, subject to certain conditions.

Article 10 stipulates that safeguard measures in place at the time of the entry into force of the WTO must be terminated not later than eight years after the date they were first applied or five years after the entry into force of the WTO Agreement.

Article 11 prohibits the use of "grey area measures" such as voluntary export restraints and orderly marketing arrangements. It also requires the elimination of existing measures within four years after the entry into force of the WTO Agreement, although each member may notify the WTO Committee on Safeguards within the first 90 days of its intention to keep one measure in place until December 31, 1999, if affected members agree.

Article 12 provides for the notification of safeguard measures to the WTO Committee on Safeguards, and consultations with affected members.

Article 13 establishes the WTO Committee on Safeguards.

Article 14 extends the dispute settlement provisions of the WTO to consultations and disputes arising under the *Agreement on Safeguards*.

Summary

Clauses 27 to 47 make a number of amendments to the CITT Act to implement Canada's obligations under the *WTO Agreement on Safeguards*, the *WTO Agreement on Government Procurement*, the *WTO Agreement on Subsidies and Countervailing Measures* and the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*. The amendments mainly pertain to the *WTO Agreement on Safeguards*, in particular to provide authority for the CITT to conduct mid-term reviews of safeguard measures and to conduct inquiries into whether a measure should be extended. It should be noted that the implementation of Canada's obligations under the *WTO Agreement on Safeguards* also requires changes to the *Customs Tariff* and the *Export and Import Permits Act*.

27. Subsection 2(1) of the *Canadian International Trade Tribunal Act* is amended by adding the following in alphabetical order:

"serious injury" « *dommage grave* »

"serious injury", in relation to domestic producers of like or directly competitive goods, means a significant overall impairment in the position of the domestic producers;

"threat of serious injury" « *menace de dommage grave* »

"threat of serious injury" means serious injury that, on the basis of facts, and not merely of allegation, conjecture or remote possibility, is clearly imminent;

"World Trade Organization Agreement" « *Accord sur l'Organisation mondiale du commerce* »

"World Trade Organization Agreement" has the meaning given to the word "Agreement" in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

27. Le paragraphe 2(1) de la *Loi sur le Tribunal canadien du commerce extérieur* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« Accord sur l'Organisation mondiale du commerce » *World Trade Organization Agreement*

« Accord sur l'Organisation mondiale du commerce » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

« dommage grave » *serious injury*

« dommage grave » Tout dommage causant une dégradation générale notable de la situation des producteurs nationaux de marchandises similaires ou directement concurrentes.

« menace de dommage grave » *threat of serious injury*

« menace de dommage grave » Vise un dommage grave dont l'imminence évidente est fondée sur des faits et non pas seulement sur des allégations, des conjectures ou de lointaines possibilités.

1993, c. 44, s. 34

28. Section 13 of the Act is replaced by the following:

1993, ch. 44, art. 34

28. L'article 13 de la même loi est remplacé par ce qui suit :

Quorum, etc.

13. Subject to subsections 30.11(3), 38(2) and 39(2) and the regulations, three members constitute a quorum of the Tribunal and any three or more members have and may exercise all of the Tribunal's powers and have and may perform all of the Tribunal's duties and functions.

Quorum, etc.

13. Sous réserve des paragraphes 30.11(3), 38(2) et 39(2) et des règlements, le quorum est constitué de trois membres, lesquels peuvent exercer toutes les attributions du Tribunal.

29. Paragraph 16(*b*) of the Act is replaced by the following:

(*a*.1) conduct mid-term reviews under section 19.02 and report on the reviews;

(*b*) consider complaints and extension requests filed with the Tribunal by domestic producers of like or directly competitive goods under this Act and, where appropriate, conduct inquiries into the complaints and extension requests and report on them;

29. L'alinéa 16*b*) de la même loi est remplacé par ce qui suit :

a.1) de procéder aux examens visés à l'article 19.02 et faire rapport sur ceux-ci;

b) d'étudier les plaintes et les demandes de prorogation déposées sous le régime de la présente loi par les producteurs nationaux de marchandises similaires ou directement concurrentes et, s'il y a lieu, d'enquêter et de faire rapport à leur égard;

Clause 27

Clause 27 adds definitions of "serious injury", "threat of serious injury" and "World Trade Organization Agreement" to **subsection 2(1)** of the Act. The first two definitions are necessary to implement Article 4 of the *Agreement on Safeguards*. The definition of "World Trade Organization Agreement" reflects, for the purposes of the CITT Act, the definition provided in the *World Trade Organization Agreement Implementation Act*.

Clause 28

Clause 28 replaces **section 13** of the Act to provide, as a consequence of the increased workload that the Tribunal may face in light of the WTO commitments, that the Tribunal's three member quorum rule may be changed in certain instances as permitted pursuant to the regulations.

Clause 29

Clause 29 replaces and amends **paragraph 16(b)** of the Act and expands the powers and duties of the Tribunal to permit it to conduct the new requirements for mid-term reviews of safeguard measures and extension inquiries pursuant to Article 7 of the *WTO Agreement on Safeguards*. Mid-term reviews are required if a measure is of a duration exceeding three years. A safeguard measure may only be extended where it is determined, following an inquiry by the competent authority, that it continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting.

Paragraph (a.1) provides authority for the Tribunal to conduct mid-term reviews pursuant to new section 19.02 of the Act.

Paragraph (b) provides authority for the Tribunal to consider and report on requests for extensions of safeguard measures.

30. The headings before section 18 of the Act are replaced by the following:

INQUIRIES AND REVIEWS

References and Mid-Term Reviews

1993, c. 44, s. 36

31. Subsection 19.01(1) of the Act is replaced by the following:

Definition of "principal cause"

19.01 (1) In this section and sections 20 and 20.01, "principal cause" means, in respect of a serious injury or threat thereof, an important cause that is no less important than any other cause of the serious injury or threat.

32. The Act is amended by adding the following after section 19.01:

Mid-term review

19.02 (1) Where an order made under subsection 59.1(1), (8) or (11) of the *Customs Tariff* or subsection 5(3), (3.2) or (4.01) of the *Export and Import Permits Act* specifies that it remains in effect for a period of more than three years, the Tribunal shall, before the mid-point of the period,

(*a*) review developments since the order was made respecting the goods that are subject to the order and like or directly competitive goods produced by domestic producers;

(*b*) in light of the review, prepare a report on the developments and provide advice

on whether the order should remain in effect, be revoked or be amended; and

(*c*) submit a copy of the report to the Governor in Council and the Minister.

Notice of report

(2) Where the Tribunal has prepared a report on a review pursuant to subsection (1), it shall cause notice of the report

(*a*) to be given to each other interested party; and

(*b*) to be published in the *Canada Gazette*.

33. Paragraph 20(*a*) of the Act is replaced by the following:

(*a*) the importation of goods into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods, or

30. Les intertitres précédant l'article 18 de la même loi sont remplacés par ce qui suit :

ENQUÊTES ET EXAMENS

Saisine et examens

31. Le paragraphe 19.01(1) de la même loi est remplacé par ce qui suit :

1993, ch. 44, art. 36

Définition de « cause principale »

19.01 (1) Au présent article et aux articles 20 et 20.01, « cause principale » s'entend de toute cause sérieuse dont l'importance est égale ou supérieure à celle des autres causes du dommage grave ou de la menace d'un tel dommage.

32. La même loi est modifiée par adjonction, après l'article 19.01, de ce qui suit :

Examen

19.02 (1) Lorsque le décret pris en vertu des paragraphes 59.1(1), (8) ou (11) du *Tarif des douanes* ou des paragraphes 5(3), (3.2) ou (4.01) de la *Loi sur les licences d'exportation et d'importation* à l'égard de marchandises prévoit une période d'application de plus de trois ans, le Tribunal, avant l'expiration de la moitié de la période, d'une part, examine les développements survenus, depuis la prise du décret, relativement aux marchandises visées par celui-ci et aux marchandises similaires ou directement concurrentes produites par des producteurs nationaux et, d'autre part, établit un rapport sur ces développements et donne son avis sur le maintien, la révocation ou la modification du décret; il transmet le rapport au gouverneur en conseil et au ministre.

Publication d'avis

(2) Le Tribunal fait publier avis du rapport dans la *Gazette du Canada* et en avise les autres intéressés.

33. L'alinéa 20*a*) de la même loi est remplacé par ce qui suit :

a) l'importation de marchandises en quantité tellement accrue et dans des conditions telles que leur importation constitue une cause principale de dommage grave porté aux producteurs nationaux de marchandises similaires ou directement concurrentes, ou de la menace d'un tel dommage;

Clause 30

Clause 30 changes the headings before **section 18** from "Inquiries" to "Inquiries and Reviews" and from "References" to "References and Mid-Term Reviews" to reflect the Tribunal's new mid-term review mandate established under new section 19.02.

Clause 31

Clause 31 amends **subsection 19.01(1)** to make section 20 (inquiries undertaken at the request of the Governor in Council) subject to the definition of "principal cause". This is necessary to comply with Article 4.2(b) of the *Agreement on Safeguards* which requires that, for a safeguard measure to be taken, there must be a causal link between increased imports and serious injury or threat thereof.

Clause 32

Clause 32 provides a new authority for the Tribunal to conduct and report on mid-term reviews of safeguard measures of a duration exceeding three years, as required by Article 7.4 of the *Agreement on Safeguards*.

Subsection 19.02(1) provides that, where an Order in Council implementing a surtax under the *Customs Tariff* or a quantitative restriction under the *Export and Import Permits Act* is of a duration exceeding three years, the Tribunal must undertake a review before the mid-term of the measure.

Paragraph 19.02(1)(a) directs the Tribunal to review developments since the Order in Council was made.

Paragraph 19.02(1)(b) directs the Tribunal to prepare a report on the developments and provide advice on whether the Order the Council should remain in effect, be revoked or amended.

Paragraph 19.02(1)(c) directs the Tribunal to submit a copy of its report to the Governor in Council and the Minister of Finance.

Subsection 19.02(2) directs the Tribunal, once it has prepared a report, to notify interested parties and to publish a notice of the report in the *Canada Gazette*.

Clause 33

Clause 33 replaces **paragraph 20(a)** of the Act to bring the wording of the provision, which permits the Governor in Council to direct the Tribunal to conduct safeguard inquiries, into conformity with the requirements of Article 2.1 of the *Agreement on Safeguards*. Specifically, the internationally agreed and defined standard of "serious injury or threat thereof to domestic producers of like or directly competitive goods" replaces "injury to, or that may retard the establishment of, the production of any goods in Canada".

1993, c. 44, s. 37

34. Subsection 20.01(3) of the Act is replaced by the following:

Idem

(2.1) In an inquiry under section 30.07 into goods imported from a NAFTA country conducted pursuant to an extension request, the Tribunal shall determine in respect of each NAFTA country

(*a*) whether the quantity of the goods imported from the NAFTA country accounts for a substantial share of total imports of goods of the same kind; and

(*b*) whether the goods imported from the NAFTA country alone or, in exceptional circumstances, together with the goods of the same kind imported from each other NAFTA country, contribute importantly to serious injury, or threat thereof, to domestic producers of like or directly competitive goods.

Considerations

(3) In making a determination under this section, the Tribunal shall take fully into account paragraph 2 of Article 802 of the Agreement.

1993, c. 44, s. 38

35. Subsection 20.2(2) of the Act is replaced by the following:

Determinations

(2) In the case of an inquiry to which section 20.01 applies, the Tribunal shall include in its report any determination made pursuant to that section.

36. (1) The portion of subsection 26(1) of the Act before paragraph (*a*) is replaced by the following:

Tribunal shall commence inquiry

26. (1) Subject to subsections (4) to (7), the Tribunal shall, within thirty days after the day on which notice is given to a complainant that the complaint is properly documented, commence an inquiry into the complaint if it is satisfied

(2) Section 26 of the Act is amended by adding the following after subsection (6):

Time limit on inquiry

(7) Where subsection 59.1(3.1) of the *Customs Tariff* or subsection 5(3.1) of the *Export and Import Permits Act* prohibits the making of an order pursuant to subsection 59.1(1) of the *Customs Tariff* or subsection 5(3) of the *Export and Import Permits Act* in respect of any goods during any period, the Tribunal may commence an inquiry into a complaint under subsection (1) in respect of the goods no earlier than one hundred and eighty days before the end of the period.

34. Le paragraphe 20.01(3) de la même loi est remplacé par ce qui suit :

1993, ch. 44, art. 37

Idem

(2.1) Quand une enquête est menée en vertu de l'article 30.07 relativement à des marchandises importées d'un pays ALÉNA, le Tribunal doit décider :

a) d'une part, si leur quantité représente une part substantielle du total des importations de marchandises du même genre;

b) d'autre part, si elles contribuent de manière importante, à elles seules ou, dans des circonstances exceptionnelles, avec celles du même genre importées des autres pays ALÉNA, au dommage grave porté aux producteurs nationaux de marchandises similaires ou directement concurrentes, ou à la menace d'un tel dommage.

Décisions

(3) Le Tribunal tient compte du paragraphe 2 de l'article 802 de l'Accord pour prendre les décisions visées aux paragraphes (2) ou (2.1).

35. Le paragraphe 20.2(2) de la même loi est remplacé par ce qui suit :

1993, ch. 44, art. 38

Mention des décisions

(2) Lorsque l'article 20.01 s'applique, le Tribunal inclut dans son rapport les décisions auxquelles il parvient en vertu de cet article.

36. (1) Le passage du paragraphe 26(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Ouverture de l'enquête

26. (1) Sous réserve des paragraphes (4) à (7), le Tribunal, dans les trente jours suivant la date de la notification au plaignant d'une décision positive, ouvre une enquête sur la plainte, s'il est convaincu :

(2) L'article 26 de la même loi est modifié par adjonction, après le paragraphe (6), de ce qui suit :

Délai pour ouvrir une enquête

(7) Lorsque, en raison du paragraphe 59.1(3.1) du *Tarif des douanes* ou du paragraphe 5(3.1) de la *Loi sur les licences d'exportation et d'importation*, le décret visé au paragraphe 5(3) de cette loi ou au paragraphe 59.1(1) du *Tarif des douanes* ne peut être pris, pendant une période donnée, à l'égard de marchandises, le Tribunal peut ouvrir l'enquête prévue au paragraphe (1) au plus tôt dans les cent quatre-vingts jours précédant la fin de la période en question.

Clause 34

Clause 34 replaces **subsection 20.01(3)** in order to comply with our obligations under the *North American Free Trade Agreement (NAFTA)*. Under these obligations, the extension of a global safeguard measure cannot be applied to goods originating in NAFTA parties unless the conditions set out in Article 802 of the NAFTA are met. Article 802 of the NAFTA requires that goods from a NAFTA party be excluded from a global safeguard measure if imports are not substantial or if they do not contribute importantly to the serious injury or threat thereof.

Subsection 20.01(2.1) provides that, where the Tribunal conducts an extension inquiry under section 30.07 of the Act, it shall determine whether

a) the quantity of goods imported from each NAFTA country accounts for a substantial share of total imports of goods of the same kind; and

b) the quantity of goods imported from a NAFTA country alone or, in exceptional circumstances, together contribute importantly to the serious injury or threat thereof.

Subsection 20.01(3) is a consequential amendment to apply Article 802.2 of the NAFTA to the extension inquiry process. Article 802.2 of NAFTA defines the terms "substantial" and "contribute importantly". To be considered "substantial", a Party must be among the top five suppliers of the imported good, measured in terms of import share during the most recent three year period. Imports from a Party do not "contribute importantly" to serious injury or threat thereof if the growth rate of imports from that Party during the period in which the injurious import surge occurred is appreciably lower than the growth rate of imports from all sources over the same period.

Clause 35

Clause 35 makes a consequential (re-numbering) amendment to **subsection 20.2(2)** to replace "subsection 20.01(2)" with "section 20.01". The requirement, that the Tribunal include its determination regarding NAFTA goods in any report made under section 18, 19, 19.01 or 20 of the Act, remains unchanged.

Clause 36

Clause 36 amends **section 26** of the Act to implement Article 7.5 of the *Agreement on Safeguards* which prohibits the re-application of a lapsed safeguard measure on a good unless the prescribed time limits have passed, i.e., either the duration of the previous measure or two years, whichever is longer.

Subsection 26(1) is a consequential amendment to exempt the Tribunal from commencing an inquiry into a complaint if the good is subject to the provisions of subsection 26(7).

Subsection 26(7) is a new provision to ensure that, when subsection 59.1(3.1) of the *Customs Tariff* or subsection 5(3.1) of the *Export and Import Permits Act* prohibits the imposition of a surtax or quantitative restriction for any period, the Tribunal will not commence an inquiry to re-apply a safeguard measure earlier than 180 days before the end of the applicable period.

1993, c. 44, s. 44

37. Subsection 30.01(2) of the Act is replaced by the following:

Filing of surge complaint

(2) A written complaint may be filed with the Tribunal where

(*a*) any goods are subject to a surtax under subsection 59.1(1) or (8) of the *Customs Tariff* or are included on the Import Control List pursuant to subsection 5(3) or (3.2) of the *Export and Import Permits Act*; and

(*b*) the surtax or inclusion does not apply to or include goods imported from a NAFTA country on the basis of a determination made under subsection 20.01(2) or (2.1) of this Act.

Allegations

(2.1) The complaint must allege that a surge of imports of goods imported from a NAFTA country undermines the effectiveness of the surtax or the inclusion of the goods on the Import Control List.

Who must file complaint

(2.2) The complaint must be filed by a domestic producer of like or directly competitive goods, or a person or association acting on behalf of any such domestic producer.

1993, ch. 44, art. 44

37. Le paragraphe 30.01(2) de la même loi est remplacé par ce qui suit :

Dépôt d'une plainte — augmentation subite

(2) Il peut être déposé une plainte écrite auprès du Tribunal lorsque :

a) d'une part, des marchandises sont assujetties à une surtaxe en vertu des paragraphes 59.1(1) ou (8) du *Tarif des douanes* ou sont inscrites sur la liste des marchandises d'importation contrôlée conformément aux paragraphes 5(3) ou (3.2) de la *Loi sur les licences d'exportation et d'importation*;

b) d'autre part, la surtaxe ou l'inscription ne s'applique pas aux marchandises importées de pays ALÉNA par suite d'une décision prise conformément aux paragraphes 20.01(2) ou (2.1).

Allégations

(2.1) La plainte doit faire état du fait que l'augmentation subite de l'importation de marchandises de pays ALÉNA diminue l'efficacité de la surtaxe ou de l'inscription.

Plaignant

(2.2) La plainte ne peut être déposée que par un producteur de marchandises similaires ou directement concurrentes ou par toute personne ou association le représentant.

Clause 37

Clause 37 replaces **subsection 30.01(2)** which allows any domestic producer of goods subject to a global action (whether a tariff surcharge imposed under section 59.1(1) or 59.1(8) of the *Customs Tariff* or a quantitative restriction imposed under subsection 5(3) or 5(3.2) of the *Export and Import Permits Act*) but which does not apply to NAFTA goods, to file a complaint that a surge (a significant increase in imports compared to a recent representative period) of NAFTA goods is undermining the effectiveness of the safeguard measure.

Subsection 30.01(2) has been redrafted to divide the section into subsections 30.01(2), (2.1) and (2.2).

Paragraph 30.01(2)(a) adds the reference to subsection 59.1(8) of the *Customs Tariff* (Order in Council extending a safeguard surtax) and subsection 5(3.2) of the *Export and Import Permits Act* (inclusion on the Import Control List) so that a surge complaint can be filed on goods subject to an extended safeguard measure.

Paragraph 30.01(2)(b) provides that surge complaints may only be filed in respect of NAFTA goods that were excluded from the application of the global safeguard measure as a result of the application of the test prescribed in Article 802 of the NAFTA during an initial inquiry conducted under subsection 20.01(2) or an extension inquiry conducted under new subsection 20.01(2.1).

Subsection 30.01(2.1) requires that the complaint allege that a surge of goods imported from a NAFTA country is undermining the effectiveness of the safeguard measure.

Subsection 30.01(2.2) requires the complaint to be filed either by a domestic producer, or by a person or association acting on behalf of a domestic producer, of like or directly competitive goods.

38. The Act is amended by adding the following after section 30.01:

EXTENSION INQUIRIES

Definition of "extension request"

30.02 In sections 30.03 to 30.09, "extension request" means a written request filed with the Tribunal under section 30.04.

Notice of expiring orders

30.03 (1) The Tribunal shall cause to be published in the *Canada Gazette* a notice of the expiration date of any order that imposes a surtax on any goods pursuant to subsection 59.1(1), (8) or (11) of the *Customs Tariff* or includes any goods on the Import Control List pursuant to subsection 5(3), (3.2) or (4.01) of the *Export and Import Permits Act*, but no notice shall be published if

(*a*) the order is revoked or ceases to have effect pursuant to subsection 59.1(4), (5), (6), (8.4) or (9) of the *Customs Tariff* or subsection 5(4.04) of the *Export and Import Permits Act* before the expiration of the effective period specified in the order; or

(*b*) the total of the effective period specified in the order and any periods during which the goods were subject to any related orders made pursuant to subsection 59.1(1), (8) or (11) of the *Customs Tariff* or subsection 5(3), (3.2) or (4.01) of the *Export and Import Permits Act* is eight years.

Manner and contents of publication

(2) The notice shall be published in accordance with the rules and shall state the final date for filing an extension request in respect of the order.

Filing of request relating to extension orders

30.04 (1) Any domestic producer of goods that are like or directly competitive with any goods that are subject to an order referred to in subsection 30.03(1), or any person or association acting on behalf of any such domestic producer, may file with the Tribunal a written request that an extension order be made pursuant to subsection 59.1(8) of the *Customs Tariff* or subsection 5(3.2) of the *Export and Import Permits Act* because an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods.

Time limit for filing extension request

(2) An extension request shall be filed no later than the final date for filing specified in the notice published pursuant to subsection 30.03(2).

Receipt to be acknowledged

(3) The Tribunal shall, forthwith after receipt of an extension request, notify the requester in writing of its receipt and the date of its receipt.

38. La même loi est modifiée par adjonction, après l'article 30.01, de ce qui suit :

DEMANDE DE PROROGATION

Définition de « demande de prorogation »

30.02 Aux articles 30.03 à 30.09, « demande de prorogation » désigne la demande écrite déposée auprès du Tribunal en vertu de l'article 30.04.

Publication d'avis

30.03 (1) En cas de prise d'un décret assujettissant des marchandises à la surtaxe visée aux paragraphes 59.1(1), (8) ou (11) du *Tarif des douanes* ou les portant sur la liste des marchandises d'importation contrôlée en application des paragraphes 5(3), (3.2) ou (4.01) de la *Loi sur les licences d'exportation et d'importation*, le Tribunal publie, dans la *Gazette du Canada*, un avis mentionnant la date d'expiration prévue par le décret; il ne doit toutefois pas le faire lorsque :

a) soit le décret a cessé de s'appliquer avant cette date en raison des paragraphes 59.1(4), (5), (6), (8.4) ou (9) du *Tarif des douanes* ou du paragraphe 5(4.04) de la *Loi sur les licences d'exportation et d'importation*;

b) soit la période spécifiée dans le décret et les périodes pendant lesquelles la surtaxe ou l'inscription a été en vigueur, par suite des décrets pris en vertu des paragraphes 59.1(1), (8) ou (11) du *Tarif des douanes* ou des paragraphes 5(3), (3.2) ou (4.01) de la *Loi sur les licences d'exportation et d'importation*, totalisent huit ans.

Modalités de publication

(2) L'avis doit être publié selon les règles du Tribunal et préciser la date limite de dépôt d'une demande de prorogation.

Dépôt d'une demande de prorogation

30.04 (1) Le producteur de marchandises similaires ou faisant directement concurrence à des marchandises auxquelles s'applique le décret visé au paragraphe 30.03(1), de même que toute personne ou association le représentant, peut déposer auprès du Tribunal une demande écrite visant à obtenir la prise du décret visé au paragraphe 59.1(8) du *Tarif des douanes* ou au paragraphe 5(3.2) de la *Loi sur les licences d'exportation et d'importation* parce qu'un décret continue d'être nécessaire pour éviter qu'un dommage grave ne soit causé aux producteurs nationaux de marchandises similaires ou directement concurrentes, ou pour réparer un tel dommage.

Délai de dépôt

(2) La demande doit être déposée au plus tard le jour mentionné dans l'avis visé au paragraphe 30.03(2).

Accusé de réception

(3) Le Tribunal accuse, sans délai et par écrit, réception de la demande auprès de son auteur et lui en précise la date.

Clause 38

Clause 38 adds **sections 30.02 to 30.09** to establish procedures for the new extension inquiry process. These sections are necessary to implement Articles 2, 3, 4, 5 and 7.2 of the *Agreement on Safeguards*.

These sections (30.02 to 30.09) are modeled on, i.e., effectively parallel, the procedures currently prescribed in the Act for initial "complaint based" safeguard inquiries.

Section 30.02 defines "extension request" as a written request filed with the Tribunal under section 30.04.

Subsection 30.03(1) requires the Tribunal to publish in the *Canada Gazette* a notice of the expiration date of any order imposing a surtax under subsection 59.1(1), (8) or (11) of the *Customs Tariff* or including the goods on the Import Control List under subsection 5(3), (3.2) or (4.01) of the *Export and Import Permits Act*.

Paragraph 30.03(1)(a) provides that the Tribunal need not publish notice if the order has been revoked or ceases to have effect before the expiration date specified in the order.

Paragraph 30.03(1)(b) provides that no Tribunal notice is required if the total effective period of the safeguard measure is eight years (the maximum period allowed by Article 7.3 of the *Agreement on Safeguards*).

Subsection 30.03(2) requires the notice of expiration to be published in accordance with the Canadian International Trade Tribunal Rules and to state the final date for filing an extension request.

Subsection 30.04(1) permits any domestic producer of like or directly competitive goods, or any person or association acting on behalf of any such domestic producer, to file a request with the Tribunal that a safeguard measure be extended to prevent or remedy serious injury.

Subsection 30.04(2) requires that an extension request be filed no later than the date specified in the Tribunal's notice published in the *Canada Gazette* pursuant to subsection 30.03(2).

Subsection 30.04(3) requires the Tribunal to notify the requester of the receipt, and date of receipt, of the extension request.

Contents of extension request

30.05 (1) An extension request shall

(*a*) state in reasonable detail the facts on which it is based;

(*b*) state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by the domestic producers by whom or on whose behalf the extension request is filed; and

(*c*) make such other representations as the requester deems relevant to the matter.

Teneur

30.05 (1) La demande de prorogation doit énoncer les faits sur lesquels elle se fonde et comporter une estimation du pourcentage, par rapport à la production canadienne de marchandises similaires ou directement concurrentes, de celle des producteurs nationaux qui ont déposé la demande ou de ceux qu'ils représentent, ainsi que toute autre observation jugée utile en l'espèce par le demandeur.

Accompanying information

(2) An extension request shall be accompanied by

(*a*) such information as is available to the requester to prove the facts referred to in paragraph (1)(*a*) and to substantiate the estimate referred to in paragraph (1)(*b*); and

(*b*) such other information as may be required by the rules.

Renseignements à l'appui

(2) Le dossier de la demande doit en outre comporter les renseignements ou documents dont dispose le demandeur et qui sont de nature à prouver ses allégations et à étayer l'estimation du pourcentage, ainsi que tous les autres renseignements exigibles en application des règles du Tribunal.

Request for additional information

30.06 (1) Within twenty-one days after receiving an extension request, the Tribunal may, by notice in writing, ask the requester to provide such additional information as the Tribunal considers necessary for the request to be properly documented.

Complément d'information

30.06 (1) Le Tribunal peut, dans les vingt et un jours suivant la date de la réception de la demande de prorogation, demander par écrit au demandeur de lui fournir le complément d'information qu'il estime nécessaire pour compléter le dossier.

Tribunal shall determine if complaint is properly documented

(2) The Tribunal shall determine whether an extension request is properly documented within twenty-one days after receiving the request or, where the Tribunal has asked the requester to provide additional information pursuant to subsection (1), within twenty-one days after receiving the additional information.

Recevabilité de la demande

(2) Dans les vingt et un jours suivant la réception de la demande ou, le cas échéant, du complément d'information demandé, le Tribunal décide si le dossier de la demande est complet ou non.

Notice where request properly documented

(3) Where the Tribunal determines that an extension request is properly documented, it shall forthwith

(*a*) notify the requester in writing that the request is properly documented; and

(*b*) notify each other interested party in writing that it has received the request and that the request is properly documented.

Décision positive

(3) Dans le cas d'une décision positive, le Tribunal la notifie sans délai au demandeur ainsi qu'aux autres intéressés.

Notice where request not properly documented

(4) Where the Tribunal determines that an extension request is not properly documented, it shall forthwith notify the requester in writing that the request is not properly documented and of its reasons for so concluding.

Décision négative

(4) Dans le cas contraire, il notifie sans délai sa décision motivée au demandeur seulement.

Paragraph 30.05(1)(a) requires that an extension request indicate the facts on which it is based.

Paragraph 30.05(1)(b) requires that an extension request to provide an estimate of the total percentage of Canadian production produced by those making the request.

Paragraph 30.05(1)(c) allows the extension request to include other information that the requester deems relevant.

Paragraph 30.05(2)(a) requires that the information substantiating the case be included in the extension request.

Paragraph 30.05(2)(b) requires the request to include other information as may be specified in the Tribunal's rules.

Subsection 30.06(1) allows the Tribunal, within 21 days after receiving an extension request, to write to the requester to ask for additional information in order for the request to be properly documented.

Subsection 30.06(2) requires the Tribunal to determine whether an extension request is properly documented within 21 days of receipt of the request or within 21 days of receipt of additional information as may be requested by the Tribunal pursuant to subsection 30.06(1).

Paragraphs 30.06(3)(a) and **30.06 (3)(b)** require the Tribunal, where a request is properly documented, to notify the requester and each interested party that the request is properly documented.

Subsection 30.06(4) provides that, if the Tribunal determines that a request is not properly documented, the Tribunal shall notify the requester of its decision and its reasons.

Inquiries into extension requests

30.07 (1) The Tribunal shall commence an inquiry into an extension request within thirty days after notice is given to the requester that the extension request is properly documented if the Tribunal is satisfied

(*a*) that the information provided by the requester and any other information examined by the Tribunal discloses a reasonable indication that an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods; and

(*b*) that the extension request is made by or on behalf of domestic producers who produce a major proportion of domestic production of the like or directly competitive goods.

Ouverture de l'enquête

30.07 (1) Le Tribunal ouvre, dans les trente jours suivant la date de la notification au demandeur du fait que le dossier est complet, une enquête sur la demande de prorogation s'il est convaincu :

a) que les renseignements et documents fournis par le demandeur ou en provenance d'autres sources indiquent de façon raisonnable qu'un décret continue d'être nécessaire pour éviter qu'un dommage grave ne soit causé aux producteurs nationaux de marchandises similaires ou directement concurrentes, ou pour réparer un tel dommage;

b) que la demande est présentée par les producteurs nationaux d'une part importante des marchandises similaires ou directement concurrentes produites au Canada, ou en leur nom.

Notice of decision

(2) Where the Tribunal decides to commence an inquiry into an extension request under subsection (1), it shall forthwith

(*a*) notify the requester and each other interested party in writing of its decision, of the reasons for its decision and of the date on which any hearing in the inquiry shall commence;

(*b*) cause a notice of its decision and the date on which any hearing in the inquiry shall commence to be published in the *Canada Gazette*; and

(*c*) send to the Minister a copy of its decision, a copy of the request and the information accompanying the request and a copy of any other relevant information examined by the Tribunal in relation to the request.

Notification de la décision : ouverture d'enquête

(2) Le Tribunal, sans délai, notifie au demandeur et aux autres intéressés sa décision motivée d'ouvrir une enquête et la date du début de l'audience; il en fait publier avis dans la *Gazette du Canada* et transmet au ministre le texte de sa décision et de la demande, ainsi que les documents et renseignements pertinents à l'appui de celle-ci obtenus du demandeur ou d'autres sources.

Idem

(3) Where the Tribunal decides not to commence an inquiry into an extension request under subsection (1), it shall forthwith

(*a*) notify the requester and each other interested party in writing of its decision and of the reasons for its refusal to commence an inquiry and, where the reasons for its decision are based in whole or in part on information that was obtained from a source other than the requester, of the fact that the decision was based in whole or in part on such information; and

(*b*) cause a notice of its decision to be published in the *Canada Gazette*.

Notification de la décision : absence d'enquête

(3) Le Tribunal, sans délai, notifie au demandeur et aux autres intéressés sa décision de ne pas tenir d'enquête et les motifs à son soutien dont, le cas échéant, le fait que des renseignements ou documents obtenus d'une autre source que le demandeur ont été considérés, et en fait publier avis dans la *Gazette du Canada*.

Subsection 30.07(1) requires the Tribunal, once the requester is notified that an extension request is properly documented, to commence an inquiry within 30 calendar days if it is satisfied that there is a reasonable indication that an order continues to be necessary to prevent or remedy serious injury to domestic producers and that the extension request is made by or on behalf of the majority of domestic producers of like or directly competitive goods.

Paragraph 30.07(2)(a) requires the Tribunal, once it decides to commence an extension inquiry, to notify the requester and other interested parties of its decision and of the date on which any hearing shall commence.

Paragraph 30.07(2)(b) requires the Tribunal to publish a notice of its decision and the date of any hearing in the *Canada Gazette*.

Paragraph 30.07(2)(c) requires the Tribunal to send the Minister of Finance a copy of its decision, as well as a copy of the request and the supporting information.

Subsection 30.07(3) requires the Tribunal, if it decides not to commence an extension inquiry, to notify the requester and other interested parties of this decision, the reasons for the decision and whether the decision was taken on the basis of information not provided by the requester. The Tribunal must also publish a notice of the decision in the *Canada Gazette*.

Continuing necessity of order

30.08 (1) The Tribunal shall, in an inquiry into an extension request, determine whether

(*a*) an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods; and

(*b*) there is evidence that the domestic producers of like or directly competitive goods are adjusting, as determined in accordance with any regulations made under paragraph 40(*b*).

Other matters

(2) The Tribunal shall, in an inquiry into an extension request, examine any other matter in relation to the extension request that the Governor in Council refers to it for examination.

Report on extension inquiry

30.09 (1) Not later than forty-five days before the expiration date of the order to which an inquiry under subsection 30.07(1) relates, the Tribunal shall prepare a report on the inquiry and submit a copy of it to the Governor in Council, the Minister, the requester and any other person who made representations to the Tribunal during the inquiry.

Notice of report

(2) Where the Tribunal has prepared a report on an inquiry pursuant to subsection (1), it shall cause notice of the report

(*a*) to be given to each other interested party; and

(*b*) to be published in the *Canada Gazette*.

Tabling of report in certain cases

(3) Where, pursuant to subsection 30.08(2), the Governor in Council refers a matter to the Tribunal for examination in an inquiry into an extension request, the Minister shall cause a copy of the report on the inquiry to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is submitted to the Governor in Council.

Objet de l'enquête

30.08 (1) L'objet de l'enquête visée à l'article 30.07 est de déterminer si, d'une part, un décret continue d'être nécessaire pour éviter qu'un dommage grave ne soit causé aux producteurs nationaux de marchandises similaires ou directement concurrentes, ou pour réparer un tel dommage, et, d'autre part, il existe des éléments de preuve selon lesquels ceux-ci procèdent à des ajustements, selon les règlements pris en vertu de l'alinéa 40*b*).

Autres questions

(2) Au cours de l'enquête, le Tribunal étudie les questions connexes dont le saisit le gouverneur en conseil.

Rapport d'enquête

30.09 (1) Au plus tard quarante-cinq jours avant la date d'expiration du décret visé par l'enquête menée en vertu du paragraphe 30.07(1), le Tribunal établit un rapport qu'il transmet au gouverneur en conseil, au ministre, au demandeur et à quiconque lui a présenté des observations au cours de l'enquête.

Publication d'avis

(2) Le Tribunal fait publier avis du rapport dans la *Gazette du Canada* et en avise les autres intéressés.

Dépôt au Parlement

(3) Le ministre dépose le rapport établi par le Tribunal à la suite de la saisine visée au paragraphe 30.08(2) devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant la transmission du rapport au gouverneur en conseil.

Subsection 30.08(1) directs the Tribunal to determine whether a safeguard measure continues to be necessary to prevent or remedy serious injury to domestic producers and whether there is evidence that domestic producers are adjusting, in accordance with any regulations made under paragraph 40(b).

Subsection 30.08(2), in relation to an extension inquiry, directs the Tribunal to examine any other matter referred to it by the Governor in Council.

Subsection 30.09(1) requires the Tribunal, not later than 45 days before the expiration date of the safeguard order, to prepare a report on the extension inquiry and submit a copy to the Governor in Council, the Minister of Finance, the requester and any other person who made representations to the Tribunal during the inquiry.

Subsection 30.09(2) requires the Tribunal to give notice of its report to other interested parties and to publish a notice of its report in the *Canada Gazette*.

Where the Governor in Council refers a matter to the Tribunal for examination in an extension inquiry, **subsection 30.09(3)** requires the Minister of Finance to table the report in Parliament on any of the first 15 days on which the House is sitting after the report is submitted to the Governor in Council.

1993, c. 44, s. 44

39. The definition "potential supplier" in section 30.1 of the Act is replaced by the following:

"potential supplier" means, subject to any regulations made under paragraph 40(*f*.1), a bidder or prospective bidder on a designated contract;

"potential supplier" «*fournisseur potentiel*»

39. La définition de « fournisseur potentiel », à l'article 30.1 de la même loi, est remplacée par ce qui suit :

« fournisseur potentiel » Sous réserve des règlements pris en vertu de l'alinéa 40*f*.1), tout soumissionnaire — même potentiel — d'un contrat spécifique.

« fournisseur potentiel » "potential supplier"

1993, c. 44, s. 44

40. Subsection 30.11(3) of the English version of the Act is replaced by the following:

(3) The Chairman may assign one member of the Tribunal to deal with a complaint and a member so assigned has and may exercise all of the Tribunal's powers, and has and may perform all of the Tribunal's duties and functions, in relation to the complaint.

Chairman may assign member

40. Le paragraphe 30.11(3) de la version anglaise de la même loi est remplacé par ce qui suit :

(3) The Chairman may assign one member of the Tribunal to deal with a complaint and a member so assigned has and may exercise all of the Tribunal's powers, and has and may perform all of the Tribunal's duties and functions, in relation to the complaint.

Chairman may assign member

1993, ch. 44, art. 44

1993, c. 44, s. 45

41. Paragraph 39(1)(*c*) of the Act is replaced by the following:

(*c*) specifying any additional information that shall accompany a complaint filed under any of subsections 23(1) to (1.1), 30.01(2) and 30.11(1) or an extension request filed under subsection 30.04(1); and

41. L'alinéa 39(1)*c*) de la même loi est remplacé par ce qui suit :

c) préciser le complément d'information à fournir à l'occasion d'une plainte fondée sur les paragraphes 23(1) à (1.1), 30.01(2) et 30.11(1) ou d'une demande de prorogation déposée en vertu du paragraphe 30.04(1);

1993, ch. 44, art. 45

1993, c. 44, s. 46

42. (1) Paragraphs 40(*a*) to (*c*) of the Act are replaced by the following:

(*a*) respecting the matters to be addressed or examined by the Tribunal in an inquiry commenced under this Act;

(*a*.1) respecting the number of members that constitute a quorum for the purposes of

(i) hearing, determining and dealing with appeals referred to in paragraph 16(*c*),

(ii) conducting inquiries and reporting on matters referred to the Tribunal pursuant to section 18 or 19, or

(iii) reviewing and reporting on developments and providing advice pursuant to section 19.02;

(*b*) defining the expressions "domestic production" and "like or directly competitive goods" for the purposes of this Act and providing factors for determining under this Act whether domestic producers of like or directly competitive goods are adjusting;

(*c*) defining the expression "other interested party" for the purposes of any provision of this Act;

42. (1) Les alinéas 40*a*) à *c*) de la même loi sont remplacés par ce qui suit :

a) prévoir les questions à aborder par le Tribunal au cours des enquêtes ouvertes sous le régime de la présente loi;

a.1) régir la constitution du quorum pour soit statuer sur les appels visés à l'alinéa 16*c*), soit procéder à des enquêtes et faire rapport sur les questions dont le Tribunal est saisi en application des articles 18 ou 19, soit aux termes de l'article 19.02, examiner les développements survenus et faire rapport à leur égard, et donner son avis;

b) pour l'application de la présente loi, définir les termes « production nationale » et « marchandises similaires ou directement concurrentes » et établir des critères permettant de déterminer si les producteurs nationaux de marchandises similaires ou directement concurrentes procèdent à des ajustements;

c) définir « autres intéressés » pour l'application de toute disposition de la présente loi;

1993, ch. 44, art. 46

(2) Section 40 is amended by adding the following after paragraph (*f*):

(*f*.1) determining, for the purposes of sections 30.1 to 30.19, whether a bidder or potential bidder on a designated contract has standing to be a potential supplier;

(2) L'article 40 de la même loi est modifié par adjonction, après l'alinéa *f*), de ce qui suit :

f.1) déterminer, pour l'application des articles 30.1 à 30.19, la qualité de fournisseur potentiel;

Clause 39

Sections 30.1 to 30.19 of the Act set out the functions of the Tribunal regarding complaints relating to the government procurement process. Clause 39 amends the definition of "potential supplier" found in **section 30.1** of the Act to make it subject to any regulations which may be made under paragraph 40(f.1) to define and limit the potential suppliers who will have standing to bring a complaint under the Act's bid challenge procedures. This amendment is required to implement our obligations under the *WTO Agreement on Government Procurement*.

Clause 40

Clause 40 is a technical amendment to **subsection 30.11(3)** to change "President" to "Chairman" to make the provision consistent with the terminology used in other provisions of the Act.

Clause 41

Clause 41 amends **paragraph 39(1)(c)** to add extension requests to the list of matters for which the Tribunal may specify in its Rules that additional information must be provided.

Clause 42

Paragraph 40(a) provides the Governor in Council with authority to make regulations respecting matters to be addressed or examined by the Tribunal in any inquiry under the Act.

Paragraph 40(a.1) provides the Governor in Council with authority to make regulations respecting the number of members that constitute a quorum for the purpose of hearing appeals under the *Customs Act* or the *Excise Tax Act*, for conducting inquiries and reporting on matters referred to the Tribunal under section 18 and 19 of the Act and for conducting mid-term reviews pursuant to section 19.02 of the Act. (see Clause 28).

Paragraph 40(b) provides the Governor in Council with authority to make regulations respecting factors to be taken into account in determining whether domestic producers are adjusting.. A determination of whether the industry is adjusting is required in extension inquiries (Article 7.2 of the Agreement on Safeguards).

Paragraph 40(c) provides the Governor in Council with authority to make regulations defining "other interested party" for the purposes of any provision of the Act.

Paragraph 40(f.1), which relates to procurement complaints, authorizes the Governor in Council to make regulations defining the standing requirements to be met before a potential supplier may bring a bid challenge under the provisions of the Act. This amendment is required to implement our obligations under the *WTO Agreement on Government Procurement*. (see Clause 39).

46. The French version of the Act is amended by replacing the word "préjudice" with the word "dommage" in the following provisions:

(*a*) subsections 19.01(2) and (3);

(*b*) paragraph 20(*b*);

(*c*) subsection 20.01(2);

(*d*) subsections 23(1) to (1.02);

(*e*) subparagraphs 26(1)(*a*)(i) to (i.2);

(*f*) subsection 26(4);

(*g*) paragraphs 27(1)(*a*) to (*a*.2);

(*h*) subsection 27(2); and

(*i*) subsection 28(1).

47. The French version of the Act is amended by replacing the word "dommage" with the word "préjudice" in the following provisions:

(*a*) subsection 23(1.03);

(*b*) subparagraph 26(1)(*a*)(i.3); and

(*c*) paragraph 27(1)(*a*.3).

46. Dans les passages suivants de la version française de la même loi, « préjudice » est remplacé par « dommage » :

a) les paragraphes 19.01(2) et (3);

b) l'alinéa 20*b*);

c) le paragraphe 20.01(2);

d) les paragraphes 23(1) à (1.02);

e) les sous-alinéas 26(1)*a*)(i) à (i.2);

f) le paragraphe 26(4);

g) les alinéas 27(1)*a*) à *a*.2);

h) le paragraphe 27(2);

i) le paragraphe 28(1).

47. Dans les passages suivants de la version française de la même loi, « dommage » est remplacé par « préjudice » :

a) le paragraphe 23(1.03);

b) le sous-alinéa 26(1)*a*)(i.3);

c) l'alinéa 27(1)*a*.3).

Clause 46

Clause 46 amends the French version of the Act to replace the word "préjudice" with the word "dommage". This is necessary to harmonize the French version of the Act with the French terminology used in the WTO Agreements.

Clause 47

Clause 47 amends the French version of the Act to replace the word "dommage" with the word "préjudice". This is necessary to harmonize the French version of the Act with the French terminology used in the WTO *Agreement on Textiles and Clothing*.

CANADIAN WHEAT BOARD ACT

CLAUSES 48 - 49

CANADIAN WHEAT BOARD ACT

CLAUSES 48 - 49

Overview

The Canadian Wheat Board ("CWB") Act gives the Canadian Wheat Board a monopoly on the import and export trade in wheat, barley and their respective products except as otherwise specifically provided by regulations. The CWB Regulations permit the CWB to grant licenses for the importation into Canada of wheat, barley and their respective products upon conditions that such importation "does not adversely effect the marketing by the Board of grain grown in Canada".

WTO Agreement Commitments

Article 4.2 of the Agreement on Agriculture, a subsidiary agreement annexed to and forming part of the WTO Agreement requires WTO members to convert non-tariff barriers such as quantitative import restrictions and discretionary import licensing into ordinary customs tariffs. Canada must therefore replace its import permit restrictions on all imports of wheat, barley and their respective products with tariff equivalents. At the same time Canada must provide access commitments in the form of tariff rate quotas for all wheat, barley and their products.

Summary of the Amendments

Sections 45 and 46 of the CWB Act are amended by deleting references to importation. The specific amendments to sections 45 and 46 of the CWB Act are set out later in the clause by clause. Pursuant to these amendments, the CWB will no longer have a monopoly on the importation of wheat, barley and their respective products into Canada. The CWB's monopoly on the export trade in wheat, barley and their products is not affected.

Although sections 45 and 46 refer only to "wheat or wheat products", section 47 of the Act permits the Governor in Council to make a regulation extending the application of Part III (Interprovincial and Export Marketing of Wheat by the Board) and Part IV (Regulations of Interprovincial and Export Trade in Wheat) of the Act to barley. Section 9 of the CWB Regulations provides that Parts III and IV of the Act are extended to barley. Accordingly, the amendments to sections 45 and 46 are also applicable to barley and barley products.

48. Paragraph 45(*a*) of the *Canadian Wheat Board Act* is replaced by the following:

(*a*) export from Canada wheat or wheat products owned by a person other than the Board;

49. Paragraphs 46(*c*) and (*d*) of the Act are replaced by the following:

(*c*) to provide for the granting of licences for the export from Canada, or for the sale or purchase for delivery outside Canada, of wheat or wheat products, which export, sale or purchase is otherwise prohibited under this Part;

(*d*) to prescribe the terms and conditions on which licences described in paragraph (*c*) may be granted, including a requirement for the recovery from the applicant by the Board or any other person specified by the regulation, of a sum that, in the opinion of the Board, represents the pecuniary benefit enuring to the applicant pursuant to the granting of a licence, arising solely by reason of the prohibition of exports of wheat and wheat products without a licence and then existing differences between prices of wheat and wheat products inside and outside Canada;

48. L'alinéa 45*a*) de la *Loi sur la Commission canadienne du blé* est remplacé par ce qui suit :

a) exporter du blé ou des produits du blé appartenant à d'autres personnes;

49. Les alinéas 46*c*) et *d*) de la même loi sont remplacés par ce qui suit :

c) prévoir l'octroi de licences pour les opérations — exportation, vente ou achat pour livraison à l'étranger de blé ou de produits du blé — qui seraient par ailleurs interdites par la présente partie;

d) fixer les conditions applicables à cet octroi, y compris l'obligation pour la Commission ou la personne que désigne le règlement de recouvrer du demandeur une somme qui, de l'avis de la Commission, correspond à l'avantage pécuniaire que représente la licence, mais uniquement dans la mesure où cet avantage découle, d'une part, du fait que sans elle les exportations de blé et de produits du blé seraient interdites et, d'autre part, des différences existant à ce moment entre les prix intérieurs et extérieurs du blé et des produits du blé;

Clause 48

Clause 48 amends section 45(a) by deleting the words "or import into" from the phrase "export from or import into Canada". This amendment removes the import monopoly power from the Canadian Wheat Board.

Clause 49

Section 46 provides for the making of regulations regarding the importation and exportation of wheat and wheat products. Clause 49 amends section 46(c) by deleting the words "or import into" from the phrase "for the export from or import into Canada" and the word "import" from the phrase "which export, import, sale or purchase" and section 46(d) by deleting the words "imports or" from the phrase "the prohibition of imports or exports of wheat and wheat products". The amendments removes the import license requirements for the importation of wheat and wheat products.

COOPERATIVE CREDIT ASSOCIATIONS ACT

CLAUSES 50 - 55

COOPERATIVE CREDIT ASSOCIATIONS ACT

CLAUSES 50 - 55

Overview

The *Cooperative Credit Associations Act* regulates cooperative credit associations that are incorporated under the Act. The members of a cooperative credit association must be a number of cooperative credit societies not all of which are incorporated under the laws of one province. An association provides financial services to its members and thus essentially acts as the bank for the provincially incorporated cooperative credit societies that comprises its membership. There is currently one association incorporated under the Act; the Credit Union of Canada (formerly the Canadian Cooperative Credit Society). The Act contains comprehensive rules regarding the incorporation, ownership, powers and regulatory supervision of associations. Of particular importance to the *World Trade Organization Agreement Implementation Act* is the fact that the *Cooperative Credit Associations Act* contains limitations on the ability of non-residents to own associations.

WTO Commitments

Pursuant to the General Agreement on Trade in Services, which is one of the agreements that made up the WTO Agreements, Canada made a number of commitments in the area of financial services. Chief among these were the commitments to provide WTO members with national treatment and most-favoured-nation treatment. National treatment means providing to financial institutions owned by non-Canadians and to non-Canadian investors in financial institutions the same treatment as provided to Canadian owned institutions or to Canadian investors in financial institutions. Most-favoured -nation treatment means providing to financial institutions owned by WTO members and to WTO investors the same treatment as provided to institutions owned by residents of any other country or provided to investors from any other country.

Summary of the Amendments

These amendments implement national treatment and most-favoured-nation treatment by the removal of the 10/25 ownership constraints on non-residents and consequential amendments which remove ancillary rules designed to prevent avoidance of the 10/25 rules. There are also consequential amendments to other provisions that are needed because of the deletion of these rules.

50. Subsection 41(4) of the *Cooperative Credit Associations Act* is repealed.

50. Le paragraphe 41(4) de la *Loi sur les associations coopératives de crédit* est abrogé.

51. Paragraphs 170(*e*) and (*f*) of the Act are repealed.

51. Les alinéas 170*e*) et *f*) de la même loi sont abrogés.

52. (1) Paragraph 233(3)(*c*) of the Act is repealed.

(2) Paragraph 233(4)(*c*) of the English version of the Act is replaced by the following:

(*c*) with respect to any matter described in any of paragraphs (3)(*d*) to (*f*), two years.

52. (1) L'alinéa 233(3)*c*) de la même loi est abrogé.

(2) L'alinéa 233(4)*c*) de la version anglaise de la même loi est remplacé par ce qui suit :

(*c*) with respect to any matter described in any of paragraphs (3)(*d*) to (*f*), two years.

Clause 50 - Repeal of subsection 41(4)

The repeal of this subsection deletes the rule that a non-resident cannot be a member of an association where more than 25% of outstanding membership shares are held by non-residents or would be if that person became a member. This implements our national treatment obligation.

Clause 51 - Repeal of paragraphs 170(e) and (f)

Paragraphs 170(e) and (f) disqualify persons from being a director of an association if such persons or the entity of which the person is a director, officer or full-time employee holds shares of an association but is prohibited from voting them pursuant to sections 367. Section 367 is being repealed and thus these paragraphs are being repealed.

Clause 52 - Repeal of paragraph 233(3)(c) and amendment of paragraph 233(4)(c)

Repeal of 233(3)(c)

Paragraph 233(3)(c) grants the Governor in Council authority to allow associations to issue shares in respect of convertible securities that were outstanding on the day of the association's letters patent were issued despite the fact that the issuance of such voting shares might otherwise violate subsection 366(1). Subsection 366(1) is being repealed and thus there is no need for the Governor in Council to allow this as there is no impediment to such an issue of shares.

Amendment of 233(4)(c)

This amendment is consequential upon the amendment of paragraph 233(1)(c) as it is the deletion of the reference to that paragraph.

53. The Act is amended by adding the following after section 355:

Exception for small holdings

355.1 Notwithstanding section 355, where, as a result of a transfer or issue of shares of a class of shares of an association to a person, the total number of shares of that class registered in the securities register of the association in the name of that person

(*a*) would not exceed five thousand, and

(*b*) would not exceed 0.1 per cent of the outstanding shares of that class,

the association is entitled to assume that no person is acquiring or increasing a significant interest in that class of shares of the association as a result of that issue or transfer of shares.

53. La même loi est modifiée par adjonction, après l'article 355, de ce qui suit :

Exception

355.1 Par dérogation à l'article 378, si, après transfert ou émission d'actions d'une catégorie donnée à une personne, le nombre total d'actions de cette catégorie inscrites à son registre des valeurs mobilières au nom de cette personne n'excède pas cinq mille ni un dixième de un pour cent des actions en circulation de cette catégorie, l'association est en droit de présumer qu'il n'y a ni acquisition ni augmentation d'intérêt substantiel dans cette catégorie d'actions du fait du transfert ou de l'émission.

1991, c. 48, par. 497(*b*), (*c*); 1993, c. 44, s. 51

54. Division II of Part VIII of the Act is repealed.

54. La section II de la partie VIII de la même loi est abrogée.

1991, ch. 48, al. 497*b*) et *c*); 1993, ch. 44, art. 51

55. Section 373 of the Act is repealed.

55. L'article 373 de la même loi est abrogé.

Clause 53 - Exception for small holdings

The substance of this provision is currently found in section 373. Section 373 says that notwithstanding section 355 (an association cannot record a transfer of its shares that has not been approved by the Minister if the result is that the transferee has thereby acquired or increased a significant interest in a class of shares of the association) and paragraphs 366(1)(a) and (b) (an association cannot record a transfer of its shares if the result is that non-residents would thereby acquire or increase their interest in voting shares of the association to a percentage exceeding 25%) an association can assume that certain small transactions do not cause these rules to be violated. Thus, this is a *de minimis* rule.

As section 366 is being repealed it is necessary to remove the references to that provision. Given that the rule now only applies to section 355, this section is being moved as a convenience to the user of the statute so that it will appear immediately after the operative rule to which it applies.

Clause 54 - Repeal of Division II of Part VIII

Division II of Part VIII is the part of the Act which prohibits a non-residents from having more than a 10% interest in any class of voting shares of an association and prohibits non-residents as a group from having more than a 25% interest in any class of voting shares of an association (i.e. the "10/25" rules). The repeal of these provisions accords national treatment to non-residents.

Clause 55 - Repeal of section 373

Although the clause talks about the repeal of section 373, this clause has to be read in conjunction with clause 53. By reading the two clauses together one can see that what is happening is that the substance of section 373 is being moved to section 355.1 for the reasons described in the notes to clause 53.

COPYRIGHT ACT

CLAUSES 56 - 70

COPYRIGHT ACT

CLAUSES 56 - 70

Overview

The *Copyright Act* was adopted in 1924 and has undergone a number of amendments since then. Among them, the more significant ones are:

* Bill C-60, adopted in 1988, which brought in Phase I of copyright reform and introduced amendments confirming protection for moral rights and computer software programs and brought in a system of collective administration of rights;

* amendments made in implementing the Canada-U.S.A. Free Trade Agreement to add protection for retransmission of distant signals;

* Bill C-88, adopted in 1993, which expanded protection for performing rights respecting musical works;

* the North American Free Trade Agreement Implementation Act, enacted in 1993, which introduced extensive changes in the Copyright Act in order to bring it in line with the provisions of the Berne Convention at the level of the Paris Act, 1971.

Canada's major international treaty obligations are contained in the Berne Convention for the Protection of Literary and Artistic Works,to which Canada has acceded at the level of the Rome Act, 1928.

TRIPS Commitment

There are four major copyright obligations:

(1) compliance with the Berne Convention at the level of the Paris Act, 1971 (Article 9, TRIPS);

(2) extension of protection to nationals of WTO countries (Arts. 3 and 4, TRIPS);

(3) limited protection of the live performances of performers (Article 14, TRIPS);

(4) limited retrospective protection for works created and performances which take place before the WTO Agreement comes into force (Article 70(2), TRIPS).

The TRIPS text overlaps considerably with the NAFTA obligations which were implemented by amendments to the Copyright Act effective January 1, 1994.

(3) Section 2 of the Act is amended by adding the following in alphabetical order:

"performer's performance" means

(*a*) a live performance of a pre-existing artistic work, pre-existing dramatic work or pre-existing musical work, or a live recitation of a pre-existing literary work, whether or not the work was previously fixed in any material form, and whether or not the work's term of copyright protection under this Act has expired,

(*b*) a live reading of a pre-existing literary work, whether or not the work's term of copyright protection under this Act has expired, or

(*c*) a live improvisation of an artistic work, dramatic work, musical work or literary work, whether or not the improvised work is based on a pre-existing work,

but the references to artistic works in paragraphs (*a*) and (*c*) shall be read as applicable only in relation to the performer's sole right conferred by paragraph 14.01(1)(*c*) and the performer's sole right to authorize acts described in paragraph 14.01(1)(*c*);

"treaty country" means a Berne Convention country, UCC country or WTO Member;

"UCC country" means a country that is a party to the Universal Copyright Convention, adopted on September 6, 1952 in Geneva, Switzerland, or to that Convention as revised in Paris, France on July 24, 1971;

"WTO Member" means a Member of the World Trade Organization as defined in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

(4) Section 2 of the French version of the Act is amended by adding the following in alphabetical order:

« artiste interprète » Tout artiste interprète ou exécutant.

(3) L'article 2 de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« membre de l'OMC » Membre de l'Organisation mondiale du commerce au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

« pays partie à la Convention universelle » Pays partie à la Convention universelle sur le droit d'auteur, adoptée à Genève (Suisse) le 6 septembre 1952, ou dans sa version révisée à Paris (France) le 24 juillet 1971.

« pays signataire » Pays partie à la Convention de Berne ou à la Convention universelle ou membre de l'OMC.

« prestation » Selon le cas, que l'oeuvre soit ou non encore protégée ou — sauf pour la lecture — déjà fixée sous une forme matérielle quelconque :

a) l'exécution ou la représentation en direct d'une oeuvre artistique, dramatique ou musicale;

b) la récitation ou la lecture en direct d'une oeuvre littéraire;

c) l'improvisation artistique, dramatique, musicale ou littéraire en direct, inspirée ou non d'une oeuvre préexistante.

La présente définition ne vise les oeuvres artistiques qu'en ce qui touche la télécommunication prévue à l'alinéa 14.01(1)*c*) et l'autorisation par l'artiste interprète de celle-ci.

(4) L'article 2 de la version française de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« artiste interprète » Tout artiste interprète ou exécutant.

"performer's performance" « *prestation* »
"treaty country" « *pays signataire* »
"UCC country" « *pays partie à la Convention universelle* »
"WTO Member" « *membre de l'OMC* »
« artiste interprète » *French version only*

« membre de l'OMC » "*WTO Member*"
« pays partie à la Convention universelle » "*UCC country*"
« pays signataire » "*treaty country*"
« prestation » "*performer's performance*"
« artiste interprète » French version only

Sub-clause 56(3): This subclause adds to s. 2 of the Act the new definition of "performers' performance" which defines the subject matter to be protected by the new performers' rights created by the Bill. This definition is different than the definition of "performance" as it is meant to protect the live performance of works that are not fixed (such as folklore), as well as the live performance of works in the public domain. This definition applies solely with respect to the new performers' rights.

This subclause also adds to s. 2 the new definition of "treaty country", which will now include countries that are members of Berne, UCC or WTO. Moreover, rather than restating, when relevant, all three conventions throughout the Act, they are condensed into one shortened definition.

This subclause also adds to s. 2 the new definitions of "UCC country" and "WTO member". As the Act will now refer to three treaties, these definitions are meant to facilitate the differentiation between treaty members. Moreover, since some sections of the Bill do not refer to all three treaties, but specifically include only one or two of the three, these definitions facilitate the reference to particular treaties.

Sub-clause 56(4): This subclause adds to s. 2 of the French version of the Act the new definition of "artiste interprète", which serves to condense the term "artiste interprète ou exécutant", which is the French equivalent of "performer".

(3) Section 2 of the Act is amended by adding the following in alphabetical order:

"performer's performance" means

(*a*) a live performance of a pre-existing artistic work, pre-existing dramatic work or pre-existing musical work, or a live recitation of a pre-existing literary work, whether or not the work was previously fixed in any material form, and whether or not the work's term of copyright protection under this Act has expired,

(*b*) a live reading of a pre-existing literary work, whether or not the work's term of copyright protection under this Act has expired, or

(*c*) a live improvisation of an artistic work, dramatic work, musical work or literary work, whether or not the improvised work is based on a pre-existing work,

but the references to artistic works in paragraphs (*a*) and (*c*) shall be read as applicable only in relation to the performer's sole right conferred by paragraph 14.01(1)(*c*) and the performer's sole right to authorize acts described in paragraph 14.01(1)(*c*);

"treaty country" means a Berne Convention country, UCC country or WTO Member;

"UCC country" means a country that is a party to the Universal Copyright Convention, adopted on September 6, 1952 in Geneva, Switzerland, or to that Convention as revised in Paris, France on July 24, 1971;

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(4) Section 2 of the French version of the Act is amended by adding the following in alphabetical order:

« artiste interprète » Tout artiste interprète ou exécutant.

(3) L'article 2 de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« membre de l'OMC » Membre de l'Organisation mondiale du commerce au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

« pays partie à la Convention universelle » Pays partie à la Convention universelle sur le droit d'auteur, adoptée à Genève (Suisse) le 6 septembre 1952, ou dans sa version révisée à Paris (France) le 24 juillet 1971.

« pays signataire » Pays partie à la Convention de Berne ou à la Convention universelle ou membre de l'OMC.

« prestation » Selon le cas, que l'oeuvre soit ou non encore protégée ou — sauf pour la lecture — déjà fixée sous une forme matérielle quelconque :

a) l'exécution ou la représentation en direct d'une oeuvre artistique, dramatique ou musicale;

b) la récitation ou la lecture en direct d'une oeuvre littéraire;

c) l'improvisation artistique, dramatique, musicale ou littéraire en direct, inspirée ou non d'une oeuvre préexistante.

La présente définition ne vise les oeuvres artistiques qu'en ce qui touche la télécommunication prévue à l'alinéa 14.01(1)*c*) et l'autorisation par l'artiste interprète de celle-ci.

(4) L'article 2 de la version française de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« artiste interprète » Tout artiste interprète ou exécutant.

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"WTO Member" « *membre de l'OMC* »
« artiste interprète » *French version only*
« membre de l'OMC » "*WTO Member*"
« pays partie à la Convention universelle » "*UCC country*"
« pays signataire » "*treaty country*"
« prestation » "*performer's performance*"
« artiste interprète » French version only

Sub-clause 56(3): This subclause adds to s. 2 of the Act the new definition of "performers' performance" which defines the subject matter to be protected by the new performers' rights created by the Bill. This definition is different than the definition of "performance" as it is meant to protect the live performance of works that are not fixed (such as folklore), as well as the live performance of works in the public domain. This definition applies solely with respect to the new performers' rights.

This subclause also adds to s. 2 the new definition of "treaty country", which will now include countries that are members of Berne, UCC or WTO. Moreover, rather than restating, when relevant, all three conventions throughout the Act, they are condensed into one shortened definition.

This subclause also adds to s. 2 the new definitions of "UCC country" and "WTO member". As the Act will now refer to three treaties, these definitions are meant to facilitate the differentiation between treaty members. Moreover, since some sections of the Bill do not refer to all three treaties, but specifically include only one or two of the three, these definitions facilitate the reference to particular treaties.

Sub-clause 56(4): This subclause adds to s. 2 of the French version of the Act the new definition of "artiste interprète", which serves to condense the term "artiste interprète ou exécutant", which is the French equivalent of "performer".

1993, c. 44, s. 57(1)

Conditions for subsistence of copyright

57. (1) Subsections 5(1) and (1.1) of the Act are replaced by the following:

5. (1) Subject to this Act, copyright shall subsist in Canada, for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work if any one of the following conditions is met:

(*a*) in the case of any work, whether published or unpublished, including a cinematograph, the author was, at the date of the making of the work,

(i) a British subject,

(ii) a citizen or subject of, or a person ordinarily resident in, a treaty country, or

(iii) a resident within Her Majesty's Realms and Territories;

(*b*) in the case of a cinematograph, whether published or unpublished, the maker, at the date of the making of the cinematograph,

(i) if a corporation, had its headquarters in a treaty country, or

(ii) if a natural person, was

(A) a British subject,

(B) a citizen or subject of, or a person ordinarily resident in, a treaty country, or

(C) a resident within Her Majesty's Realms and Territories; or

(*c*) in the case of a published work, including a cinematograph,

(i) in relation to paragraph 4(1)(*a*), the first publication in such a quantity as to satisfy the reasonable demands of the public, having regard to the nature of the work, occurred within Her Majesty's Realms and Territories or in a treaty country, or

(ii) in relation to paragraph 4(1)(*b*) or (*c*), the first publication occurred within Her Majesty's Realms and Territories or in a treaty country.

1993, ch. 44, par. 57(1)

Conditions d'obtention du droit d'auteur

57. (1) Les paragraphes 5(1) et (1.1) de la même loi sont remplacés par ce qui suit :

5. (1) Sous réserve des autres dispositions de la présente loi, le droit d'auteur existe au Canada, pendant la durée mentionnée ci-après, sur toute oeuvre littéraire, dramatique, musicale ou artistique originale si l'une des conditions suivantes est réalisée :

a) pour toute oeuvre publiée ou non, y compris une oeuvre cinématographique, l'auteur était, à la date de sa création, sujet britannique, citoyen, sujet ou résident habituel d'un pays signataire ou avait sa résidence dans les royaumes et territoires de Sa Majesté;

b) dans le cas d'une oeuvre cinématographique — publiée ou non —, à la date de sa création, le siège social du producteur était dans un pays signataire ou le producteur était sujet britannique, citoyen, sujet ou résident habituel d'un tel pays ou avait sa résidence dans les royaumes et territoires de Sa Majesté;

c) s'il s'agit d'une oeuvre publiée, y compris une oeuvre cinématographique, selon le cas :

(i) en ce qui touche la mise à la disposition du public d'exemplaires de l'oeuvre, elle l'a été en premier lieu dans les royaumes et territoires de Sa Majesté ou dans un pays signataire, en quantité suffisante pour satisfaire la demande raisonnable du public, compte tenu de la nature de l'oeuvre,

(ii) en ce qui touche l'édification d'une oeuvre architecturale ou l'incorporation d'une oeuvre artistique à celle-ci, elle l'a été en premier lieu dans l'un des lieux mentionnés au sous-alinéa (i).

Clause 57 - Retrospective protection, etc.

Sub-clause 57(1): This subclause replaces subsections 5(1) and (1.1) of the Act by replacing the term "Berne Convention country" with the term "treaty country" in order to add the UCC and the WTO.

Protection for older works

(1.01) For the purposes of subsection (1), a country that becomes a Berne Convention country or a WTO Member after the date of the making or publication of a work shall, as of becoming a Berne Convention country or WTO Member, as the case may be, be deemed to have been a Berne Convention country or WTO Member at the date of the making or publication of the work, subject to subsection (1.02) and section 29.

(1.01) Pour l'application du paragraphe (1), le pays qui devient un pays partie à la Convention de Berne ou un membre de l'OMC après la date de création ou de publication de l'oeuvre est réputé avoir adhéré à la convention ou être devenu membre de l'OMC, selon le cas, à compter de cette date, sous réserve du paragraphe (1.02) et de l'article 29.

Présomption

Limitation

(1.02) Subsection (1.01) does not confer copyright protection in Canada on a work whose term of copyright protection in the country referred to in that subsection had expired before that country became a Berne Convention country or WTO Member, as the case may be.

(1.02) Le paragraphe (1.01) ne confère aucun droit à la protection d'une oeuvre au Canada lorsque la durée de protection accordée par le pays visé a expiré avant que celui-ci ne devienne un pays partie à la Convention de Berne ou un membre de l'OMC, selon le cas.

Réserve

First publication

(1.1) The first publication described in subparagraph (1)(*c*)(i) or (ii) shall be deemed to have occurred within Her Majesty's Realms and Territories or in a treaty country notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications did not exceed thirty days or such longer period as may be fixed by order in council.

(1.1) Même quand l'oeuvre a été publiée en premier lieu ailleurs que dans un des lieux mentionnés au sous-alinéa (1)*c*)(i), la première publication est réputée être survenue dans l'un de ceux-ci si l'intervalle entre les deux publications n'excède pas trente jours ou toute période plus longue qui peut être fixée par décret.

Première publication

1993, c. 15, s. 2, c. 44, s. 57(1)

(2) Subsections 5(2) and (2.1) of the Act are replaced by the following:

(2) Les paragraphes 5(2) et (2.1) de la même loi sont remplacés par ce qui suit :

1993, ch. 15, art. 2; 1993, ch. 44, par. 57(1)

Minister may extend copyright to other countries

(2) Where the Minister certifies by notice, published in the *Canada Gazette*, that any country that is not a treaty country grants or has undertaken to grant, either by treaty, convention, agreement or law, to citizens of Canada, the benefit of copyright on substantially the same basis as to its own citizens or copyright protection substantially equal to that conferred by this Act, the country shall, for the purpose of the rights conferred by this Act, be treated as if it were a country to which this Act extends, and the Minister may give a certificate, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, under the law of such country, differ from those in this Act.

(2) Si le ministre certifie par avis, publié dans la *Gazette du Canada*, qu'un pays autre qu'un pays signataire accorde ou s'est engagé à accorder, par traité, convention, contrat ou loi, aux citoyens du Canada les avantages du droit d'auteur aux conditions sensiblement les mêmes qu'à ses propres citoyens, ou une protection de droit d'auteur réellement équivalente à celle que garantit la présente loi, ce pays est traité, pour l'objet des droits conférés par la présente loi, comme s'il était un pays tombant sous l'application de la présente loi; et il est loisible au ministre de délivrer ce certificat, bien que les recours pour assurer l'exercice du droit d'auteur, ou les restrictions sur l'importation d'exemplaires des oeuvres, aux termes de la loi de ce pays, diffèrent de ceux que prévoit la présente loi.

Étendue du droit d'auteur à d'autres pays

Subsection 5(1.01) provides retrospective copyright protection for works created by authors of WTO Members and Berne Convention countries prior to those countries acceding to the Berne Convention or the WTO, as required by Article 70(2) of TRIPS, which incorporates by reference the retrospectivity requirement of Article 18 of the Berne Convention.

Subsection 5(1.02) limits the retrospectivity offered in subsection 5(1.01) so as not to apply to works in the public domain.

Sub-clause 57(2): This subclause replaces subsections 5(2) and (2.1) of Act in order to introduce the term "treaty country" in order to include all three treaties.

1993, c. 44, s. 57(2)

(3) Subsection 5(7) of the Act is replaced by the following:

Reciprocity protection preserved

(7) For greater certainty, the protection to which a work is entitled by virtue of a notice published under subsection (2), or under that subsection as it read at any time before the coming into force of this subsection, is not affected by reason only of the country in question becoming a treaty country.

1993, ch. 44, par. 57(2)

(3) Le paragraphe 5(7) de la même loi est remplacé par ce qui suit :

Protection du certificat

(7) Il est entendu que le fait, pour le pays visé, de devenir un pays signataire ne modifie en rien la protection conférée par l'avis publié conformément au paragraphe (2), en son état actuel ou en tout état antérieur à l'entrée en vigueur du présent paragraphe.

58. The Act is amended by adding the following after section 14:

PERFORMERS' RIGHTS

Performer's rights (post-WTO performances)

14.01 (1) Where a performer's performance takes place in a country that is a WTO Member, on or after the later of the day on which this section comes into force and the day on which that country becomes a WTO Member, the performer has the sole right

(*a*) to fix the performer's performance, or any substantial part thereof, by means of a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced,

(*b*) to reproduce

(i) the fixation described in paragraph (*a*), or any substantial part thereof, and

(ii) any reproduction of that fixation, or any substantial part of such reproduction,

where that fixation was made without the performer's consent, and

(*c*) to communicate the performer's performance, or any substantial part thereof, to the public by telecommunication at the time of the performer's performance,

and to authorize any such acts.

Interpretation

(2) For the purpose of paragraph (1)(*c*), persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public and a communication intended to be received exclusively by such persons is a communication to the public.

Restriction

(3) For the purpose of paragraph (1)(*c*), a person whose only act in respect of the communication of a performer's performance to the public consists of providing the means of telecommunication necessary for another person to so communicate the performer's performance does not communicate that performer's performance to the public.

58. La même loi est modifiée par adjonction, après l'article 14, de ce qui suit :

DROITS DE L'ARTISTE INTERPRÈTE

Prestation dans un pays membre de l'OMC

14.01 (1) La prestation qui a lieu dans un pays membre de l'OMC après l'entrée en vigueur du présent article confère à l'artiste interprète à compter de cette date ou, si elle est postérieure, de la date où le pays est devenu membre de l'OMC, le droit exclusif :

a) de fixer la prestation, ou une partie importante de celle-ci, au moyen d'une empreinte, d'un rouleau perforé ou autre organe à l'aide duquel des sons peuvent être reproduits mécaniquement;

b) si la fixation visée à l'alinéa *a*) a été faite sans son autorisation, soit d'en reproduire la totalité ou une partie importante, soit d'en copier toute reproduction ou une partie importante;

c) de communiquer au public en direct, par télécommunication, la prestation ou une partie importante de celle-ci.

Il a aussi le droit d'autoriser ces actes.

Précision

(2) Pour l'application de l'alinéa (1)*c*), font partie du public les personnes qui occupent les locaux d'un même immeuble d'habitation, tel un appartement ou une chambre d'hôtel, et la communication qui leur est exclusivement destinée est une communication au public.

Restriction

(3) N'effectue pas une communication au public au titre de l'alinéa (1)*c*) la personne qui ne fait que fournir à un tiers les moyens de télécommunication nécessaires pour que celui-ci l'effectue.

Sub-clause 57(3): This subclause replaces subsection 5(7) of the Act by replacing the term "Berne Convention country" with the term "treaty country" in order to add Universal Copyright Convention (UCC) and WTO.

Clause 58

This clause introduces the basic protection for performer's performances.

The protection is granted only to performances given in WTO countries (including Canada).

Paragraph 14.01(1)(a) provides that it is an infringement to make an unauthorized audio recording of a performance, e.g. a recording by means of an audio tape recorder or an audio cassette recorder.

Paragraph 14.01(1)(b) provides that it is an infringement to make an unauthorized copy of an unauthorized fixation, i.e. a "bootleg" copy, of a performance.

It is not an infringement of this provision to make an unauthorized or infringing copy of a recording with the performer's consent.

Paragraph 14.01(c) provides that it is an infringement to communicate a live radio or television broadcast or live cable transmission of a performance without the consent of the performer.

Subsection 14.01(2) establishes that communications of performances to certain residences are communications to the public.

Subsection 14.01(3) provides that those who simply provide telecommunications services are not thereby infringing performer's rights.

Performer's rights (pre-WTO performances)

(4) Where a performer's performance took place in a country before the later of the day on which this section comes into force and the day on which that country becomes a WTO Member, the performer has, commencing on the later of those two days, the sole right described in paragraph (1)(*b*) and the sole right to authorize any such act.

Prestation non visée au paragraphe (1)

(4) La prestation qui a lieu dans un pays avant soit l'entrée en vigueur du présent article, soit, si elle est postérieure, la date où le pays devient membre de l'OMC, confère à l'artiste interprète, à compter de la date applicable, le droit exclusif d'exécuter et d'autoriser les actes visés à l'alinéa (1)*b*).

Term of performer's rights

(5) The rights conferred by this section subsist for the remainder of the calendar year in which the performer's performance takes place and a period of fifty years following the end of that calendar year.

Durée de protection

(5) Les droits accordés par le présent article subsistent jusqu'à la fin de la cinquantième année suivant celle où la prestation de l'artiste interprète a eu lieu.

Assignment of right by performer

(6) Subsections 13(4) and 14(3) apply in respect of a performer's right conferred by this Act, in the same way that they apply in respect of assignment of copyright and grants of interests in copyright by licence.

Cession

(6) Les paragraphes 13(4) et 14(3) s'appliquent aux droits de l'artiste interprète conférés par la présente loi au même titre qu'à la cession d'un droit d'auteur ou la concession par licence d'un intérêt dans ce droit.

Limitation

(7) No assignment of a performer's right conferred by this Act, and no grant of an interest in such a right by licence, affects the right of the performer

(*a*) to prevent the reproduction of

(i) any fixation of the performer's performance, or any reproduction of such a fixation, and

(ii) any substantial part of such a fixation or reproduction,

where the fixation was made without the performer's consent; and

(*b*) to prevent the importation into Canada, for sale or hire, of any fixation of the performer's performance, or any reproduction of such a fixation, that to the knowledge of the importer was made without the performer's consent.

Réserve

(7) Même en cas de cession d'un droit qui lui est conféré par la présente loi, ou de concession par licence d'un intérêt dans ce droit, l'artiste interprète peut encore empêcher :

a) si la fixation a été faite sans son autorisation, soit la reproduction de toute fixation de sa prestation ou d'une partie importante de cette fixation, soit la copie d'une reproduction d'une telle fixation ou d'une partie importante de cette reproduction;

b) l'importation au Canada, pour la vente ou la location, de toute fixation de sa prestation — ou reproduction d'une telle fixation — qui, à la connaissance de l'importateur, a été faite sans son autorisation.

Subsection 14.01(4) provides that once this right becomes effective in a particular country, either because it is an original member of the WTO or because it joins later, it is an infringement after that date to make an unauthorized reproduction of an unauthorized fixation, i.e. a "bootleg copy", made prior to that date.

Subsection 14.01(5) provides that the performer's right lasts for fifty years.

Subsection 14.01(6) ensures that the full assignability of the performer's right in the same way as copyright [subject to subsection 14.01(7)].

Subsection 14.01(7) ensures that despite any licence or assignment the performer will always retain the right to prevent the reproduction or importation of an unauthorized recording.

R.S., c. 10 (4th Supp.), s. 17(F); 1993, c. 44, ss. 62, 63

59. The heading before section 16 and sections 16 to 26 of the Act are repealed.

59. L'intertitre précédant l'article 16 et les articles 16 à 26 de la même loi sont abrogés.

L.R., ch. 10 (4e suppl.), art. 17 (F); 1993, ch. 44, art. 62 et 63

60. The Act is amended by adding the following after section 28.01:

60. La même loi est modifiée par adjonction, après l'article 28.01, de ce qui suit :

INFRINGEMENT OF PERFORMERS' RIGHTS

VIOLATION DES DROITS DE L'ARTISTE INTERPRÈTE

Infringement of performer's right

28.02 (1) A performer's right in a performer's performance shall be deemed to be infringed by any person who, without the consent of the owner of the performer's right, does anything that, by virtue of section 14.01, only the performer has the right to do.

Violation

28.02 (1) Est réputé une violation des droits de l'artiste interprète tout acte sur lequel il a un droit exclusif en vertu de l'article 14.01 accompli sans le consentement du titulaire de ces droits.

Acts not constituting infringement

(2) The following acts do not constitute an infringement of a performer's right in a performer's performance:

(*a*) any fair dealing with the performer's performance, a fixation thereof or a reproduction of the fixation, for the purposes of private study, research, criticism, review or newspaper summary;

(*b*) the making of a temporary fixation of the performer's performance for the purpose of doing an act permitted by paragraph 27(2)(*e*);

(*c*) reproducing a fixation of the performer's performance for the purpose of doing an act permitted by paragraph 27(2)(*h*), (*i*), (*j*) or (*k*); and

(*d*) the retransmission of the performer's performance where, by virtue of subsection 28.01(2), the retransmission is not an infringement of copyright.

Cas de non-violation

(2) Ne constituent pas une violation des droits de l'artiste interprète :

a) l'utilisation équitable de sa prestation, la fixation de celle-ci ou la reproduction de la fixation à des fins d'étude privée, de recherche, de critique, de compte rendu ou de préparation d'un résumé destiné aux journaux;

b) la fixation temporaire de sa prestation en vue de faire un acte autorisé par l'alinéa 27(2)*e*);

c) la reproduction de toute fixation de sa prestation en vue de faire un acte autorisé par les alinéas 27(2)*h*), *i*), *j*) ou *k*);

d) la retransmission de sa prestation lorsque, par application du paragraphe 28.01(2), elle ne constitue pas une violation du droit d'auteur.

Clause 59 – repeal of compulsory licensing for books and serial publications

This clause repeals the compulsory licence to print or publish a book in Canada and the compulsory licence to publish a book in serial form. They were rarely if ever used. It appears that these compulsory licences were inconsistent with the reproduction right granted under Article 9 of the Berne Convention. They also applied only to works by Canadian authors and were therefore an inappropriate discrimination against Canadians.

Clause 60

Subsection 28.02(1) establishes the general principles for determining the infringement of the performer's right.

Subsection 28.02(2) establishes certain limited exceptions. Paragraphs (2)(a), (b) & (c) are based upon some of the exceptions in s.27(2) of the *Copyright Act*.

Paragraph 2(a) is based upon the fair dealing provision in s.27(2)(a) & (a.1) of the Act.

Paragraph 2(b) allows the making of a temporary fixation of a lecture delivered in public for purposes of reporting the lecture in a newspaper. It allows a newspaper journalist to make a temporary audio recording of a public lecture for purposes of writing a report on it.

Paragraph 2(c) allows the reproduction of a fixation for purposes of section 14 of the *Cultural Property Export and Import Act*, the *Access to Information Act*, the *Privacy Act* and section 8 of the *National Archives of Canada Act*.

Paragraph 2(d) narrows the scope of new s.14.01(1)(c). It provides that the right of the performer to control telecommunication to the public does not extend to legitimate cable retransmissions.

Infringement by personal action

(3) A performer's right in a performer's performance shall be deemed to be infringed by any person who

(*a*) sells or lets for hire, or by way of trade exposes or offers for sale or hire,

(*b*) distributes, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the performer's right,

(*c*) by way of trade exhibits in public, or

(*d*) imports for sale or hire into Canada,

any fixation of the performer's performance, or any reproduction of such a fixation, that to the knowledge of that person infringes the performer's right.

Violation par action personnelle

(3) Est considéré comme ayant porté atteinte aux droits de l'artiste interprète quiconque, sachant qu'une fixation de la prestation — ou une reproduction d'une telle fixation — viole ces droits, accomplit l'un des actes suivants :

a) la vend ou la loue, ou commercialement la met ou l'offre en vente ou en location;

b) la met en circulation, soit dans un but commercial, soit de façon à porter préjudice au titulaire de ces droits;

c) l'expose commercialement en public;

d) l'importe pour la vente ou la location au Canada.

Certain rights and interests protected

28.03 (1) Notwithstanding subsections 28.02(1) and (3), where a person has, before the later of the day on which this section comes into force and the day on which a country becomes a WTO Member, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed a performer's right under this Act commencing on the later of those two days, had that country been a WTO member, any right or interest of that person that

(*a*) arises from or in connection with the doing of that act, and

(*b*) is subsisting and valuable on the later of those two days

is not prejudiced or diminished by reason only that that country has become a WTO member, except as provided by an order of the Board made under subsection 70.8(3).

Protection de certains droits et intérêts

28.03 (1) Par dérogation aux paragraphes 28.02(1) et (3), lorsque, avant la date d'entrée en vigueur du présent article ou, si elle est postérieure, celle où un pays devient membre de l'OMC, une personne a fait des dépenses ou contracté d'autres obligations relatives à l'exécution d'un acte qui, accompli après cette date, violerait les droits de l'artiste interprète conférés par la présente loi, le seul fait que ce pays soit devenu membre de l'OMC ne porte pas atteinte aux droits ou intérêts de cette personne, qui, d'une part, sont nés ou résultent de l'exécution de cet acte et, d'autre part, sont valables à cette date, sauf dans la mesure prévue par une ordonnance de la Commission rendue en application du paragraphe 70.8(3).

Compensation

(2) Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates if and when the owner of the performer's right pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 70.8.

Indemnisation

(2) Toutefois, les droits ou intérêts protégés en application du paragraphe (1) s'éteignent lorsque le titulaire des droits de l'artiste interprète verse à cette personne une indemnité convenue par les deux parties, laquelle, à défaut d'entente, est déterminée par la Commission conformément à l'article 70.8.

Limitation

(3) Nothing in subsections (1) and (2) affects any right of a performer available in law or equity.

Réserve

(3) Les paragraphes (1) et (2) ne portent pas atteinte aux droits dont dispose l'artiste interprète en droit ou en equity.

Subsection 28.02(3) is based on subsection 27(4) of the current Act. It prevents the commercial sale, distribution or importation of unauthorized copies of a performance. However, unlike section 27(4) it does not prevent the importation or distribution of authorized foreign copies which are imported without the consent of the rights holder in Canada.

Section 28.03 gives users certain rights as a result of pre-1996 performances becoming protected because of Canada's implementation of the TRIPS agreement. Since the term of protection may involve a retrospective application, it is necessary to protect the reliance interests of good faith users. Performers are obliged to compensate such users for the termination of their interests, and if the amount of compensation is not agreed upon, it will be set by the Copyright Board.

Subsection 28.03(3) provides that nothing in this section limits any remedies that might be available outside the *Copyright Act*.

61. The Act is amended by adding the following after section 28.2:

COMPENSATION FOR RESTORATION OF COPYRIGHT OR MORAL RIGHTS

Certain rights and interests protected

29. (1) Notwithstanding subsections 27(1), (4) and (5) and sections 28.1 and 28.2, where a person has, before a country becomes a treaty country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed the copyright owner's copyright or the author's moral rights had that country been a treaty country, any right or interest of that person that

(*a*) arises from or in connection with the doing of that act, and

(*b*) is subsisting and valuable at the time when that country becomes a treaty country

is not prejudiced or diminished by reason only that that country has become a treaty country, except as provided by an order of the Board made under subsection 70.8(3).

Compensation

(2) Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or the author, if and when the copyright owner or the author, as the case may be, pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 70.8.

61. La même loi est modifiée par adjonction, après l'article 28.2, de ce qui suit :

INDEMNISATION D'OBTENTION DU DROIT D'AUTEUR OU DES DROITS MORAUX

Protection de certains droits et intérêts

29. (1) Par dérogation aux paragraphes 27(1), (4) et (5) et aux articles 28.1 et 28.2, lorsque, avant la date où un pays devient un pays signataire, une personne a fait des dépenses ou contracté d'autres obligations relatives à l'exécution d'un acte qui, accompli après cette date, violerait le droit d'auteur du titulaire ou les droits moraux de l'auteur, le seul fait que ce pays soit devenu un pays signataire ne porte pas atteinte aux droits ou intérêts de cette personne, qui, d'une part, sont nés ou résultent de l'exécution de cet acte et, d'autre part, sont valables à cette date, sauf dans la mesure prévue par une ordonnance de la Commission rendue en application du paragraphe 70.8(3).

Indemnisation

(2) Toutefois, les droits ou intérêts protégés en application du paragraphe (1) s'éteignent à l'égard du titulaire ou de l'auteur lorsque l'un ou l'autre, selon le cas, verse à cette personne une indemnité convenue par les deux parties, laquelle, à défaut d'entente, est déterminée par la Commission conformément à l'article 70.8.

Clause 61 - Compensation for the Restoration of Copyright or Moral Rights

Section 29 is meant to preserve the rights of persons who, in good faith, incurred expenditures or liabilities with respect to the reproduction or other use of foreign works which were created by authors of WTO or Berne Convention countries prior to retrospective protection being given to such works in Canada.

Copyright owners or authors are obliged to compensate such users for the termination of their interests, and if the amount of compensation is not agreed upon, it will be set by the Copyright Board.

62. Section 34 of the Act is amended by adding the following after subsection (1):

Performers' rights

(1.01) In any proceedings for an infringement of a performer's right, the court may, subject to subsection (1.02), grant to the owner of the performer's right all remedies by way of injunction, damages, accounts or delivery up and otherwise that are or may be conferred by law for the infringement of a right.

Limitation

(1.02) Where a performer has assigned to any extent a performer's right, or has granted an interest in a performer's right by licence, and subsequently institutes proceedings described in paragraph 14.01(7)(*a*) or (*b*), the court may not grant to the performer, in relation to the right assigned or interest granted, any remedy otherwise than by way of injunction or delivery up.

Other parties may be joined

(1.03) In any proceedings for an infringement of a performer's right, the court may, on application by the performer, an assignee of the performer's right, a person to whom an interest in the performer's right has been granted by licence, or the defendant, order such other parties to be joined in the proceedings as the court considers necessary.

63. Section 36 of the Act is renumbered as subsection 36(1) and is amended by adding the following:

Protection of separate rights

(2) Subsection (1) applies in respect of a performer and in respect of the owner of a performer's right conferred by this Act, in the same way that that subsection applies in respect of the persons described therein.

62. L'article 34 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Droits de l'artiste interprète

(1.01) Le tribunal, saisi d'un recours en violation des droits de l'artiste interprète, peut, sous réserve du paragraphe (1.02), accorder au titulaire de ces droits les réparations qu'il pourrait accorder par voie d'injonction, de dommages-intérêts, de reddition de compte, de restitution ou autrement, et que la loi prévoit ou peut prévoir pour la violation d'un droit.

Réserve

(1.02) Le tribunal, saisi d'un recours en violation des droits de l'artiste interprète qui lui sont reconnus par le paragraphe 14.01(7), ne peut accorder à celui-ci que les réparations qu'il pourrait accorder par voie d'injonction ou de restitution.

Jonction d'une tierce partie

(1.03) Le tribunal, saisi d'un recours en violation des droits de l'artiste interprète, peut, sur demande de ce dernier, du cessionnaire de ces droits, du concessionnaire d'un intérêt concédé par licence dans ces droits ou du défendeur, ordonner que d'autres parties semblables se joignent aux procédures s'il l'estime indiqué.

63. L'article 36 de la même loi devient le paragraphe 36(1) et est modifié par adjonction de ce qui suit :

Idem

(2) Le paragraphe (1) s'applique à l'artiste interprète et au titulaire des droits de celui-ci conférés par la présente loi au même titre qu'à l'égard des personnes qui y sont visées.

Clause 62

This clause grants to the owner of the performer's right basic civil remedies for infringement.

Subsection 34(1.01) gives the owner of the performer's right the same basic civil remedies as are available to a copyright owner.

Subsection 34(1.02) provides that where both the performer and an assignee or licensee have the right to sue, the performer is entitled only to an injunction or delivery-up but not to damages or accounts.

Subsection 34(1.03) allows the court to order that other parties may be joined in an infringement proceeding.

Clause 63

This clause ensures that assignees and licensees of a performer's right are entitled to enforce rights in their own name in the same way as assignees and licensees of copyright.

64. Section 38 of the Act is renumbered as subsection 38(1) and is amended by adding the following:

Ownership of fixations, reproductions and plates

(2) In relation to a performer's performance in respect of which a performer's right subsists,

(*a*) all infringing fixations,

(*b*) all infringing reproductions of a fixation, and

(*c*) all plates used or intended to be used for the purpose of making infringing reproductions of a fixation

shall be deemed to be the property of the owner of the performer's right, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

64. L'article 38 de la même loi devient le paragraphe 38(1) et est modifié par adjonction de ce qui suit :

Propriété des fixations, reproductions et planches

(2) Toute fixation contrefaite de la prestation encore protégée d'un artiste interprète, toute reproduction contrefaite d'une telle fixation ou toute planche ayant servi ou étant destinée à servir à la fabrication d'une telle reproduction est réputée être la propriété du titulaire du droit de l'artiste interprète; en conséquence, celui-ci peut engager toute procédure en recouvrement de possession ou concernant l'usurpation du droit de propriété.

Clause 64

This clause deems infringing copies and plates to be the property of the owner of the performer's right and creates the remedy of conversion (i.e., the ability to trace the proceeds of the sale of such items).

65. The Act is amended by adding the following after section 43:

Offences and punishment

43.1 (1) Every person who knowingly

(*a*) makes for sale or hire any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists,

(*b*) sells or lets for hire or by way of trade exposes or offers for sale or hire any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists,

(*c*) distributes infringing fixations, or infringing reproductions thereof, of a performer's performance in respect of which a performer's right subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the performer's right,

(*d*) by way of trade exhibits in public any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists, or

(*e*) imports for sale or hire into Canada any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists

is guilty of an offence and liable

(*f*) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or

(*g*) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

65. La même loi est modifiée par adjonction, après l'article 43, de ce qui suit :

Infraction et peines

43.1 (1) Commet une infraction quiconque, sciemment :

a) produit, en vue de la vente ou de la location, une fixation contrefaite de la prestation encore protégée d'un artiste interprète ou une reproduction contrefaite de cette fixation;

b) vend ou loue, ou commercialement met ou offre en vente ou en location, une fixation contrefaite d'une telle prestation ou une reproduction contrefaite de cette fixation;

c) met en circulation des fixations contrefaites d'une telle prestation, ou des reproductions contrefaites de ces fixations, soit dans un but commercial, soit de façon à porter préjudice au titulaire de l'artiste interprète;

d) expose commercialement en public une fixation contrefaite d'une telle prestation ou une reproduction contrefaite de cette fixation;

e) importe pour la vente ou la location, au Canada, une fixation contrefaite d'une telle prestation ou une reproduction contrefaite de cette fixation.

Le contrevenant encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de vingt-cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, ou, sur déclaration de culpabilité par voie de mise en accusation, une amende maximale d'un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

Clause 65

This clause creates criminal remedies with respect to the infringement of the performer's right.

Subsection 43.1(1) creates criminal remedies with respect to the commercial production, distribution or importation of infringing copies of performer's performances.

Making or possessing plate — offence and punishment

(2) Every person who knowingly makes or possesses any plate for the purpose of making infringing reproductions of a fixation of a performer's performance in respect of which a performer's right subsists is guilty of an offence and liable

(*a*) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both; or

(*b*) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

Power of court to deal with fixations, reproductions or plates

(3) The court before which any proceedings under this section are taken may, whether the alleged offender is convicted or not, order that

(*a*) all fixations in the possession of the alleged offender that appear to it to be infringing fixations,

(*b*) all reproductions of the fixation in the possession of the alleged offender that appear to it to be infringing reproductions, and

(*c*) all plates in the possession of the alleged offender that appear to it to be plates for the purpose of making infringing reproductions

be destroyed or delivered up to the owner of the performer's right or otherwise dealt with as the court may think fit.

Infractions et peines — confection et possession

(2) Quiconque, sciemment, confectionne ou possède une planche destinée à la fabrication de reproductions contrefaites de toute fixation de la prestation encore protégée d'un artiste interprète commet une infraction et encourt, sur déclaration de culpabilité :

a) par procédure sommaire, une amende maximale de vingt-cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines;

b) par voie de mise en accusation, une amende maximale d'un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

Le tribunal peut disposer des fixations, reproductions ou planches

(3) Le tribunal devant lequel sont portées de telles poursuites peut, que le contrefacteur présumé soit déclaré coupable ou non, ordonner que toutes les fixations ou reproductions en la possession de ce dernier, qu'il estime être des fixations ou reproductions contrefaites ou des planches destinées à la fabrication de reproductions contrefaites, soient détruites ou remises entre les mains du titulaire des droits de l'artiste interprète, ou qu'il en soit autrement disposé à son gré.

Subsection 43.1(2) creates criminal remedies for making or possessing a plate for the purpose of making infringing copies.

Subsection 43.1(3) allows the court to order the destruction or delivery up of infringing plates or copies.

66. The heading before section 44 of the Act is replaced by the following:

IMPORTATION OF COPIES, FIXATIONS AND REPRODUCTIONS

66. L'intertitre précédant l'article 44 de la même loi est remplacé par ce qui suit :

IMPORTATIONS D'EXEMPLAIRES, DE FIXATIONS ET DE REPRODUCTIONS

67. The Act is amended by adding the following after section 44.1:

67. La même loi est modifiée par adjonction, après l'article 44.1, de ce qui suit :

Performer's performances

44.2 Section 44.1 applies, with such modifications as the circumstances require, in respect of a performer's performance, where a fixation of the performer's performance, or a reproduction of such a fixation,

(*a*) is about to be imported into Canada, or has been imported into Canada but has not yet been released;

(*b*) was made without the consent of the performer; and

(*c*) to the knowledge of the importer, would have infringed the performer's right if it had been made in Canada by the importer.

Prestations

44.2 L'article 44.1 s'applique, avec les adaptations nécessaires, à la prestation de l'artiste interprète lorsqu'une fixation de celle-ci ou une reproduction d'une telle fixation est importée au Canada — ou sur le point de l'être — sans être dédouanée, qu'elle a été produite sans le consentement de celui-ci et que, à la connaissance de l'importateur, elle aurait enfreint les droits de l'artiste interprète si elle avait été produite au Canada par cet importateur.

R.S., c. 41 (3rd Supp.), s. 117

68. (1) Subsection 45(1) of the Act is replaced by the following:

L.R., ch. 41, (3e suppl.), art. 117

68. (1) Le paragraphe 45(1) de la même loi est remplacé par ce qui suit :

No importation where right to reproduce in Canada granted

45. (1) Where the owner of the copyright has by licence or otherwise granted the right to reproduce any book in Canada, it shall not be lawful except as provided in subsections (3) and (4) to import into Canada copies of the book, and the copies shall be deemed to be included in Schedule VII to the *Customs Tariff*, and that Schedule applies accordingly.

Non-importation en cas de droit de reproduction au Canada

45. (1) Lorsque le titulaire du droit d'auteur a, par licence ou autrement, accordé le droit de reproduire un livre au Canada, il n'est pas permis, sauf selon les dispositions des paragraphes (3) et (4), d'importer au Canada des exemplaires de ce livre, et ces exemplaires sont réputés figurer à l'annexe VII du *Tarif des douanes*, et cette annexe s'applique en conséquence.

1993, c. 44, s. 67(1)

(2) Paragraph 45(3)(*a*) of the Act is replaced by the following:

(*a*) to import for the person's own use not more than two copies of any work published in a treaty country;

1993, ch. 44, par. 67(1)

(2) L'alinéa 45(3)*a*) de la même loi est remplacé par ce qui suit :

a) d'importer pour son propre usage deux exemplaires au plus d'un ouvrage publié dans un pays signataire;

1993, c. 44, s. 67(2)

(3) Paragraph 45(3)(*d*) of the Act is replaced by the following:

(*d*) to import any book lawfully printed in a treaty country and published for circulation among, and sale to, the public within that country.

1993, ch. 44, par. 67(2)

(3) L'alinéa 45(3)*d*) de la même loi est remplacé par ce qui suit :

d) d'importer tout livre légalement imprimé dans un pays signataire, et publié en vue d'y être mis en circulation et vendu au public.

1993, c. 44, s. 67(3)

(4) Subsection 45(5) of the Act is replaced by the following:

1993, ch. 44, par. 67(3)

(4) Le paragraphe 45(5) de la même loi est remplacé par ce qui suit :

Application of provisions regarding importation

(5) This section does not apply to any work the author of which is a subject or citizen of a treaty country other than Canada.

Application des dispositions relatives à l'importation

(5) Le présent article ne s'applique pas à une oeuvre dont l'auteur est sujet ou citoyen d'un pays signataire autre que le Canada.

Clause 66

This clause changes the title above section 44 to reflect the fact that border measures now cover infringing fixations and reproductions of performer's performances.

Clause 67

This clause creates border measures against the importation of infringing fixations or reproductions.

Clause 68 - Consequential Amendments

Sub-clause 68(1): This subclause amends s. 45(1) of the Act by deleting the words "or where a licence to reproduce the book has been granted under this Act", because the sections of the Act dealing with those compulsory licenses are being repealed.

Sub-clause 68(2): This subclause amends paragraph 45(3)(a) of the Act by replacing the term "his" with the term "the person's" in order to modernize the Act. It also replaces the term "Berne Convention country" with the term "treaty country" in order to add UCC and WTO.

Sub-clause 68(3): This subclause amends paragraph 45(3)(d) of the Act by replacing the words "in the United Kingdom or in a Berne Convention country" with the term "treaty country" in order to add UCC and WTO.

Sub-clause 68(4): This subclause amends subsection 45(5) of the Act by replacing the term "Berne Convention country" with the term "treaty country" in order to add the UCC and the WTO. It also deletes the term "British subject", and replaces the words "other than a Canadian citizen" with the words "other than Canada" in order generalize its application to the countries of the three treaties.

69. The Act is amended by adding the following after section 70.7:

COMPENSATION FOR RESTORATION OF COPYRIGHT OR PERFORMER'S RIGHT

Board may determine compensation

70.8 (1) Subject to subsection (2), for the purposes of subsections 28.03(2) and 29(2), the Board may, on application by any of the parties referred to in one of those provisions, determine the amount of the compensation referred to in that provision that the Board considers reasonable, having regard to all the circumstances, including any judgment of a court in an action between the parties for enforcement of a right mentioned in subsection 28.03(3).

Limitation

(2) The Board shall not proceed with an application under subsection (1)

(*a*) where a notice is filed with the Board that an agreement touching the matters in issue has been reached; or

(*b*) where a court action between the parties for enforcement of a right mentioned in subsection 28.03(3) has been commenced but not finally concluded.

Interim orders

(3) Where the Board proceeds with an application under subsection (1), it may, for the purpose of avoiding serious prejudice to any party, make an interim order requiring a party to refrain from doing any act described in the order until the determination of compensation is made under subsection (1).

69. La même loi est modifiée par adjonction, après l'article 70.7, de ce qui suit :

INDEMNISATION D'OBTENTION DU DROIT D'AUTEUR OU DES DROITS D'ARTISTE INTERPRÈTE

Indemnité fixée par la Commission

70.8 (1) Sous réserve du paragraphe (2), la Commission peut, sur demande de l'une ou l'autre des parties visées aux paragraphes 28.03(2) ou 29(2), fixer l'indemnité à verser qu'elle estime raisonnable, compte tenu des circonstances. Elle peut notamment prendre en considération toute décision émanant d'un tribunal dans une poursuite pour la reconnaissance des droits visés au paragraphe 28.03(3).

Réserve

(2) Le dépôt auprès d'elle d'un avis faisant état d'une entente conclue entre les parties de même que toute poursuite en cours pour la reconnaissance des droits visés au paragraphe 28.03(3) opèrent désaisissement de la Commission.

Ordonnances intérimaires

(3) La Commission saisie d'une demande visée au paragraphe (1) peut, en vue d'éviter de causer une préjudice grave à l'une ou l'autre partie, rendre une ordonnance intérimaire afin de les empêcher d'accomplir les actes qui y sont visés avant que l'indemnité soit fixée conformément à ce paragraphe.

70. The French version of the Act is amended by replacing the expression "pays partie à la Convention" with the expression "pays partie à la Convention de Berne" in the following provisions:

(*a*) subsection 10(2); and

(*b*) section 11.

70. Dans les passages suivants de la version française de la même loi, « pays partie à la Convention » est remplacé par « pays partie à la Convention de Berne », avec les adaptations nécessaires :

***a*) le paragraphe 10(2);**

***b*) l'article 11.**

Clause 69 - Compensation for the Restoration of Copyright or Performers' Rights

This clause creates a new section 70.8 in the Act which establishes confers the power on the Copyright Board to:

(i) determine compensation in applications for arbitration; and

(ii) issue interim orders.

This clause is necessary because of the other provisions in the bill which require compensation to be paid, when terminating the reliance interests of good faith prior users of copyrighted works or fixations and copies of performances.

Clause 70 - Consequential Amendment

This clause amends subsection 10(2) and section 11 of the French version of the Act by replacing the term "partie pays à la Convention" with the term "pays partie à la Convention de Berne" in order to indicate clearly that only the Berne Convention applies in these sections.

CUSTOMS ACT

CLAUSES 71 - 73

CUSTOMS ACT

CLAUSES 71 - 73

Overview

The *Customs Act* provides the mechanism for the collection of duties and taxes imposed on imported goods by other federal statutes, and for the enforcement of the many federal statutes that prohibit, regulate or control imported and exported goods.

Federal statutes under which duties and taxes are imposed include the *Customs Tariff*, the *Special Import Measures Act*, the *Excise Act* and the *Excise Tax Act*. No duties or taxes are imposed under the *Customs Act* itself.

The *Customs Act* also provides for drawbacks (refunds) of duties on imported goods, based on the subsequent exportation of goods (drawbacks are also included in the duty relief measures set out in the *Customs Tariff*).

WTO Committments

Agreement on Article VI (Anti-Dumping)

See *Special Import Measures Act*.

Agreement on Article VII (Valuation)

Contracting Parties agreed to an amendment that will allow a Customs administration to reject the transaction method of valuation where the administration has reason to doubt the documentation submitted in support of the transaction value. The Customs administration could then determine value under one of several alternate methods of valuation, for example, on the value of identical or similar imported goods.

1992, c. 28, s. 7(1)

71. Subsection 33.4(6) of the *Customs Act* is replaced by the following:

71. Le paragraphe 33.4(6) de la *Loi sur les douanes* est remplacé par ce qui suit :

1992, ch. 28, par. 7(1)

Interest on tax

(6) Any person who is liable to pay tax under Division III of Part IX of the *Excise Tax Act* in respect of an amount of duty levied under subsection 11(1) or paragraph 60(1)(*a*) of the *Special Import Measures Act* shall pay, in addition to that tax, interest at the prescribed rate in respect of each month or fraction of a month in the period beginning thirty days after the day the tax became payable and ending on the day the tax has been paid in full, calculated on the outstanding balance of the tax:

(6) Quiconque est redevable de la taxe prévue à la section III de la partie IX de la *Loi sur la taxe d'accise* au titre des droits imposés en application du paragraphe 11(1) ou de l'alinéa 60(1)*a*) de la *Loi sur les mesures spéciales d'importation* paie, en plus de cette taxe, des intérêts au taux réglementaire, calculés sur les arriérés pour chaque mois ou fraction de mois de la période commençant trente jours après l'échéance de cette taxe et se terminant le jour de son paiement intégral.

Intérêts sur la TPS

72. (1) The portion of subsection 48(1) of the Act before paragraph (*a*) is replaced by the following:

72. (1) Le passage du paragraphe 48(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Transaction value as primary basis of appraisal

48. (1) Subject to subsections (6) and (7), the value for duty of goods is the transaction value of the goods if the goods are sold for export to Canada and the price paid or payable for the goods can be determined and if

48. (1) Sous réserve des paragraphes (6) et (7), la valeur en douane des marchandises est leur valeur transactionnelle si elles sont vendues pour exportation au Canada, si le prix payé ou à payer est déterminable et si les conditions suivantes sont réunies :

Valeur transactionnelle servant de base principale d'appréciation

(2) Section 48 of the Act is amended by adding the following after subsection (6):

(2) L'article 48 de la même loi est modifié par adjonction de ce qui suit :

Where information inaccurate

(7) Where an officer who is appraising the value for duty of goods believes on reasonable grounds that the information submitted in support of the transaction value of the goods as determined under subsection (4) is inaccurate, the officer shall determine, in accordance with the prescribed procedure, that the value for duty of the goods shall not be appraised under this section.

(7) L'agent qui, lors de l'appréciation de la valeur en douane de marchandises, a des motifs raisonnables de douter de l'exactitude des renseignements sur lesquels est fondée la détermination de la valeur transactionnelle des marchandises prévue au paragraphe (4) détermine, conformément à la procédure réglementaire, que le présent article ne peut s'appliquer à l'appréciation de la valeur en douane des marchandises.

Inexactitude des renseignements

73. Subsection 164(4) of the Act is amended by adding the following after paragraph (*a*.01):

73. Le paragraphe 164(4) de la même loi est modifié par adjonction, après l'alinéa *a*.01), de ce qui suit :

(*a*.02) implements, in whole or in part, a provision of the Agreement as defined in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*;

a.02) d'application totale ou partielle d'une disposition de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*;

Summary of the Amendments

Clause 71

Clause 71 is a consequential amendment to subsection 33.4(6) of the *Customs Act* resulting from clause 178 which amends and re-numbers section 60 of the *Special Import Measures Act*. Due to re-numbering, the reference to paragraph 60(a) in subsection 33.4(6) of the *Customs Act* has to be changed to paragraph 60(1)(a). This provision of the *Customs Act* provides for the imposition of interest, in the case of late payment, on taxes (GST) levied under Division III or Part IX of the *Excise Tax Act* which have been applied to anti-dumping or countervailing duties levied on imported goods in accordance with the *Special Import Measures Act*.

Clause 72

This amendment to the *Customs Act* implements the Agreement on Article VII (Valuation). It brings Canada's legislation in line with other countries, including our major trading partners.

Although the new Section 48(7) gives Customs the authority to reject transaction value where it has doubts about the truth or accuracy of documents, it will also protect the rights of the importer by placing an obligation on Customs, through regulation, to give the importer an opportunity to respond to Customs enquiries and will require Customs to provide written reasons for rejecting transaction value.

Clause 73

Subsection 164(3) of the *Customs Act* requires that all regulations made pursuant to subsection 164(1) of that Act be published in Part I of the *Canada Gazette* at least 60 days before the proposed effective date thereof.

Subsection 164(4) of the *Customs Act* lists the exceptions to subsection (3), including paragraphs 164(4)(*a*.01) and (*a*.1), which exempt from pre-publication regulations implementing NAFTA and the Canada-United States Free Trade Agreement, respectively.

Clause 73 simply amends subsection 164(4) of the *Customs Act* to add to the current list of exemptions to the pre-publication requirement any regulations made under subsection 164(3) of the *Customs Act* that implement, in whole or in part, a provision of the Agreement Establishing the World Trade Organization.

CUSTOMS TARIFF

CLAUSES 74 - 100

CUSTOMS TARIFF

CLAUSES 74 - 100

Overview

The *Customs Tariff* is a fiscal statute that

- establishes customs duties on imported goods;
- provides for the tariff treatment accorded imported goods, depending on their country of origin, and for the rules determining the country of origin;
- provides for other conditions (e.g. relating to transshipment) that goods must meet in order to be entitled to a specific tariff treatment;
- provides for the tariff (rate of customs duty) applicable to goods, depending on the classification of the goods and the tariff treatment to which the good is entitled;
- prohibits the importation of certain goods (e.g. pornography);
- provides for duty relief;
- provides for additional duties to be imposed as a bilateral or global safeguard action; and
- provides for other matters such as marking of goods with their country of origin.

Customs Duties

The principal customs duties are set out in Schedule I to the *Customs Tariff*. That schedule sets out the tariff, or rate of duty, including the free rate, that applies to all goods upon their importation into Canada. The rate of duty applied to goods depends upon their classification and their country of origin or other entitlement. The main categories of tariff treatment by country of origin are: Most-Favoured-Nation (most of the world, including the industrialized nations), General Preferential (developing countries) and other preferential tariffs (e.g. Mexico-U.S., United States, Australia, New Zealand).

Schedule II to the *Customs Tariff* provides, through items known as codes, for the entry of goods at reduced or duty-free rates rather than higher Schedule I rates, if certain conditions are met. Such conditions often include the subsequent use of the imported

Bill will bring Canada's global safeguard regime into conformity with the obligations contained in the WTO Agreement on Safeguards and are consistent with the provisions of the NAFTA safeguard regime.

Amendments to the other two statutes, the EIPA and CITTA, will complement the changes to the *Customs Tariff*. The EIPA provides an alternative safeguard measure to surtaxes in the form of import quotas.

The changes to the CITTA will provide the authority for the CITT to conduct mid-term reviews of safeguard measures, and to inquire into whether a safeguard measure should be extended.

1988, c. 65, s. 84

76. (1) Paragraph 13(2)(*a*) of the Act is replaced by the following:

(*a*) deeming goods, the whole or a portion of which is produced outside a country, to originate in that country for the purposes of this Act or any other Act, subject to such conditions, if any, as are specified in the regulations;

(*a*.1) for determining when goods originate in any country for the purposes of this Act or any other Act; and

(2) Section 13 of the Act is amended by adding the following after subsection (2):

Application of rules of origin regulations

(2.1) For the purpose of implementing the Agreement on Rules of Origin in Annex 1A of the World Trade Organization Agreement, regulations made under subsection (2) may, if they so provide, apply respecting the origin of goods for the purposes of any other Act and prevail over any other regulations to the extent of any inconsistency.

Agreement

(2.2) For the purposes of subsection (2.1), the Agreement on Rules of Origin includes any annex added to it pursuant to Article 9 of that Agreement.

1989, c. 18, s. 2(2)

77. Subsection 21(4) of the Act is replaced by the following:

Where there is no rate

(4) The symbol "N/A", where it appears in the column "Most-Favoured-Nation Tariff", "General Preferential Tariff" or "United States Tariff" of a tariff item in Schedule I or in the column "Most-Favoured-Nation Tariff", "MFN Staging Category" or "General Preferential Tariff" of a code in Schedule II, indicates that there is no Most-Favoured-Nation Tariff, General Preferential Tariff or United States Tariff rate of customs duty, as the case may be, for that tariff item or code.

1988, ch. 65, art. 84

76. (1) L'alinéa 13(2)*a*) de la même loi est remplacé par ce qui suit :

a) sur l'assimilation, pour l'application de la présente loi ou de toute autre loi, à des marchandises originaires d'un pays des marchandises produites en tout ou en partie à l'extérieur de ce pays, sous réserve des conditions prévues au règlement;

a.1) pour l'application de la présente loi ou de toute autre loi, sur la détermination de l'origine de marchandises;

(2) L'article 13 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Application des règles d'origine

(2.1) Dans la mesure qui y est indiquée, les règlements pris en vertu du paragraphe (2) pour mettre en œuvre l'Accord sur les règles d'origine figurant à l'annexe 1A de l'Accord sur l'Organisation mondiale du commerce s'appliquent, dans le cadre de toute autre loi, à l'origine des marchandises; ils l'emportent sur les dispositions incompatibles de tout autre règlement.

Annexes

(2.2) Pour l'application du paragraphe (2.1), l'Accord sur les règles d'origine comprend les annexes ajoutées en application de son article 9.

1989, ch. 18, par. 2(2)

77. Le paragraphe 21(4) de la même loi est remplacé par ce qui suit :

Idem

(4) La présence du symbole « S/O », dans les colonnes intitulées « Tarif de la nation la plus favorisée », « Tarif de préférence général » ou « Tarif des États-Unis », à l'annexe I, ou dans les colonnes intitulées « Tarif de la nation la plus favorisée », « Catégorie d'échelonnement NPF » ou « Tarif de préférence général », à l'annexe II, en regard d'un numéro tarifaire ou d'un code, selon le cas, signifie l'absence de taux de droits de douane pour celui-ci en vertu de ces tarifs.

Clause 76 - Rules of Origin

Clause 76 amends **paragraph 13(2)(a)** to establish rules of origin for goods for the purposes of other Acts in addition to the *Customs Tariff*. This will allow the government to implement harmonized Rules of Origin (e.g. for tariff classification purposes under the *Custom Tariff* relating to MFN rates of duty, for anti-dumping or countervailing duty purposes under the *Special Import Measures Act* and quota administration under the EIPA).

It also adds **subsections 13(2.1) and 13(2.2)**. Subsection 13(2.1) provides that regulations made under 13(2) can apply respecting the origin of goods for the purposes of any Act and prevail over regulations that are inconsistent therewith.

Subsection 13(2.2) provides, for the purposes of subsection 13(2.1) for the Agreement on Rules of Origin to include any annex added to it pursuant to Article 9 of the Agreement.

Clause 77 - Customs Duties

Clause 77 amends **subsection 21(4)** by providing that when the letters "N/A" appear in the column "MFN Staging Category" of a code in Schedule II to the *Customs Tariff* that there is no Most-Favoured-Nation rate of customs duty for that code.

Under the NAFTA eight codes with Mexican Tariff rates were introduced which do not have a MFN rate of duty. Part A of Schedule I to the Bill introduces an "MTN Staging Category" column to Schedules I and II to the *Customs Tariff*. Since Tariff provisions must be accounted for in each column of the Customs Tariff, and no Most-Favoured-Nation Tariff staging category applies to these eight codes, "N/A" is indicated for them in the MFN Staging Category column.

(*c*) where "G" appears, the rate of customs duty that applies to those goods is reduced

(i) effective on the coming into force of this subsection, by one sixth of the difference between the base rate and the final rate,

(ii) effective on January 1, 1996, by two sixths of the difference between the base rate and the final rate,

(iii) effective on January 1, 1997, by three sixths of the difference between the base rate and the final rate,

(iv) effective on January 1, 1998, by four sixths of the difference between the base rate and the final rate,

(v) effective on January 1, 1999, by five sixths of the difference between the base rate and the final rate, and

(vi) effective on January 1, 2000, to the final rate;

(*d*) where "H" appears, the rate of customs duty that applies to those goods is reduced

(i) effective on the coming into force of this subsection, by one eighth of the difference between the base rate and the final rate,

(ii) effective on January 1, 1996, by two eighths of the difference between the base rate and the final rate,

(iii) effective on January 1, 1997, by three eighths of the difference between the base rate and the final rate,

(iv) effective on January 1, 1998, by four eighths of the difference between the base rate and the final rate,

(v) effective on January 1, 1999, by five eighths of the difference between the base rate and the final rate,

(vi) effective on January 1, 2000, by six eighths of the difference between the base rate and the final rate,

(vii) effective on January 1, 2001, by seven eighths of the difference between the base rate and the final rate, and

(viii) effective on January 1, 2002, to the final rate; and

c) dans le cas de « G », le taux est réduit :

(i) à compter de l'entrée en vigueur du présent paragraphe, du sixième de la différence entre le taux de base et le taux final,

(ii) à compter du 1er janvier 1996, des deux sixièmes de la différence entre le taux de base et le taux final,

(iii) à compter du 1er janvier 1997, des trois sixièmes de la différence entre le taux de base et le taux final,

(iv) à compter du 1er janvier 1998, des quatre sixièmes de la différence entre le taux de base et le taux final,

(v) à compter du 1er janvier 1999, des cinq sixièmes de la différence entre le taux de base et le taux final,

(vi) à compter du 1er janvier 2000, au niveau du taux final;

d) dans le cas de « H », le taux est réduit :

(i) à compter de l'entrée en vigueur du présent paragraphe, du huitième de la différence entre le taux de base et le taux final,

(ii) à compter du 1er janvier 1996, des deux huitièmes de la différence entre le taux de base et le taux final,

(iii) à compter du 1er janvier 1997, des trois huitièmes de la différence entre le taux de base et le taux final,

(iv) à compter du 1er janvier 1998, des quatre huitièmes de la différence entre le taux de base et le taux final,

(v) à compter du 1er janvier 1999, des cinq huitièmes de la différence entre le taux de base et le taux final,

(vi) à compter du 1er janvier 2000, des six huitièmes de la différence entre le taux de base et le taux final,

(vii) à compter du 1er janvier 2001, des sept huitièmes de la différence entre le taux de base et le taux final;

(viii) à compter du 1er janvier 2002, au niveau du taux final;

Rounding percentage rates

(5) Where a percentage rate of customs duty for any goods that results from the application of subsection (2) or (3) contains a fraction of one per cent, the resulting percentage rate shall be rounded to the nearest one-tenth of one per cent and, if the resulting percentage rate is equidistant from two one-tenths of one per cent, to the higher of them.

Rounding specific rates

(6) Where a specific rate of customs duty for any goods that results from the application of subsection (2) or (3) contains a fraction of one cent and the final rate of customs duty set out with respect to the goods in the Most-Favoured-Nation Tariff

(*a*) is or contains a specific rate, the resulting specific rate shall be rounded

(i) to the nearest one-hundredth of a cent if the final rate is or contains a specific rate expressed in cents to two decimal places and, if the resulting specific rate is equidistant from two one-hundredths of a cent, to the higher of them,

(ii) to the nearest one-tenth of a cent if the final rate is or contains a specific rate expressed in cents to one decimal place and, if the resulting specific rate is equidistant from two one-tenths of a cent, to the higher of them, and

(iii) to the nearest cent in any other case and, if the resulting specific rate is equidistant from two cents, to the higher of them; or

(*b*) is free or does not contain a specific rate, the resulting specific rate shall be rounded as provided in subparagraphs (*a*)(i) to (iii), except that the references to the final rate in those subparagraphs shall be read as references to the specific rate of customs duty in the base rate of duty set out with respect to the goods in that Tariff.

Application of staging provisions

(7) Where the customs duties imposed on goods entitled to the benefit of the Most-Favoured-Nation Tariff are subject to reduction or removal under subsection 68(2), the references to Schedule I in this section shall be interpreted as references to Schedule II.

Arrondissement des taux en pourcentage

(5) Dans le cas où le pourcentage du taux de droits de douane obtenu en application des paragraphes (2) ou (3) comporte une fraction de un pour cent, il est arrondi au dixième de un pour cent le plus proche ou, si le chiffre obtenu est équidistant entre deux dixièmes de un pour cent, au plus élevé de ceux-ci.

Arrondissement des taux spécifiques

(6) Si, d'une part, le taux de droits de douane spécifique obtenu en application des paragraphes (2) ou (3) comporte une fraction d'un cent et, d'autre part, le taux final de droits de douane figurant à l'égard des marchandises au tarif de la nation la plus favorisée :

a) est ou comporte un taux spécifique, le taux spécifique obtenu est arrondi :

(i) dans le cas où le taux final est ou comporte un taux spécifique ayant deux décimales de cent, au centième de cent le plus proche ou, si le chiffre obtenu est équidistant entre deux centièmes de cent, au plus élevé de ceux-ci,

(ii) dans le cas où le taux final est ou comporte un taux spécifique ayant une décimale de cent, au dixième de cent le plus proche ou, si le chiffre obtenu est équidistant entre deux dixièmes de cent, au plus élevé de ceux-ci,

(iii) dans les autres cas, au cent le plus proche ou, si le chiffre obtenu est équidistant entre deux cents, au plus élevé de ceux-ci;

b) est égal à zéro ou ne comporte pas de taux spécifique, le taux spécifique obtenu est arrondi conformément aux sous-alinéas *a*)(i) à (iii), la mention du taux final valant toutefois mention du taux de droits de douane spécifique du taux de base de droits prévu à ce tarif.

Application

(7) La mention de l'annexe I vaut, au présent article, mention de l'annexe II dans le cas où les droits de douane imposés sur les marchandises bénéficiant du tarif de la nation la plus favorisée sont réduits ou supprimés en application du paragraphe 68(2).

Subsections 22(5) and (6) set out neutral rounding formulae for calculating the percentage and specific Most-Favoured-Nation duty rates applicable to tariff items of Schedule I to the *Customs Tariff* during the reduction process. Since, in most instances, the schedule sets out only the base and final rates of duty for tariff items and codes that are subject to Most-Favoured-Nation reduction, these rounding formulae are required to determine the rates of duty applicable during the reduction process.

Subsection (5) provides that percentage rates of customs duty be rounded to the nearest one-tenth of one per cent, and to the higher one tenth if the calculated rate results in a number where the second decimal place contains the number five.

Subsection (6) provides that customs duties that are or contain a specific rate be rounded neutrally:

1) to the same number of decimal places as the final rate, in instances where the final rate is dutiable; and

2) to the same number of decimal places as the base rate where the final rate is free or does not contain a specific rate of duty.

Subsection 22(7) applies the reduction and rounding provisions of **Section 22** to Schedule II to the *Customs Tariff*.

83. The Act is amended by adding the following after section 59.1:

Revocation or amendment of surtax order

59.2 Where at any time it appears to the satisfaction of the Governor in Council, as a result of a mid-term review by the Canadian International Trade Tribunal under section 19.02 of the *Canadian International Trade Tribunal Act*, that an order imposing or extending the application of a surtax under section 59.1 should be revoked or amended, the Governor in Council may, on the recommendation of the Minister of Finance, by order, revoke or amend the order.

83. La même loi est modifiée par adjonction, après l'article 59.1, de ce qui suit :

Modification ou révocation du décret imposant une surtaxe

59.2 Sur recommandation du ministre des Finances, le gouverneur en conseil peut, par décret, révoquer ou modifier le décret pris en vertu de l'article 59.1 s'il est convaincu, en se fondant sur un examen fait, en vertu de l'article 19.02 de la *Loi sur le Tribunal canadien du commerce extérieur*, par le Tribunal canadien du commerce extérieur, que cela devrait être fait.

84. The Act is amended by adding the following after section 60:

Special Safeguard Measures for Agricultural Goods

Surtax order

60.01 (1) Notwithstanding this Act or any other Act of Parliament but subject to subsections (2) to (7), the Governor in Council may, on the recommendation of the Minister of Finance, by order, make any prescribed agricultural goods, as specified in the order, subject to

(*a*) a surtax at a rate specified in the order, in addition to any other duty imposed under this Act, or any other law relating to customs; and

(*b*) any conditions specified in the order relating to the imposition of the surtax.

Conditions for making order

(2) Before recommending that the order be made under subsection (1), the Minister of Finance must be satisfied, on the basis of a report of the Minister of Agriculture, that the conditions set out in Article 5 of the Agreement on Agriculture in Annex 1A of the World Trade Organization Agreement for the imposition of an additional duty on the prescribed agricultural goods have been met.

84. La même loi est modifiée par adjonction, après l'article 60, de ce qui suit :

Mesures de sauvegarde visant les produits agricoles

Surtaxe

60.01 (1) Par dérogation aux autres dispositions de la présente loi et à toute autre loi fédérale mais sous réserve des paragraphes (2) à (7), le gouverneur en conseil, sur recommandation du ministre des Finances, peut par décret, aux conditions qu'il fixe, assujettir certains produits agricoles désignés par règlement à une surtaxe, en plus des droits imposés en vertu de la présente loi ou de toute autre loi relative aux douanes, au taux spécifié dans le décret.

Conditions de prise du décret

(2) Le ministre des Finances ne recommande la prise du décret que s'il estime, en se fondant sur un rapport du ministre de l'Agriculture, que sont remplies les conditions relatives à l'imposition d'un droit additionnel sur les produits agricoles désignés, que prévoit l'article 5 de l'Accord sur l'agriculture figurant à l'annexe 1A de l'Accord sur l'Organisation mondiale du commerce.

Clause 83 - Global Safeguard Measures

Clause 83 adds a new section, 59.2, which gives the Governor-in-Council the power, on the recommendation of the Minister of Finance, to amend or revoke an order following a mid-term review by the CITT. Under clause 32 of this Bill, the CITT is authorized to conduct a mid-term review of any measure that exceeds three years. This reflects the obligation in Article 7, paragraph 4 of the WTO Agreement on Safeguards.

Clause 84 - Agricultural Safeguards

Clause 84 establishes a special safeguard measure (**section 60.01**) that may be applied to tariffied agricultural imports in certain circumstances.

Subsection 60.01(1) provides the Governor in Council with authority to impose, on the recommendation of the Minister of Finance, a surtax on any agricultural goods prescribed in the regulations.

Subsection (2) provides that, before making any such recommendation to the Governor in Council, the Minister of Finance must be satisfied, on the basis of a report of the Minister of Agriculture, that imports of a tariffied good have exceeded the trigger levels, or fallen below the trigger prices, specified in Article 5 of the Agreement on Agriculture.

1993, c. 44, s. 126

(6) Subsections 59.1(8) to (13) of the Act are replaced by the following:

Extension order

(8) Where, at any time before the expiration of an order with respect to any goods made pursuant to this subsection, subsection (1) or (11) of this section or subsection 5(3), (3.1) or (4.01) of the *Export and Import Permits Act*, it appears to the satisfaction of the Governor in Council, as a result of an inquiry made by the Canadian International Trade Tribunal under section 30.07 of the *Canadian International Trade Tribunal Act*, that

(*a*) an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods, and

(*b*) there is evidence that the domestic producers of like or directly competitive goods are adjusting, as determined in accordance with any regulations made under paragraph 40(*b*) of the *Canadian International Trade Tribunal Act*,

the Governor in Council may, on the recommendation of the Minister of Finance, make an extension order imposing a surtax on any goods specified in the previous order imported from any country specified in the extension order.

Scope and rate

(8.1) Where an extension order is made pursuant to subsection (8),

(*a*) the extension order applies to goods imported into Canada, or any region or part of Canada, specified in the order during the period that the order is in effect; and

(*b*) the rate of the surtax imposed by the extension order shall, subject to subsection (8.2),

(i) be at a rate specified in the extension order, or

(ii) be at a rate specified in the extension order that varies from time to time as the quantity of the goods imported into Canada or that region or part of Canada during a period specified in the order equals or exceeds totals specified in the order.

1993, ch. 44, art. 126

(6) Les paragraphes 59.1(8) à (13) de la même loi sont remplacés par ce qui suit :

Extension

(8) Si, avant l'expiration du décret pris en vertu du présent paragraphe, des paragraphes (1) ou (11) du présent article ou des paragraphes 5(3), (3.1) ou (4.01) de la *Loi sur les licences d'exportation et d'importation*, le gouverneur en conseil est convaincu, en se fondant sur une enquête menée, en vertu de l'article 30.07 de la *Loi sur le Tribunal canadien du commerce extérieur*, par le Tribunal canadien du commerce extérieur, que, d'une part, un décret continue d'être nécessaire pour éviter qu'un dommage grave ne soit causé à des producteurs nationaux de marchandises similaires ou directement concurrentes, ou pour réparer un tel dommage, et, d'autre part, il existe des éléments de preuve selon lesquels les producteurs nationaux procèdent à des ajustements, selon les règlements pris en vertu de l'alinéa 40*b*) de cette loi, il peut, sur recommandation du ministre des Finances, par décret, assujettir à une surtaxe toutes marchandises visées par le décret antérieur qui sont importées des pays mentionnés dans le décret.

Application de la surtaxe

(8.1) Le décret pris en vertu du paragraphe (8) s'applique aux marchandises importées au Canada ou dans une de ses régions ou parties précisées dans le décret, pendant la période de validité de celui-ci; le taux de la surtaxe spécifié dans le décret soit est fixe, soit varie selon que la quantité des marchandises, importées au Canada ou dans une de ses régions ou parties pendant la période spécifiée dans le décret, est égale ou supérieure aux quantités totales qui y sont spécifiées.

Subsection 59.1(8) provides that the Governor in Council may, on the recommendation of the Minister of Finance, impose a surtax on goods previously the subject of a surtax order or previously under quota if the CITT reports that an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods and that such domestic producers are adjusting. The right to take such action is provided for in Article 7, paragraph 2 of the WTO Agreement on Safeguards.

The existing subsection 59.1(8) is deleted as it relates to an order extended by a resolution of Parliament, which will no longer be provided for in subsections 59.1(5) and (6).

Subsection 59.1(8.1), provides that the scope and rate of the surtax are to be specified in the extension order. As in initial orders, the rate of surtax in an extension order could be fixed for the duration of the order or could vary as quantities vary and could apply to all imports into Canada or only to a specific region of Canada.

Maximum rate

(8.2) The rate specified in the extension order shall not exceed

(*a*) the lowest rate, if any, previously imposed with respect to the goods pursuant to subsection (1), (8) or (11); and

(*b*) the rate that in the opinion of the Governor in Council is sufficient to prevent or remedy serious injury to domestic producers of like or directly competitive goods and to facilitate the adjustment of the domestic producers.

Taux maximum

(8.2) Le taux de la surtaxe ne peut toutefois excéder ni le taux le plus bas fixé, le cas échéant, en vertu des paragraphes (1), (8) ou (11) ni celui que le gouverneur en conseil estime suffisant pour prévenir ou réparer tout dommage grave et pour permettre aux producteurs nationaux de procéder à des ajustements.

Exception for NAFTA goods

(8.3) Notwithstanding subsection (8), no extension order under subsection (8) may be made applicable to goods of any kind imported from a NAFTA country unless it appears to the satisfaction of the Governor in Council, pursuant to a report under the *Canadian International Trade Tribunal Act*, that the quantity of such goods

(*a*) imported from that country represents a substantial share of total imports of goods of the same kind; and

(*b*) imported from that country alone or, in exceptional circumstances, together with goods of the same kind imported from each other NAFTA country, contributes importantly to serious injury or threat thereof to domestic producers of like or directly competitive goods.

Exception applicable aux marchandises ALÉNA

(8.3) Par dérogation au paragraphe (8), le décret pris en vertu de ce paragraphe ne s'applique aux marchandises de toute nature importées d'un pays ALÉNA que si le gouverneur en conseil est convaincu, en se fondant sur un rapport établi conformément à la *Loi sur le Tribunal canadien du commerce extérieur*, que la quantité de ces marchandises constitue une part substantielle du total des importations de marchandises de même nature importées d'autres pays et que les marchandises importées du pays ALÉNA contribuent de manière importante, à elles seules, ou, dans des circonstances exceptionnelles, avec celles de même nature importées des autres pays ALÉNA, à causer ou à menacer de causer un dommage grave aux producteurs nationaux de marchandises similaires ou directement concurrentes.

Period and revocation of extension orders

(8.4) Every extension order made pursuant to subsection (8)

(*a*) shall, subject to this section, remain in effect for such period as is specified in the order, but the total of the specified period and the periods during which the goods were subject to related orders made pursuant to subsection (1), (8) or (11) of this Act or subsection 5(3), (3.2) or (4.01) of the *Export and Import Permits Act* shall not exceed eight years; and

(*b*) may, notwithstanding any other provision of this section, be amended or revoked at any time by the Governor in Council on the recommendation of the Minister of Finance, unless, prior to that time, a resolution praying that the order be revoked has been adopted by both Houses of Parliament pursuant to subsection (9).

Application et révocation du décret

(8.4) Le décret pris en vertu du paragraphe (8) :

a) s'applique, sous réserve des autres dispositions du présent article, pendant la période qui y est spécifiée, celle-ci et les périodes pendant lesquelles les marchandises ont fait l'objet de décrets pris en vertu des paragraphes (1), (8) ou (11) du présent article ou des paragraphes 5(3), (3.2) ou (4.01) de la *Loi sur les licences d'exportation et d'importation* ne pouvant toutefois excéder huit ans;

b) peut, sur recommandation du ministre des Finances, malgré les autres dispositions du présent article, être à tout moment annulé ou modifié par le gouverneur en conseil, sauf si les deux chambres du Parlement ont déjà adopté, aux termes du paragraphe (9), une résolution de révocation.

Subsections 59.1(9) and 59.1(10) are amended by adding a reference to subsections 59.1(8)and (11) which refer to extension orders and surge orders respectively. These are consequential amendments.

Surtax on NAFTA goods

(11) Where an order has been made under subsection (1) or (8) imposing a surtax that does not apply to goods imported from a NAFTA country because the quantity of such goods is not substantial in comparison with the quantity of goods of the same kind imported from other countries or because such goods imported from the NAFTA country alone or, in exceptional circumstances, together with goods of the same kind imported from each other NAFTA country, do not contribute importantly to the serious injury or threat thereof to domestic producers of like or directly competitive goods and the Governor in Council is satisfied, on the recommendation of the Minister of Finance made as a result of an inquiry by the Canadian International Trade Tribunal, that

(*a*) there has been a surge of such goods imported from the NAFTA country on or after the coming into force of the order, and

(*b*) as a result thereof, the effectiveness of the imposition of the surtax is being undermined,

the Governor in Council may, by order, make any goods of that kind that are imported from the NAFTA country, when imported into Canada or any region or part thereof specified in the order during the period that the order is in effect, subject to a surtax at a rate specified in the order, or at a rate specified in the order that varies from time to time as the quantity of such goods imported into Canada or that region or part thereof during a period specified in the order equals or exceeds totals specified in the order, but no such rate shall, at the maximum, exceed the rate that, in the opinion of the Governor in Council, is sufficient to prevent the undermining of the effectiveness of the order under subsection (1) or (8).

Rate

(12) The rate of a surtax imposed on goods imported from a NAFTA country under subsection (1), (8) or (11) need not be the same rate as that imposed under subsection (1) or (8) on goods of the same kind imported from any other country, but it shall in no case exceed the rate of surtax imposed under subsection (1) or (8) on goods of the same kind imported from any other country.

Limitation

(13) Where the Governor in Council makes an order under subsection (1) or (8) that applies to goods imported from a NAFTA country by virtue of subsection (3) or (8.3) or makes an order under subsection (11), the Governor in Council shall, in respect of goods imported from a NAFTA country, be guided by the provisions of subparagraph 5(*b*) of Article 802 of the North American Free Trade Agreement.

Surtaxe sur les marchandises ALÉNA

(11) En cas de prise, en vertu des paragraphes (1) ou (8), d'un décret imposant une surtaxe qui ne s'applique pas aux marchandises importées d'un pays ALÉNA parce que leur quantité n'est pas substantielle comparativement à celle des marchandises de même nature importées d'autres pays ou que les marchandises importées du pays ALÉNA ne contribuent pas de manière importante, à elles seules, ou, dans des circonstances exceptionnelles, avec celles de même nature importées des autres pays ALÉNA, à causer ou à menacer de causer un dommage grave aux producteurs nationaux de marchandises similaires ou directement concurrentes, le gouverneur en conseil, s'il est d'avis, sur recommandation du ministre des Finances faite par suite d'une enquête du Tribunal canadien du commerce extérieur :

a) d'une part, qu'il y a eu augmentation subite de l'importation de ces marchandises importées du pays ALÉNA à compter de l'entrée en vigueur du décret,

b) d'autre part, qu'en conséquence, l'efficacité de la surtaxe est diminuée,

peut, par décret, assujettir les marchandises de cette nature importées du pays ALÉNA, lors de leur importation au Canada ou dans une de ses régions ou parties précisées dans le décret, pendant la période de validité de celui-ci, à une surtaxe, au taux spécifié dans le décret et soit fixe soit variable selon que la quantité des marchandises importées au Canada ou dans une de ses régions ou parties pendant la période spécifiée dans le décret est égale ou supérieure aux quantités totales ainsi spécifiées. Les taux ne peuvent dépasser le taux qui, de l'avis du gouverneur en conseil, suffit pour prévenir la diminution d'efficacité du décret visé aux paragraphes (1) ou (8).

Taux

(12) Le taux de la surtaxe imposée, en vertu des paragraphes (1), (8) ou (11), sur les marchandises importées d'un pays ALÉNA n'est pas obligatoirement le même que celui de la surtaxe imposée en vertu des paragraphes (1) ou (8) sur les marchandises de même nature importées d'autres pays; ce taux ne peut cependant dépasser celui de la surtaxe imposée sur ces marchandises.

Réserve

(13) Le gouverneur en conseil, s'il prend soit un décret en vertu des paragraphes (1) ou (8), applicable aux marchandises importées d'un pays ALÉNA en raison des paragraphes (3) ou (8.3), soit un décret en vertu du paragraphe (11), doit tenir compte de l'alinéa 5*b*) de l'article 802 de l'Accord de libre-échange nord-américain en ce qui a trait à ces marchandises.

Subsections 59.1(11) and 59.1(12) are amended by adding references to subsection 59.1(8), which refers to extension orders. These are consequential amendments. (It will be noted that more extensive amendments are made to the French version of 59.1(11) in order to take into account changes respecting terminology in the Agreement on Safeguards (see clauses 90, 91 and 92).)

Subsection 59.1(13) is amended by adding references to subsection 59.1(8) (extension orders) and 59.1(8.3) (exception for NAFTA goods). These are consequential amendments.

Non-application to goods in transit

(3) Goods are not subject to a surtax imposed by an order under subsection (1) where the Deputy Minister is of the opinion that, before the coming into force of the order, a person purchased the goods for importation in the expectation in good faith that only the Most-Favoured-Nation Tariff rate of customs duty applicable to the goods would apply to them and, at the time of the coming into force of the order, the goods were in transit to the purchaser in Canada.

Period and revocation of order

(4) An order under subsection (1)

(*a*) shall, subject to this section, remain in effect for such period as is specified in the order; and

(*b*) may, notwithstanding any other provision of this section, be revoked at any time by the Governor in Council on the recommendation of the Minister of Finance, unless, prior to that time, a resolution praying that the order be revoked has been adopted by both Houses of Parliament pursuant to subsection (5).

Resolution of Parliament revoking order

(5) Notwithstanding anything in this section, where a resolution praying that an order under subsection (1) be revoked is adopted by both Houses of Parliament, the order shall cease to have effect on the day that the resolution is adopted or, if the adopted resolution specifies a day on which the order shall cease to have effect, on that specified day.

Notice in *Canada Gazette*

(6) Where an order under subsection (1) ceases to have effect by reason of a resolution of both Houses of Parliament, the Minister of Finance shall cause a notice to that effect to be published in the *Canada Gazette*.

Regulations

(7) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations

(*a*) prescribing agricultural goods for the purposes of this section in respect of any country;

(*b*) prescribing terms and conditions governing the making of orders under subsection (1); and

(*c*) generally for carrying out the purposes and provisions of this section.

Exemption from *Statutory Instruments Act*

(8) An order under subsection (1) is exempt from the application of sections 3, 5 and 11 of the *Statutory Instruments Act*.

Publication

(9) Every order made pursuant to subsection (1) shall be published in the *Canada Gazette*.

(3) Le décret ne s'applique pas aux marchandises que le sous-ministre estime avoir été achetées pour importation, avant l'entrée en vigueur du décret, par un acheteur qui croyait de bonne foi que seul le tarif de la nation la plus favorisée leur serait applicable, et qui, à l'entrée en vigueur du décret, sont en transit à destination de l'acheteur au Canada.

Non-application du décret

Application et révocation du décret

(4) Le décret pris en vertu du paragraphe (1) :

a) s'applique, sous réserve des autres dispositions du présent article, pendant la période qui y est spécifiée;

b) peut, sur recommandation du ministre des Finances, malgré les autres dispositions du présent article, être à tout moment annulé par le gouverneur en conseil, sauf si les deux chambres du Parlement ont déjà adopté, aux termes du paragraphe (5), une résolution de révocation.

Résolution de révocation

(5) Par dérogation aux autres dispositions du présent article, le décret cesse de s'appliquer le jour de l'adoption d'une résolution de révocation par les deux chambres du Parlement ou, le cas échéant, le jour que prévoit cette résolution.

Publication d'un avis

(6) Le ministre des Finances fait publier dans la *Gazette du Canada* l'avis approprié en cas de révocation du décret par suite d'une résolution adoptée par les deux chambres du Parlement.

Règlements

(7) Sur recommandation du ministre des Finances, le gouverneur en conseil peut, par règlement :

a) désigner, relativement à tout pays, des produits agricoles;

b) fixer les conditions de prise des décrets visés au paragraphe (1);

c) prendre toute autre mesure d'application du présent article.

Dérogation à la *Loi sur les textes réglementaires*

(8) Les décrets pris en application du paragraphe (1) sont soustraits à l'application des articles 3, 5 et 11 de la *Loi sur les textes réglementaires*.

Publication

(9) Les décrets pris en application du paragraphe (1) sont publiés dans la *Gazette du Canada*.

Subsection (3) exempts certain goods in transit from the application of a surtax imposed pursuant to subsection (1).

Subsection (4) provides for the period of a surtax order and gives the Governor in Council authority to repeal it at any time on the recommendation of the Minister of Finance.

Subsection (5) provides additional authority to Parliament to revoke such an order.

Subsection (6) provides for publication of notice of a revocation pursuant to subsection (5).

Subsection (7) provides the Governor in Council with authority to make regulations: prescribing agricultural goods to which the special safeguard authority applies; prescribing terms and conditions of a surtax order; and for such other purposes as may be necessary to implement the safeguard.

Subsection (8) exempts a special safeguard surtax order from the pre-publication requirements of the *Statutory Instruments Act*.

Subsection (9) provides that a surtax order must be published in the Canada Gazette.

1993, c. 44, s. 129(1)

85. Subsection 60.2(4) of the Act is replaced by the following:

Where emergency actions taken

(4) No order shall be made in respect of a fresh fruit or vegetable pursuant to subsection (1) during any period in which an order made pursuant to subsection 59.1(1), (8) or (11), 60(1) or (6.1) or 60.1(1) of this Act or subsection 5(3), (3.2), (4.01) or (4.2) of the *Export and Import Permits Act* in respect of the same fresh fruit or vegetable that is entitled to the benefit of the United States Tariff is in force and any such order made pursuant to subsection (1) shall not have any force or effect during any such period.

1993, c. 44, s. 130

86. Subsection 60.3(4) of the Act is replaced by the following:

Application of special measures

(4) Any order made pursuant to subsection 59.1(1), (8) or (11) of this Act or subsection 5(3), (3.2) (4.01) or (4.2) of the *Export and Import Permits Act* shall have effect in respect of goods referred to in subsection (2) only during any period in which the limits specified under subsection (3) for those goods have not been exceeded.

1993, c. 44, s. 132

87. Paragraph 62(1)(*c*) of the Act is replaced by the following:

(*c*) reduce or remove customs duties on goods imported, whether before or after the order comes into force, from any country by way of compensation for any action taken under subsection 59.1(1), (8) or (11), 60(1) or (6.1), 60.1(1), 60.11(2) or 60.4(1) of this Act or under subsection 5(3), (3.2), (4.01) or (4.2) of the *Export and Import Permits Act*.

1988, c. 65, s. 99

88. The definition "customs duties" in section 66 of the Act is replaced by the following:

"customs duties" *« droits de douane »*

"customs duties" means the customs duties imposed under Part I, other than surtaxes imposed under section 59, 59.1, 60 or 60.01, temporary duties imposed under section 60.1 or 60.2 or surcharges imposed under section 61;

1993, c. 44, s. 135

89. Section 83.01 of the Act is replaced by the following:

Definition of "customs duties"

83.01 In section 83.02, "customs duties" means customs duties imposed under Part I, other than additional customs duties imposed under section 20, surtaxes imposed under section 59, 59.1, 60 or 60.01, temporary duties imposed under section 60.1, 60.11, 60.2 or 60.4 or surcharges imposed under section 61.

1993, ch. 44, par. 129(1)

85. Le paragraphe 60.2(4) de la même loi est remplacé par ce qui suit :

Mesures d'urgence

(4) L'arrêté visé au paragraphe (1) ne peut être pris à l'égard des fruits et légumes frais bénéficiant du tarif des États-Unis pendant la période de validité du décret pris à l'égard de ceux-ci en vertu des paragraphes 59.1(1), (8) ou (11), 60(1) ou (6.1) ou 60.1(1) de la présente loi ou des paragraphes 5(3), (3.2), (4.01) ou (4.2) de la *Loi sur les licences d'exportation et d'importation*; l'arrêté n'a, pendant cette période, aucun effet.

1993, ch. 44, art. 130

86. Le paragraphe 60.3(4) de la même loi est remplacé par ce qui suit :

Mesures spéciales

(4) Le décret pris en vertu des paragraphes 59.1(1), (8) ou (11) de la présente loi ou des paragraphes 5(3), (3.2), (4.01) ou (4.2) de la *Loi sur les licences d'exportation et d'importation* s'applique aux marchandises tant que la quantité globale de marchandises bénéficiant d'une réduction de droits de douane n'est pas atteinte.

1993, ch. 44, art. 132

87. L'alinéa 62(1)*c*) de la même loi est remplacé par ce qui suit :

c) réduire ou supprimer les droits de douane sur les marchandises importées, avant ou après l'entrée en vigueur du décret, de tout pays en compensation de toute mesure prise en vertu des paragraphes 59.1(1), (8) ou (11), 60(1) ou (6.1), 60.1(1), 60.11(2) ou 60.4(1) de la présente loi ou des paragraphes 5(3), (3.2), (4.01) ou (4.2) de la *Loi sur les licences d'exportation et d'importation*.

1988, ch. 65, art. 99

88. La définition de « droits de douane », à l'article 66 de la même loi, est remplacée par ce qui suit :

« droits de douane » *"customs duties"*

« droits de douane » Les droits de douane imposés en vertu de la partie I, à l'exception d'une surtaxe imposée en vertu des articles 59, 59.1, 60 ou 60.01, d'un droit temporaire imposé en vertu des articles 60.1 ou 60.2 ou d'une surcharge imposée en vertu de l'article 61.

1993, ch. 44, art. 135

89. L'article 83.01 de la même loi est remplacé par ce qui suit :

Définition de « droits de douane »

83.01 Pour l'application de l'article 83.02, « droits de douane » s'entend des droits de douane imposés en vertu de la partie I, à l'exception des droits de douane supplémentaires imposés en vertu de l'article 20, des surtaxes imposées en vertu des articles 59, 59.1, 60 ou 60.01, des droits temporaires imposés en vertu des articles 60.1, 60.11, 60.2 ou 60.4 et des surcharges imposées en vertu de l'article 61.

Clause 85

Clause 85 amends the Bilateral Safeguard Measures for U.S. Fresh Fruits and Vegetables (section 60.2) to reflect new subsections in the provisions governing global safeguard measures (i.e. extension orders for a surtax or quota) to ensure that bilateral safeguard actions against U.S. fruit and vegetables cannot be applied where a global safeguard measure affecting those fruit and vegetables is already in place.

Clause 86

Clause 86 amends the Bilateral Safeguard Measures for Mexican Agricultural Goods (section 60.3) to reflect new subsections in the provisions governing global safeguard measures, (i.e. extension orders for a surtax or quota)to ensure that bilateral safeguard actions against Mexican agricultural goods cannot be applied where a global safeguard measure affecting those goods is already in place.

Clause 87 - Global Safeguard Measures

Clause 87 amends paragraph 62(1)(c) to ensure that the Governor in Council continues to have the authority to reduce or remove customs duties where another country has rights of compensation as a result of a global safeguard action taken by Canada (i.e. extension orders for a surtax or a quota).

Clause 88 and 89

Clauses 88 and 89 amend the definition of customs duties in sections 66 and 83.01 to ensure that surtaxes imposed pursuant to the safeguard measures introduced in this Bill are not considered customs duties for the purposes of other provisions of the Tariff.

90. The French version of the Act is amended by replacing the expression "marchandises semblables ou directement concurrentielles" with the expression "marchandises similaires ou directement concurrentes" in the following provisions:

(*a*) subsection 59.1(3);

(*b*) subsection 59.1(7);

(*c*) subsection 60.1(1);

(*d*) subsection 60.11(2);

(*e*) subsection 60.4(1); and

(*f*) subsection 60.4(5).

91. The French version of the Act is amended by replacing the word "préjudice" with the word "dommage" in the following provisions:

(*a*) subsection 59.1(3);

(*b*) subsection 60.1(1);

(*c*) subsection 60.1(3);

(*d*) subsection 60.11(2); and

(*e*) subsection 60.11(6).

92. The French version of the Act is amended by replacing the word "dommage" with the word "préjudice" in the following provisions:

(*a*) subsection 60.4(1); and

(*b*) subsection 60.4(5).

90. Dans les passages suivants de la version française de la même loi, « marchandises semblables ou directement concurrentielles » est remplacé par « marchandises similaires ou directement concurrentes » :

a) le paragraphe 59.1(3);

b) le paragraphe 59.1(7);

c) le paragraphe 60.1(1);

d) le paragraphe 60.11(2);

e) le paragraphe 60.4(1);

f) le paragraphe 60.4(5).

91. Dans les passages suivants de la version française de la même loi, « préjudice » est remplacé par « dommage » :

a) le paragraphe 59.1(3);

b) le paragraphe 60.1(1);

c) le paragraphe 60.1(3);

d) le paragraphe 60.11(2);

e) le paragraphe 60.11(6).

92. Dans les passages suivants de la version française de la même loi, « dommage » est remplacé par « préjudice » :

a) le paragraphe 60.4(1);

b) le paragraphe 60.4(5).

Clause 90

Clause 90 amends the French version of the Bill to replace the words "marchandises semblables ou directement concurrentielles" with the words "marchandises similaires ou directement concurrentes" to harmonize the French version with the language used in the CITTA and the EIPA.

Clause 91

Clause 91 amends the French version of the Bill to replace the word "préjudice" with the word "dommage". This is necessary to harmonize the French version of the Bill with the French terminology used in the WTO Agreements.

Clause 92

Clause 92 amends the French version of the Bill to replace the word "dommage" with the word "préjudice". This is necessary to harmonize the French version of the Bill with the French terminology used in the WTO Agreement on Textiles and Clothing.

93. Schedules I and II to the Act are amended in the manner and to the extent indicated in Schedule I to this Act.

93. Les annexes I et II de la même loi sont modifiées conformément à l'annexe I de la présente loi.

94. (1) Code 9954 (oleomargarine) of Schedule VII to the Act is repealed.

(2) Code 9962 (metallic trading checks) of Schedule VII to the Act is repealed.

94. (1) Le code 9954 (oléomargarine) de l'annexe VII de la même loi est abrogé.

(2) Le code 9962 (jetons de commerce en métal) de l'annexe VII de la même loi est abrogé.

Clause 93

Clause 93 amends Schedules I and II of the *Customs Tariff* by:

a) Creating a column with the heading "MFN Staging Category" to the right of the column "Most-Favoured-Nation Tariff";

b) Adding the MFN Staging Category applicable to each tariff item or code;

c) Setting out the base and final rates (and in some cases the intermediate rates) of duty for tariff items and codes subject to Most-Favoured-Nation Tariff reductions;

d) Striking out tariff items and codes which do not accommodate the rates of tariff reduction agreed to with our trading partners;

e) Introducing tariff items and codes that are required to accommodate rates of tariff reduction agreed to with our trading partners;

f) Adding or amending certain Supplementary Notes for Chapters or Sections of Schedule I;

g) Inserting "N\A" in the "MFN Staging Category" for the eight codes in Schedule II to the *Customs Tariff* to which only the Mexico Tariff applies.

Clause 94

Schedule VII of the *Customs Tariff* enumerates the goods that are prohibited entry into Canada.

Sub-clause 94(1) repeals Code 9954 of Schedule VII of the *Customs Tariff*, eliminating the import prohibition on oleomargarine, consistent with our obligations under the Agreement on Agriculture to provide minimum access for sensitive agricultural imports and to convert restrictions on such imports into customs duties.

Sub-clause 94(2) repeals Code 9962 of Schedule VII of the *Customs Tariff*, eliminating the import prohibition on metallic trading checks. This prohibition is being eliminated because it is inconsistent with Canada's current and future GATT/WTO obligations.

Transitional Provisions

Surtaxes and Import Control List orders

95. Subsections 59.1(3.1), (3.2), (4.2), (5), (6) and (8) to (8.4) and section 59.2 of the *Customs Tariff*, as enacted by sections 82 and 83 of this Act, apply in respect of surtaxes imposed and goods included on the Import Control List by orders made after those provisions come into force.

Amendment to Schedules

96. (1) The Governor in Council may, on the recommendation of the Minister of Finance, by order, amend any of Schedules I to VII to the *Customs Tariff* where the Governor in Council deems it necessary to do so as a consequence of the implementation in Canada of the World Trade Organization Agreement.

Ceases to have effect

(2) Subsection (1) ceases to have effect three years after it comes into force.

Definitions

97. In sections 98 and 99,

"former version" means the *Customs Tariff* as it read immediately before this section came into force;

"present version" means the *Customs Tariff* as amended by this Act.

Amendments to other Acts

98. (1) The Governor in Council may, on the recommendation of the Minister of Finance, by order, amend any Act of Parliament, other than the *Customs Tariff*, by

(*a*) substituting for any reference made in the other Act to a tariff item, code or portion of a tariff item or code, of the *Customs Tariff* amended or repealed by this Act another reference to a tariff item or items, or code or codes, or portion or portions of them;

(*b*) substituting for any reference made in the other Act to all or a portion of a schedule to the *Customs Tariff* amended or repealed by this Act a reference to all or a portion of a schedule to the present version; and

(*c*) making such other modifications as the Governor in Council may deem necessary as a consequence of any substitution made pursuant to paragraph (*a*) or (*b*) or as a consequence of the enactment of this Act.

Ceases to have effect

(2) Subsection (1) ceases to have effect three years after it comes into force.

Dispositions transitoires

Surtaxes — liste des marchandises d'importation contrôlée

95. Les paragraphes 59.1(3.1), (3.2), (4.2), (5), (6) et (8) à (8.4) et l'article 59.2 du *Tarif des douanes*, édictés par les articles 82 et 83 de la présente loi, s'appliquent aux marchandises assujetties à une surtaxe ou portées sur la liste des marchandises d'importation contrôlée par décret pris après l'entrée en vigueur de ces dispositions.

Modification d'annexes

96. (1) Sur recommandation du ministre des Finances, le gouverneur en conseil peut, par décret, modifier les annexes I à VII du *Tarif des douanes*, s'il l'estime nécessaire en conséquence de la mise en oeuvre au Canada de l'Accord sur l'Organisation mondiale du commerce.

Cessation d'effet

(2) Le paragraphe (1) cesse d'avoir effet trois ans après son entrée vigueur.

Définitions

97. Pour l'application des articles 98 et 99, « version antérieure » et « version actuelle » s'entendent respectivement de la version du *Tarif des douanes* antérieure à l'entrée en vigueur du présent article et de la version de cette loi modifiée par la présente loi.

Modification d'autres lois

98. (1) Le gouverneur en conseil peut, par décret, sur recommandation du ministre des Finances, modifier une loi fédérale autre que le *Tarif des douanes* par :

a) substitution, à un renvoi à tout ou partie d'un numéro tarifaire ou d'un code du *Tarif des douanes* modifié ou abrogé par la présente loi, d'un renvoi à tout ou partie d'un numéro tarifaire ou d'un code;

b) substitution, à un renvoi à tout ou partie d'une annexe du *Tarif des douanes* modifié ou abrogé par la présente loi, d'un renvoi à tout ou partie d'une annexe de la version actuelle;

c) autres modifications qu'il estime nécessaires à la suite des substitutions effectuées en application des alinéas *a*) ou *b*) ou de l'édiction de la présente loi.

Cessation d'effet

(2) Le paragraphe (1) cesse d'avoir effet trois ans après sont entrée en vigueur.

Clause 95

Clause 95 is a transitional provision. It provides that extension orders for a surtax or import quota, mid-term reviews, refund orders for a provisional surtax and the new time limits for surtax measures only apply in respect of surtaxes imposed on goods or goods which are included on the Import Control List after the coming into force of this Bill.

Clause 96

Clause 96 is a transitional provision.

Sub-clause 96(1) provides for amendments to the Schedules to the *Customs Tariff* that are necessary to implement the World Trade Organization Agreement in Canada to be made by Order in Council.

Sub-clause 96(2) provides for Sub-clause 96(1) to expire three years after it comes into force.

Clause 97

Clause 97 is a transitional provision which defines the "former version" and the "present version" of the *Customs Tariff* for the purposes of Clauses 98 and 99. The "former version" is the *Customs Tariff* as it reads prior to Clause 97 coming into force, whereas the "present version" is the *Customs Tariff* as amended by the *World Trade Organization Implementation Act*.

Clause 98

Clause 98 is a transitional provision.

Sub-clause 98(1) provides for consequential amendments to other Acts to be made by Order in Council where such amendments replace references to codes, tariff items or schedules to the former *Customs Tariff* with references to the present version.

Sub-clause 98(2) provides for Sub-clause 98(1) to expire three years after it comes into force.

Former tariff items

99. Where a tariff item or code of the former version, or any portion of the tariff item or code, is referred to in any Act of Parliament or regulation or order made under it, the reference to that tariff item, code or portion *shall*, unless the context otherwise requires, be construed as a reference to the tariff item or items, code or codes, or portion or portions of the present version enumerating or referring to goods that correspond most closely to goods enumerated or referred to in the tariff item, code or portion of the former version.

Mention de numéros tarifaires du régime antérieur

99. La mention, dans une loi fédérale ou dans un texte d'application de celle-ci, de tout ou partie d'un numéro tarifaire ou d'un code de la version antérieure vaut, sauf indication contraire du contexte, mention soit du ou des numéros tarifaires ou codes, soit de la partie du numéro tarifaire ou code, figurant dans la version actuelle et où la dénomination des marchandises ou le renvoi à des marchandises correspond le mieux au numéro tarifaire ou au code ou à la partie de l'un de ceux-ci de la version antérieure.

Conditional Amendment

Modification conditionnelle

Bill C-49

100. If Bill C-49, introduced in the first session of the thirty-fifth Parliament and entitled *An Act to amend the Department of Agriculture Act and to amend or repeal certain other Acts*, is assented to, then subsection 60.01(2) of the *Customs Tariff*, as enacted by section 84 of this Act, is replaced by the following:

Projet de loi C-49

100. En cas de sanction du projet de loi C-49, déposé au cours de la première session de la trente-cinquième législature et intitulé *Loi modifiant la Loi sur le ministère de l'Agriculture et abrogeant ou modifiant certaines lois*, le paragraphe 60.01(2) du *Tarif des douanes*, édicté par l'article 84 de la présente loi, est remplacé par ce qui suit :

Conditions for making order

(2) Before recommending that an order be made under subsection (1), the Minister of Finance must be satisfied, on the basis of a report of the Minister of Agriculture and Agri-Food, that the conditions set out in Article 5 of the Agreement on Agriculture in Annex 1A of the World Trade Organization Agreement for the imposition of an additional duty on any prescribed agricultural goods have been met.

Conditions de prise du décret

(2) Le ministre des Finances ne recommande la prise du décret que s'il estime, en se fondant sur un rapport du ministre de l'Agriculture et de l'Agroalimentaire, que sont remplies les conditions relatives à l'imposition d'un droit additionnel sur les produits agricoles désignés, que prévoit l'article 5 de l'Accord sur l'agriculture figurant à l'annexe 1A de l'Accord sur l'Organisation mondiale du commerce.

Clause 99

Clause 99 is a transitional provision which provides for instances where consequential amendments that are required to replace references to tariff items or codes introduced in this Bill have not been made to any Acts, Regulations or Orders. In such instances references to the tariff items, codes and portions thereof that have been superseded are to be read as if they refer to the tariff item, code or portion thereof in the "present version" of the *Customs Tariff* that most closely corresponds to the goods that are covered by the reference.

Clause 100

Clause 100 is a consequential amendment necessary to change the name of the Minister of Agriculture to the Minister of Agriculture and Agri-Food for the purpose of section 60.01 (Special Agricultural Safeguards) if the *Department of Agriculture Act* (Bill C-49) receives Royal Assent before this Bill.

Schedule I to the Bill sets out the manner and extent of amendments to Schedules I and II of the *Customs Tariff* enacted by clause 93. Although Schedule I to the Bill provides for Most-Favoured-Nation tariff rates and tariff reductions staging categories for all tariff items and codes in Schedule I and II to the *Customs Tariff* it does not set out every column in Schedules I and II to the *Customs Tariff* (e.g. the columns containing descriptions of goods and non-MFN tariffs) except in instances where new tariff items or codes are being introduced.

Schedule I to the Bill consists of Parts A through E. Part A establishes a column with the heading "MFN Staging Category" throughout Schedules I and II to the *Customs Tariff*. Parts B and C set out amendments to tariff items and codes, respectively, relating to non-agricultural goods. Parts D and E set out amendments to tariff items and codes, respectively, relating to agricultural goods. Each Part is divided into Divisions, each of which set out particular types of amendments.

In Parts A, B and C, Division I lists tariff items or codes that are not subject to Most-Favoured-Nation Tariff reduction and indicates their status in the *Customs Tariff* by adding "K" in the MFN Staging Category column. These tariff items include those that are currently duty-free, that are equal to or less than the rates to which we committed in the WTO Agreement or on which no tariff reductions were negotiated (i.e. ships and some rubber footwear).

Division III strikes out those tariff items or codes which do not accommodate the rates of tariff reduction to which we committed in the WTO Agreement. For example, our commitments on the goods provided for in any one of these items may include more than one final rate of duty or multiple rates of tariff reduction that cannot be implemented in a single provision.

Division IV introduces tariff items or codes that are required to accommodate the rates of duty or tariff reductions to which we committed in the WTO Agreement. The tariff items and codes introduced in Division IV replace the items and codes struck out in Division III.

Division V, which is included only in Parts B and D, amends or introduces Supplementary Section and Chapter Notes in Schedule I to the *Customs Tariff*.

In Part E, Divisions I and II have the same structure and function as Parts A, B and C. Division III of Part E, however, adds the symbol "N/A" to the MFN Staging Category column for eight tariff codes to which only the Mexico Tariff applies.

EXPORT AND IMPORT PERMITS ACT

CLAUSES 101 - 114

EXPORT AND IMPORT PERMITS ACT

CLAUSES 101 - 114

Overview

The *Export and Import Permits Act (EIPA)* provides authority for the establishment of controls on exports or imports of designated goods where certain criteria apply. Controls are established by the addition of items to the Export Control List (ECL) or the Import Control List (ICL), or of countries to the Area Control List or the Automatic Firearms Country Control List, by Order in Council. Goods on a List may only be exported or imported, as the case may be, under the authority of an export or import permit. The Minister responsible for the *EIPA*, the Secretary of State for External Affairs, is given discretion in the issuance of these permits, save only in the case of goods placed on the ECL or ICL for monitoring purposes only, when the Minister shall issue permits on request. The present amendments will provide for other cases where import permits will be issued on request for goods on the ICL.

The circumstances for placing goods on a List are specified in the *EIPA* and other Acts of Parliament. One circumstance is that of a "safeguard" action based on our rights under Article 2 of the WTO Agreement on Safeguards, under which Canada may impose restrictions on imports of a good that are causing or threatening serious injury to the domestic producers of like or directly competitive goods. Goods may also be included on the ICL for the purpose of enforcing a *Customs Tariff* action. Other circumstances foreseen for the addition of goods to the ECL or ICL, as appropriate, include monitoring (a) for the purpose of the collection of information on exports or imports, and (b) for the purpose of enforcing a *Customs Tariff* action. Goods may also be added to either List for the purpose of implementing an intergovernmental arrangement or commitment. The present amendments provide that goods may be added to the ICL for the purpose of implementing the WTO Agreement on Agriculture.

The *EIPA* also provides authority for the issuance of export certificates in order to facilitate the administration of an intergovernmental arrangement providing for special treatment for the goods for which the certificate is issued (for instance, providing a lower duty rate for goods accompanied by an export certificate than for others upon importation into another country).

101. Section 2 of the *Export and Import Permits Act* is amended by adding the following in alphabetical order:

"import allocation" « *autorisation d'importation* »

"import allocation" means an allocation issued pursuant to subsection 6.2(2);

"World Trade Organization Agreement" « *Accord sur l'Organisation mondiale du commerce* »

"World Trade Organization Agreement" has the same meaning as the word "Agreement" in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

102. The Act is amended by adding the following after section 4.1:

Definitions

4.2 (1) In section 5,

"contribute importantly" « *contribuer de manière importante* »

"contribute importantly" has the meaning given that expression by Article 805 of NAFTA;

"serious injury" « *dommage grave* »

"serious injury" means, in relation to domestic producers of like or directly competitive goods, a significant overall impairment in the position of the domestic producers;

"surge" « *augmentation subite* »

"surge" has the meaning given that word by Article 805 of NAFTA;

"threat of serious injury" « *menace de dommage grave* »

"threat of serious injury" means serious injury that, on the basis of facts, and not merely of allegation, conjecture or remote possibility, is clearly imminent.

Application of definition in regulations

(2) Any regulations made under paragraph 40(*b*) of the *Canadian International Trade Tribunal Act* defining "like or directly competitive goods" apply for the purposes of section 5.

101. L'article 2 de la *Loi sur les licences d'exportation et d'importation* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« Accord sur l'Organisation mondiale du commerce » "World Trade Organization Agreement"

« Accord sur l'Organisation mondiale du commerce » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

« autorisation d'importation » "import allocation"

« autorisation d'importation » Autorisation délivrée en application du paragraphe 6.2(2).

102. La même loi est modifiée par adjonction, après l'article 4.1, de ce qui suit :

Définitions

4.2 (1) Les définitions qui suivent s'appliquent à l'article 5.

« augmentation subite » "surge"

« augmentation subite » S'entend au sens de l'article 805 de l'ALÉNA.

« contribuer de manière importante » "contribute importantly"

« contribuer de manière importante » S'entend au sens de l'article 805 de l'ALÉNA.

« dommage grave » "serious injury"

« dommage grave » Tout dommage causant une dégradation générale notable de la situation des producteurs nationaux de marchandises similaires ou directement concurrentes.

« menace de dommage grave » "threat of serious injury"

« menace de dommage grave » Vise un dommage grave dont l'imminence évidente est fondée sur des faits et non pas seulement sur des allégations, des conjectures ou de lointaines possibilités.

Application du terme défini par règlement

(2) Les règlements pris en vertu de l'alinéa 40*b*) de la *Loi sur le Tribunal canadien du commerce extérieur* qui définissent « marchandises similaires ou directement concurrentes » s'appliquent à l'article 5.

Clause 101

Clause 101 adds two new definitions to Section 2 of the *EIPA*. It defines "import allocation" (see Clause 106) and "World Trade Organization Agreement". The definition of "World Trade Organization Agreement" refers to the definition provided in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

Clause 102

Clause 102 adds new subsection 4.2(1) to the *EIPA* defining, for the purposes of section 5, the terms "contribute importantly", "serious injury", "surge" and "threat of serious injury". The definition of "contribute importantly" and "surge" have the meaning given those expressions by Article 805 of the NAFTA. The definitions of "serious injury" and "threat of serious injury" are needed to implement Article 4 of the WTO Agreement on Safeguards. New subsection 4.2(2) is consequential to amendments to paragraph 40(b) of the *Canadian International Trade Tribunal Act*.

103. (1) Paragraph 5(1)(*a*) of the Act is replaced by the following:

(*a*) to ensure, in accordance with the needs of Canada, the best possible supply and distribution of an article that is scarce in world markets or in Canada or is subject to governmental controls in the countries of origin or to allocation by intergovernmental arrangement;

103. (1) L'alinéa 5(1)*a*) de la même loi est remplacé par ce qui suit :

a) assurer, selon les besoins du Canada, le meilleur approvisionnement et la meilleure distribution possibles d'un article rare sur les marchés mondiaux ou canadien ou soumis à des régies gouvernementales dans les pays d'origine ou à une répartition par accord intergouvernemental;

Sub-clause 103(1)

Access Commitments of WTO Agreement on Agriculture

The WTO Agreement on Agriculture provides, in Article 4, paragraph 2, that members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties ("tariffied"), except as provided for in Article 5 ("Special Safeguard Provisions") and Annex 5 (respecting special treatment for certain primary agricultural products and their worked and/or prepared products). The following kinds of measures are henceforward prohibited by this Article: quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties. Limited exceptions are provided, e.g. for balance of payments measures and other general, non-agriculture-specific provisions of the World Trade Organization Agreement.

This "tariffication" has consequently meant the replacement of a slew of quotas, effective prohibitions, and discretionary licensing systems by tariffs. The product areas affected include supply-managed products (dairy and poultry sectors), margarine, beef and veal, and wheat, barley and their products. The new access regimes may take the form of straightforward tariffs, but for most of the affected products there will be Tariff Rate Quotas (TRQs). These consist of two tariff lines for a covered product (one providing for a lower, one for a higher duty rate). Other market access commitments are provided for in the Schedules to the WTO Agreement referred to in Article 4, paragraph 1; these include, notably, quantities that shall be allowed access at the lower rate of duty. Canada's tariff commitments are set out in Section 1-A (Tariffs) of Section 1 (Agricultural Products), Part I (Most-Favoured Nation Tariff) of Schedule V: Canada; the access commitments are set out in Section 1-B (Tariff Quotas) of the same schedule.

Summary of the Amendment

Since the TRQs will replace existing controls, which were of a nature to permit extraordinary imports in times of shortage of a given good in Canada, the proposed amendment is one of a series providing equivalent powers under the *EIPA*. Goods are placed on the Import Control List (ICL) for various purposes, and permits may then be issued by the Minister consistently with that purpose or those purposes. The proposed amendment ensures that goods placed on the ICL for the purpose of implementing access commitments in the WTO Agreement on Agriculture may also be permitted entry when it is in the national interest by reason of domestic scarcity, regardless of whether the access commitment in question has already been fulfilled.

R.S., c. 47 (4th Supp.), s. 52 (Sch., Item 6); 1993, c. 44, s. 147(1)

(4) Subsections 5(3) to (4.04) of the Act are replaced by the following:

Addition to Import Control List

(3) Where at any time it appears to the satisfaction of the Governor in Council, on a report of the Minister made pursuant to an inquiry made by the Canadian International Trade Tribunal under section 20 or 26 of the *Canadian International Trade Tribunal Act*, that goods of any kind are being imported or are likely to be imported into Canada at such prices, in such quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods, any goods of the same kind may, by order of the Governor in Council, be included on the Import Control List, for the purpose of limiting the importation of such goods to the extent and, subject to subsection (7), for the period that in the opinion of the Governor in Council is necessary to prevent or remedy the injury.

Prohibition against further orders

(3.1) No order may be made pursuant to subsection (3) with respect to goods that have already been the subject of an order made pursuant to that subsection or subsection 59.1(1) of the *Customs Tariff* unless, following the expiration of the order and any related orders made pursuant to subsection (3.2) or (4.01) of this Act or subsection 59.1(8) or (11) of the *Customs Tariff*, there has elapsed a period equal to the greater of two years and the total period during which the order or orders were in effect.

Extension order

(3.2) Where at any time before the expiration of an order made with respect to any goods pursuant to this subsection or subsection (3) or (4.01) of this Act or subsection 59.1(1), (8) or (11) of the *Customs Tariff* it appears to the satisfaction of the Governor in Council, as a result of an inquiry made by the Canadian International Trade Tribunal under section 30.07 of the *Canadian International Trade Tribunal Act*, that

(*a*) an order continues to be necessary to prevent or remedy serious injury to do-

L.R., ch. 47 (4e suppl.), art. 52, ann., art. 6; 1993, ch. 44, par. 147(1)

(4) Les paragraphes 5(3) à (4.04) de la même loi sont remplacés par ce qui suit :

Addition à la liste des marchandises d'importation contrôlée

(3) Dans les cas où le gouverneur en conseil est convaincu, sur rapport du ministre établi en conséquence d'une enquête tenue par le Tribunal canadien du commerce extérieur en application des articles 20 ou 26 de la *Loi sur le Tribunal canadien du commerce extérieur*, que des marchandises de tous genres sont importées au Canada — ou sont susceptibles de l'être — à des prix, en quantités et dans des conditions portant un dommage grave aux producteurs nationaux de marchandises similaires ou directement concurrentes — ou menaçant de le faire —, les marchandises du même genre peuvent, par décret du gouverneur en conseil, être portées sur la liste des marchandises d'importation contrôlée afin de limiter l'importation de ces marchandises dans la mesure et, sous réserve du paragraphe (7), pour la période que le gouverneur en conseil estime nécessaires pour éviter le dommage ou y remédier.

Interdiction

(3.1) Il ne peut être pris de décret en vertu du paragraphe (3) à l'égard des marchandises qui ont fait l'objet d'un décret pris en vertu de ce paragraphe ou du paragraphe 59.1(1) du *Tarif des douanes* à moins que, depuis l'expiration du décret en cause et tout décret pris en application des paragraphes 59.1(8) ou (11) de cette loi ou des paragraphes (3.2) ou (4.01) du présent article, il ne se soit écoulé au moins deux ans ou, s'il est plus long, un délai égal à la période d'application du décret ou des décrets.

Décret d'extension

(3.2) Lorsque, avant l'expiration du décret pris en vertu du présent paragraphe, des paragraphes (3) ou (4.01) du présent article ou des paragraphes 59.1(1), (8) ou (11) du *Tarif des douanes* à l'égard de marchandises, il est convaincu, en se fondant sur une enquête menée, en vertu de l'article 30.07 de la *Loi sur le Tribunal canadien du commerce extérieur*, par le Tribunal canadien du commerce extérieur, que, d'une part, un décret continue d'être nécessaire pour éviter qu'un dommage grave ne soit causé à des producteurs nationaux de marchandises similaires ou directement concurrentes, ou pour réparer un tel

Sub-clause 103(4):

Sub-clause 103(4) amends section 5 of the *EIPA* by replacing in subsections (3) and (5) the expression "production in Canada" by "domestic producers". It also amends the French version of this subsection by replacing the words "préjudice", "semblables" and "concurrentielles" with "dommage", "similaires" and "concurrentes", respectively. This is consequent to changes to the *Canadian International Trade Tribunal Act* and the French version of Article 4, paragraph 1 of the WTO Agreement on Safeguards. It adds four new subsections, (3.1), (3.2), (3.3) and (4.04) that are consequent amendments to the *Customs Tariff*. The amendments to subsections (4), (4.01), (4.02) and (4.03) are consequential to new subsection (3.2) providing for an extension order.

The new subsection (3.1) prohibits the making of a further order with respect to a global safeguard action applying to goods that have already been the subject of an order made under that subsection or subsection 59.1(1) of the *Customs Tariff*, unless following the expiration of the order or any related orders made pursuant to subsection (3.2) or (4.01) or subsection 59.1(8) or (11) of the *Customs Tariff*, there has elapsed a period of at least two years. This provision reflects an obligation under Article 7, paragraph 5 of the WTO Agreement on Safeguards.

Subsection (3.2) provides that an extension order may be made at any time before the expiration of an order made pursuant to this subsection or subsection (3) or (4.01) or subsection 59.1(1), (8) or (11) of the *Customs Tariff*. The Governor in Council's decision will be made on the basis of a recommendation by the Secretary of State for External Affairs pursuant to an inquiry under the *Canadian International Trade Tribunal Act*. This subsection requires that the CITT inquiry concludes that an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods, and that there is evidence that the domestic producers are adjusting. The right to take such action is provided for in Article 7, paragraph 2 of the WTO Agreement on Safeguards.

Subsection (3.3) provides that an extension order made pursuant to subsection (3.2) shall remain in effect for the period specified in the order, but the total specified period and the periods during which the goods were previously subject to any related order made pursuant to subsection (3), (3.2) or (4.01) or subsection 59.1(1), (8) or (11) of the *Customs Tariff* shall not exceed eight years. This provision reflects an obligation under Article 7, paragraph 3 of the WTO Agreement on Safeguards.

The amendments to subsections (4), (4.01), (4.02) and (4.03) are consequent to new subsection (3.2) providing for an extension order. Subsection (4) requires that any goods imported from a NAFTA country not be included in any global safeguard action unless the Governor in Council is satisfied that the imports from that country are substantial in quantity (defined in NAFTA Article 802), and contribute importantly (defined in Articles 802 and 805) to the serious injury, or threat thereof. In making the latter determination the imports from the NAFTA country will normally be considered individually, but in

mestic producers of like or directly competitive goods, and

(*b*) there is evidence that the domestic producers are adjusting, as determined in accordance with any regulations made pursuant to paragraph 40(*b*) of the *Canadian International Trade Tribunal Act*,

the Governor in Council may, on the recommendation of the Minister, make an extension order including any of the goods on the Import Control List.

dommage, et, d'autre part, il existe des éléments de preuve selon lesquels ils procèdent à des ajustements, selon les règlements pris en vertu de l'alinéa 40*b*) de cette loi, le gouverneur en conseil peut, sur recommandation du ministre, par décret, porter toutes marchandises visées par le décret antérieur sur la liste des marchandises d'importation contrôlée.

Period and revocation of extension orders

(3.3) Every extension order made pursuant to subsection (3.2) shall, subject to this section, remain in effect for such period as is specified in the order, but the total of the specified period and the periods during which the goods were previously subject to any related orders made pursuant to subsection (3), (3.2) or (4.01) of this Act or subsection 59.1(1), (8) or (11) of the *Customs Tariff* shall not exceed eight years.

Application et révocation du décret

(3.3) Le décret pris en vertu du paragraphe (3.2) s'applique, sous réserve des autres dispositions du présent article, pendant la période qui y est spécifiée, celle-ci et les périodes pendant lesquelles les marchandises ont fait l'objet de décrets pris en application des paragraphes (3), (3.2) ou (4.01) du présent article ou des paragraphes 59.1(1), (8) ou (11) du *Tarif des douanes* ne pouvant toutefois dépasser huit ans.

Exception for goods imported from a NAFTA country

(4) Notwithstanding subsections (3) and (3.2), no order made under those subsections may apply to goods imported from a NAFTA country unless it appears to the satisfaction of the Governor in Council, on a report of the Minister made pursuant to an inquiry under section 20, 26 or 30.07 of the *Canadian International Trade Tribunal Act*, that

(*a*) the quantity of those goods represents a substantial share of the quantity of goods of the same kind imported into Canada from all countries; and

(*b*) the quantity of those goods, alone or, in exceptional circumstances, together with the quantity of goods of the same kind imported into Canada from each other NAFTA country, contributes importantly to the serious injury or threat of serious injury to domestic producers of like or directly competitive goods.

Exception pour les marchandises importées d'un pays ALÉNA

(4) Malgré les paragraphes (3) et (3.2), les marchandises importées d'un pays ALÉNA ne peuvent être assujetties au décret visé à ces paragraphes que si le gouverneur en conseil est convaincu, sur rapport du ministre établi en application de l'enquête menée en vertu des articles 20, 26 ou 30.07 de la *Loi sur le Tribunal canadien du commerce extérieur*, que, à la fois :

a) la quantité de ces marchandises constitue une part substantielle de la quantité des marchandises du même genre importées de tous les pays;

b) la quantité de ces marchandises — considérée séparément ou, en circonstances exceptionnelles, collectivement avec la quantité des marchandises du même genre importées des autres pays ALÉNA — contribue de manière importante au dommage grave, ou à la menace d'un tel dommage, porté aux producteurs nationaux de marchandises similaires ou directement concurrentes.

New order with respect to goods imported from a NAFTA country

(4.01) Where an order has been made under subsection (3) or (3.2) that does not, by virtue of subsection (4), apply to goods imported from a NAFTA country and it ap-

Nouveau décret applicable aux marchandises importées d'un pays ALÉNA

(4.01) En cas de prise aux termes des paragraphes (3) ou (3.2) d'un décret non applicable, en raison du paragraphe (4), aux marchandises importées d'un pays ALÉNA,

exceptional circumstances may be considered together with the like imports from each other NAFTA country. In other words, Canada cannot include Mexican or American goods in a global safeguard import restriction unless it is shown that imports of those goods are an important cause. A separate determination must be made in respect of each of Mexico and the United States. The Governor in Council's decision will be made on the basis of a recommendation by the Secretary of State for External Affairs pursuant to an inquiry under the *Canadian International Trade Tribunal Act*.

Subsection (4.01) provides that, where NAFTA goods were initially excluded from a global safeguard measure or from an extension order by virtue of subsection (4), they may subsequently be included on the ICL if a "surge" occurs that undermines the effectiveness of the original action or extension order.

Subsection (4.02) provides that any order made under subsection (3) or (3.2) to place goods on the ICL by way of a safeguard action must state whether it applies to goods imported from a NAFTA country.

Subsection (4.03) provides that goods initially excluded from either a quantitative safeguard action under subsection (3) or (3.2) or a tariff-based safeguard action under subsection 59.1(1) or (8) of the *Customs Tariff* may be placed on the ICL for monitoring purposes if the Governor in Council is satisfied that this is advisable.

New subsection (4.04) provides that any order including goods on the ICL pursuant to subsection (3), (3.2) or (4.01) may, on the recommendation of the Minister, be repealed or amended by the Governor in Council.

1993, c. 34, s. 67, c. 44, s. 147(2)

(5) Subsections 5(5) and (6) of the Act are replaced by the following:

Addition to Import Control List

(5) Where at any time it appears to the satisfaction of the Governor in Council on a report of the Minister made as described in subsection (3) that goods of any kind are being imported or are likely to be imported into Canada at such prices, in such quantities and under such conditions as to make it advisable to collect information with respect to the importation of those goods in order to ascertain whether the importation is causing or threatening injury to domestic producers of like or directly competitive goods, any goods of the same kind may, by order of the Governor in Council, be included on the Import Control List in order to facilitate the collection of that information.

Idem

(6) Where, for the purpose of facilitating the implementation of action taken under sections 42 to 44, paragraph 59(2)(*d*), section 59.1, paragraph 60(1)(*e*) or subsection 62(1) or 68(1) of the *Customs Tariff*, the Governor in Council considers it necessary to control the importation of any goods or collect information with respect to their importation, the Governor in Council may, by order, include those goods on the Import Control List for that purpose.

(6) Paragraph 5(7)(*a*) of the Act is replaced by the following:

(*a*) on the expiration of the period of four years after the day on which they are included on the List by the order; or

(7) Subparagraph 5(7.1)(*b*)(ii) of the Act is replaced by the following:

(ii) in the case of an order under subsection (4.03) in respect of goods referred to in paragraph (4.03)(*b*), the order under subsection 59.1(1) or (8) of the *Customs Tariff* that applies to goods of the same kind imported from any other country ceases to have effect.

(5) Les paragraphes 5(5) et (6) de la même loi sont remplacés par ce qui suit :

1993, ch. 34, art. 67; 1993, ch. 44, par. 147(2)

Addition à la liste des marchandises d'importation contrôlée

(5) Lorsqu'il est convaincu, en se fondant sur un rapport du ministre établi de la façon prévue au paragraphe (3), que des marchandises de tous genres sont importées au Canada — ou sont susceptibles de l'être — à des prix, en quantités et dans des conditions tels qu'il est souhaitable d'obtenir sur leur importation des renseignements afin de déterminer si celle-ci cause ou menace de causer un dommage aux producteurs nationaux de marchandises similaires ou directement concurrentes, le gouverneur en conseil peut, par décret, porter les marchandises du même genre sur la liste des marchandises d'importation contrôlée pour que soit facilitée la collecte de ces renseignements.

Idem

(6) Le gouverneur en conseil peut, par décret, porter des marchandises sur la liste des marchandises d'importation contrôlée si, pour faciliter l'application des mesures prises aux termes des articles 42 à 44, de l'alinéa 59(2)*d*), de l'article 59.1, de l'alinéa 60(1)*e*) ou des paragraphes 62(1) ou 68(1) du *Tarif des douanes*, il estime nécessaire de contrôler leur importation ou d'obtenir des renseignements à cet égard.

(6) Les alinéas 5(7)*a*) et *b*) de la même loi sont remplacés par ce qui suit :

a) à l'expiration des quatre ans suivant la date de leur inclusion aux termes du décret;

b) à la date précisée au décret, si celle-ci est antérieure à celle de l'expiration des quatre ans.

1993, c. 44, s. 147(3)

(7) Subparagraph 5(7.1)(*b*)(ii) of the Act is replaced by the following:

(ii) in the case of an order under subsection (4.03) in respect of goods referred to in paragraph (4.03)(*b*), the order under subsection 59.1(1) or (8) of the *Customs Tariff* that applies to goods of the same kind imported from any other country ceases to have effect.

(7) Le sous-alinéa 5(7.1)*b*)(ii) de la même loi est remplacé par ce qui suit :

1993, ch. 44, par. 147(3)

(ii) soit, dans le cas d'un décret pris en application du paragraphe (4.03) à l'égard des marchandises visées à l'alinéa (4.03)*b*), le décret pris aux termes des paragraphes 59.1(1) ou (8) du *Tarif des douanes* applicable aux marchandises du même genre importées d'autres pays cesse d'avoir effet.

Sub-clause 103(5)

As for subsection (3), the expression "production in Canada" in subsection (5) is replaced by "domestic producers". It also amends the French version of this subsection by replacing the words "préjudice", "semblables" and "concurrentielles" with "dommage", "similaires" and "concurrentes", respectively. This is a consequent change to the *Canadian International Trade Tribunal Act* and Article 4, paragraph 1 of the WTO Agreement on Safeguards.

Subsection 5(6) adds new references to subsections 62(1) and 68(1) the *Customs Tariff* and provides that the Governor in Council may include goods on the ICL for purposes of control as well as monitoring in support of the named sections of the *Customs Tariff*. These named sections include various measures amounting to a TRQ, including any surtax that might be applied pursuant to the WTO Agreement on Safeguards. Since other quantitative safeguards (under subsection 5(3) of the *EIPA*) can be enforced through controls on goods added to the ICL for the purpose, and since other TRQs can equally be subject to controls (in support of the WTO Agreement on Agriculture and other relevant purposes, including support of supply management), the inability to control such safeguard TRQs was doubly inconsistent with related legislative provisions.

Sub-clause 103(6)

Paragraph 5(7)(a) is amended to provide that goods included on the ICL under subsection (3), (5) or (6) are deemed to be removed from that List on the expiration of the period of four years after the day on which they are included on the List. This provision reflects the duration provided for in Article 7, paragraph 1 of the WTO Agreement on Safeguards.

Sub-clause 103(7)

The amendment to subparagraph 5(7.1)(b)(ii) is consequential to the amendment to subsection 59.1(8) of the *Customs Tariff* with respect to an extension order imposing a surtax. It relates to the timing of the removal of NAFTA country goods from the ICL after they have been included pursuant to subsection (4.03) for the purpose of collecting information.

Allocation method

(2) Where the Minister has determined a quantity of goods under subsection (1), the Minister may

(*a*) by order, establish a method for allocating the quantity to residents of Canada who apply for an allocation; and

(*b*) issue an allocation to any resident of Canada who applies for the allocation, subject to the regulations and any terms and conditions the Minister may specify in the allocation.

Allocation de quotas

(2) Lorsqu'il a déterminé la quantité des marchandises en application du paragraphe (1), le ministre peut :

a) établir, par arrêté, une méthode pour allouer des quotas aux résidents du Canada qui en font la demande;

b) délivrer une autorisation d'importation à tout résident du Canada qui en fait la demande, sous réserve des conditions qui y sont énoncées et des règlements.

Transfer of allocation

(3) The Minister may consent to the transfer of an import allocation from one resident of Canada to another.

Transfert

(3) Le ministre peut autoriser le transfert à un autre résident de l'autorisation d'importation.

Subsection 6.2(2) provides the Minister with the discretion to establish a method for allocating any quantity determined under subsection (1) to residents of Canada who apply for an allocation, and then to proceed to issue such an allocation to applicants, subject to the regulations and such terms and conditions as the Minister may specify in the allocation. The effect of this amendment is to translate into the TRQ context, and make more transparent, discretionary powers already given to the Minister in respect of current import quotas. The orderly allocation and administration of these quotas for supply-managed commodities is of prime importance to the relevant sectors, but the *EIPA* does not currently provide clear and unambiguous authority to allocate TRQs as such. The replacement of quotas by TRQs thus raised the possibility of a legal vacuum developing in this area, with consequent negative impact on the relevant sectors. This amendment remedies that situation, and allows the orderly implementation of access commitments undertaken under the WTO Agreement on Agriculture.

Subsection 6.2(3) allows the Minister to consent to the transfer of an import allocation issued under subsection (2)(b) from one resident of Canada to another. This provision reflects Article 3, sub-paragraph 5(j) of the new GATT Licensing Code, which indicates that, in issuing import licences, consideration should be given to ensuring a reasonable distribution of licences to new importers. Since import permits (licences) will be given to those holding import allocations (see Clause 109), private transfer of allocations will provide one method of ensuring the system is open to new importers.

Idem

(2.1) Where, by virtue of subsection 5(4), an order has been made pursuant to subsection 5(3) or (3.2) that applies to goods imported from a NAFTA country, or an order has been made pursuant to subsection 5(4.01), the Minister shall, in determining whether to issue a permit under this section in respect of goods imported from a NAFTA country, be guided by subparagraph 5(*b*) of Article 802 of NAFTA.

Idem

(2.1) Lorsque le décret visé aux paragraphes 5(3) ou (3.2) a été rendu applicable, en raison du paragraphe 5(4), aux marchandises importées d'un pays ALÉNA, ou qu'un décret a été pris en vertu du paragraphe 5(4.01), le ministre doit, pour la délivrance des licences visées au présent article à l'égard des marchandises importées d'un pays ALÉNA, tenir compte de l'alinéa 5*b*) de l'article 802 de l'ALÉNA.

109. The Act is amended by adding the following after section 8.2:

109. La même loi est modifiée par adjonction, après l'article 8.2, de ce qui suit :

Import permits — allocation

8.3 (1) Notwithstanding subsection 8(1), where goods have been included on the Import Control List for the purpose of implementing an intergovernmental arrangement or commitment and the Minister has determined an import access quantity for the goods pursuant to subsection 6.2(1), the Minister shall issue a permit to import those goods to any resident of Canada who has an import allocation for the goods and applies for the permit, subject only to compliance with and the application of such regulations made pursuant to section 12 as it is reasonably necessary to comply with or apply in order to achieve that purpose.

Licences en cas d'allocation

8.3 (1) Malgré le paragraphe 8(1), en cas d'inscription de marchandises sur la liste des marchandises d'importation contrôlée aux fins de la mise en oeuvre d'un accord ou d'un engagement intergouvernemental, s'il a déterminé la quantité de marchandises bénéficiant du régime d'accès en application du paragraphe 6.2(1), le ministre délivre à tout résident du Canada qui a une autorisation d'importation et qui en fait la demande une licence pour l'importation des marchandises, sous la seule réserve de l'observation des règlements d'application de l'article 12 qui sont nécessaires à ces fins.

Import permits — no allocation

(2) Notwithstanding subsection 8(1), where goods have been included on the Import Control List for the purpose of implementing an intergovernmental arrangement or commitment and the Minister has determined an import access quantity for the goods pursuant to subsection 6.2(1), but has not issued import allocations for the goods, the Minister shall

(*a*) if in the opinion of the Minister the import access quantity has not been exceeded, issue a permit to import those goods to any resident of Canada who applies for the permit, or

(*b*) issue generally to all residents of Canada a general permit to import those goods,

subject only to compliance with and the application of such regulations made pursuant to section 12 as it is reasonably necessary to comply with or apply in order to achieve that purpose.

Licences en l'absence d'allocation

(2) Malgré le paragraphe 8(1), en cas d'inscription de marchandises sur la liste des marchandises d'importation contrôlée aux fins de la mise en oeuvre d'un accord ou d'un engagement intergouvernemental, s'il a déterminé la quantité de marchandises bénéficiant du régime d'accès en application du paragraphe 6.2(1), mais n'a pas délivré d'autorisation d'importation, le ministre délivre :

a) s'il est d'avis que la quantité de marchandises n'a pas été atteinte, à tout résident du Canada qui en fait la demande une licence pour leur importation, sous la seule réserve de l'observation des règlements d'application de l'article 12 qui sont nécessaires à ces fins;

b) aux résidents du Canada une licence de portée générale autorisant l'importation des marchandises, sous la seule réserve de l'observation des règlements d'application de l'article 12 qui sont nécessaires à ces fins.

Supplemental import permits

(3) Notwithstanding subsection 8(1) and subsections (1) and (2) of this section, where goods have been included on the Import Control List and the Minister has determined an import access quantity for the goods pursuant to subsection 6.2(1), the Minister may issue

(*a*) a permit to import those goods in a supplemental quantity to any resident of Canada who applies for the permit, or

(*b*) generally to all residents of Canada a general permit to import those goods in a supplemental quantity,

subject to such terms and conditions as are described in the permit or in the regulations.

Licences — quantité additionnelle

(3) Malgré le paragraphe 8(1) et les paragraphes (1) et (2), en cas d'inscription de marchandises sur la liste des marchandises d'importation contrôlée, s'il a déterminé la quantité de marchandises bénéficiant du régime d'accès en application du paragraphe 6.2(1), le ministre peut délivrer à tout résident du Canada qui en fait la demande une licence pour l'importation des marchandises en quantité additionnelle ou aux résidents du Canada une licence de portée générale autorisant leur importation en quantité additionnelle, sous réserve des conditions prévues dans la licence ou les règlements.

The change to subsection 8(2.1) is consequential to the proposed subsection 5(3.2) (Sub-clause 103(4)), which provides for the authority of extension of a safeguard order, as provided for in Article 7, paragraph 2 of the WTO Agreement on Safeguards.

Clause 109

Clause 109 adds a new section 8.3 to the *EIPA* to provide specific authority to the Minister to issue import permits where goods have been included on the ICL for the purpose of implementing an intergovernmental arrangement or commitment and the Minister has determined an import access quantity under subsection 6.2(1). The effect is to provide certainty that permits will be issued on request within the limits of such access quantity, as well as to provide discretionary authority to continue to issue them regardless of such access quantity.

The proposed subsection 8.3(1) provides that, notwithstanding subsection 8(1) (the general discretionary authority for the issuance of import permits), the Minister shall issue a permit, where an import access quantity has been both determined and allocated, to any resident of Canada applying therefor who has an import allocation for the goods, subject only to compliance with reasonable or applicable regulations. This will afford those residents of Canada issued import allocations, or to whom they may be lawfully transferred, an assurance that permits will be issued on request against those allocations. The practical situation to which this corresponds is the allocation to importers of a TRQ for a supply-managed product, for instance.

The proposed subsection 8.3(2), similarly, provides that the Minister shall issue permits where an import access quantity has been determined but not allocated. Two situations are foreseen: the Minister shall issue permits to any resident of Canada applying therefor if, in his opinion, the import access quantity has not been exceeded; or, the Minister shall issue generally to all residents of Canada a general permit to import those goods. It is foreseen that such a general import permit would contain, as a condition of validity, an analogous provision respecting the import access quantity. The practical situation to which this corresponds is the administration of a TRQ on a first-come, first-served basis.

Finally, the proposed subsection 8.3(3) provides that, notwithstanding subsection 8(1) and subsections (1) and (2), where goods have been included on the ICL and the Minister has determined an import access quantity for the goods, the Minister may issue a permit to import goods in a supplemental quantity, irrespective of whether the import access quantity has been allocated or not. In this case, the Minister has discretion to issue a permit to any resident applying therefor, or to issue generally to all residents of Canada a general permit. The practical situations to which these provisions correspond are the issuance of permits for quantities supplemental to those specified in the access quantities, and the issuance of general permits for travellers' imports. While such discretionary authority is also provided under subsection 8(1), permits issued under sections other than 8.3 do not qualify for the purpose of invoking the low, in-TRQ rate of duty provided in the *Customs Tariff* (see clause 75).

110. The Act is amended by adding the following after section 9.1:

Minister may issue certificate

9.2 For the purpose of implementing an intergovernmental arrangement with any country or customs territory respecting the administration of any limitation imposed on the quantity of goods that may be imported into that country or customs territory in any period, the Minister may issue to any resident of Canada who applies, a certificate with respect to an exportation of the goods to the country or customs territory stating the specific quantity of the goods in the shipment in respect of which the certificate is issued that, on importation into the country or customs territory, is eligible for the benefit provided for goods imported within that limitation.

111. Subsection 10(1) of the Act is replaced by the following:

Alteration of permits, etc.

10. (1) Subject to subsection (3), the Minister may amend, suspend, cancel or reinstate any permit, import allocation, certificate or other authorization issued or granted under this Act.

110. La même loi est modifiée par adjonction, après l'article 9.1, de ce qui suit :

Délivrance de certificats

9.2 Pour la mise en oeuvre d'un accord intergouvernemental avec un pays ou un territoire douanier portant sur l'application d'une limitation de la quantité de marchandises pouvant y être importée, le ministre peut délivrer à tout résident du Canada qui en fait la demande un certificat pour l'exportation des marchandises vers le pays ou territoire douanier en cause énonçant la quantité précise des marchandises dont le transport est visé par le certificat qui est susceptible, au moment de son importation, de bénéficier du régime préférentiel prévu dans le cadre de cette limitation.

111. Le paragraphe 10(1) de la même loi est remplacé par ce qui suit :

Modification des licences

10. (1) Sous réserve du paragraphe (3), le ministre peut modifier, suspendre, annuler ou rétablir les licences, certificats, autorisations d'importation ou autres autorisations délivrés ou concédés en vertu de la présente loi.

Clause 110

This clause adds a new Section 9.2 to the *EIPA* providing for the issuance of export certificates for the purpose of implementing an intergovernmental arrangement with any country or customs territory (e.g. the European Union) respecting the administration of any quantitative limitation affecting imports into that country or territory. The Minister may issue such certificates to any resident of Canada who applies, for the purpose of ensuring a benefit upon importation into the other country or customs territory for the goods to which the certificate applies. The practical situation to which this corresponds is the administration by Canada of a foreign quota or TRQ; certain trade partners, notably the United States, have a policy of allowing exporting countries rather than their own import administration determine who should get the benefit of access within quota or TRQ, and this amendment enables Canada to take advantage of such policies, as appropriate.

Clause 111

This clause is a consequential amendment to clause 106 providing for the issuance of import allocations (see new paragraph 6(2)(b)). It adds discretionary authority to the Minister to amend, suspend, cancel or reinstate any import allocation.

112. (1) Paragraphs 12(*a*) and (*b*) of the Act are replaced by the following:

(*a*) prescribing the information and undertakings to be furnished by applicants for permits, import allocations, certificates or other authorizations under this Act, the procedure to be followed in applying for and issuing or granting permits, import allocations, certificates or other authorizations, the duration thereof, and the terms and conditions, including those with reference to shipping or other documents, on which permits, import allocations, certificates or other authorizations may be issued or granted under this Act;

(*a*.1) respecting the considerations that the Minister must take into account when deciding whether to issue an import allocation or consent to its transfer;

(*b*) respecting information to be supplied by persons to whom permits, import allocations, certificates or other authorizations have been issued or granted under this Act and any other matter associated with their use;

112. (1) Les alinéas 12*a*) et *b*) de la même loi sont remplacés par ce qui suit :

a) déterminer les renseignements et les engagements que sont tenus de fournir ceux qui demandent des licences, certificats, autorisations d'importation ou autres autorisations en vertu de la présente loi, la procédure à suivre pour la demande et la délivrance ou la concession de licences, certificats, autorisations d'importation ou autres autorisations, la durée de ceux-ci et les conditions, y compris celles qui concernent les documents d'expédition ou autres, auxquelles des licences, certificats, autorisations d'importation ou autres autorisations peuvent être délivrés ou concédés en vertu de la présente loi;

a.1) prévoir les facteurs à prendre en compte par le ministre pour la délivrance et le transfert des autorisations d'importation;

b) établir les renseignements que sont tenues de fournir les personnes à qui des licences, certificats, autorisations d'importation ou autres autorisations ont été délivrés ou concédés en vertu de la présente loi et régir toutes autres questions liées à leur utilisation;

(2) Section 12 of the Act is amended by adding the following after paragraph (*c*.01):

(*c*.02) respecting the considerations that the Minister must take into account when deciding whether to issue a certificate under section 9.2;

(2) L'article 12 de la même loi est modifié par adjonction, après l'alinéa *c*.01), de ce qui suit :

c.02) prévoir les facteurs à prendre en compte par le ministre pour la délivrance des certificats visés à l'article 9.2;

113. The Act is amended by adding the following after section 16:

Transfers or unauthorized use of import allocations

16.1 No person who has been issued an import allocation shall, without the consent of the Minister, transfer it or allow it to be used by another person.

113. La même loi est modifiée par adjonction, après l'article 16, de ce qui suit :

Transfert ou autorisation interdits

16.1 Il est interdit au titulaire d'une autorisation d'importation de la transférer à une autre personne, ou de lui en permettre l'utilisation, sans le consentement du ministre.

114. Section 17 of the Act is replaced by the following:

False or misleading information, and misrepresentation

17. No person shall wilfully furnish any false or misleading information or knowingly make any misrepresentation in any application for a permit, import allocation, certificate or other authorization under this Act or for the purpose of procuring its issue or grant or in connection with any subsequent use of the permit, import allocation, certificate or other authorization or the exportation, importation or disposition of goods to which it relates.

114. L'article 17 de la même loi est remplacé par ce qui suit :

Faux renseignements

17. Il est interdit de fournir volontairement des renseignements faux ou trompeurs ou de faire en connaissance de cause une déclaration erronée dans une demande de licence, certificat, autorisation d'importation ou autre autorisation en vertu de la présente loi, ou pour en obtenir la délivrance ou la concession, ou à l'égard de l'usage subséquent de cette licence, ce certificat, cette autorisation d'importation ou cette autre autorisation, ou à l'égard de l'exportation, de l'importation ou de l'aliénation des marchandises qui font l'objet de cette licence, ce certificat, cette autorisation d'importation ou cette autre autorisation.

Clause 112

Sub-clause 112(1)(a) is a related amendment to clause 106 providing for the issuance of import allocations (see new paragraph 6(2)(b)). It provides discretionary authority to the Governor in Council to make regulations prescribing the information and undertakings to be furnished by applicants for import allocations, the procedure to be followed in applying for and issuing or granting allocations, the duration thereof, and the terms and conditions thereof.

The proposed new paragraph 12(a.1) provides discretionary authority to the Governor in Council to make regulations respecting the considerations that the Minister must take into account when deciding whether to issue import allocations or to consent to their transfer. Although the Minister has discretionary authority for the issuance of certificates pursuant to new paragraph 6.2(2)(b), this provision will allow the Governor in Council, at his discretion, to set the general parameters for the exercise of such powers.

The proposed new subsection 12(c.02), in sub-clause 112(2), provides discretionary authority to the Governor in Council to make regulations respecting the considerations the Minister must take into account when deciding whether to issue a certificate under proposed section 9.2 (Clause 110). Although it is proposed that certificate issuance be discretionary within the context of the relevant intergovernmental arrangement, this provision will allow the Governor in Council, at his discretion, to set the general parameters for the exercise of such powers.

Clause 113

This clause is a related amendment to clause 106 providing that the Minister may consent to the transfer of import allocations (see new subsection 6(3)). It is a strict liability offence. It prohibits, without the consent of the Minister, any person who has been issued an import allocation from transferring it or allowing it to be used by another person.

Clause 114

This clause is a related amendment to clause 106 providing for the issuance of import allocations (see new paragraph 6(2)(b)). It is a *mens rea* offence. It prohibits any person from willfully furnishing any false or misleading information or knowingly make any misrepresentation in any application for an import allocation or for the purpose of procuring its issue or grant or in connection with any subsequent use of the import allocation, or the exportation, importation or disposition of goods to which it relates.

FERTILIZERS ACT

CLAUSE 115

1993, c. 44, s. 155

115. Subsections 5(2) and (3) of the *Fertilizers Act* are replaced by the following:

115. Les paragraphes 5(2) et (3) de la *Loi sur les engrais* sont remplacés par ce qui suit :

1993, ch. 44, art. 155

Regulations re North American Free Trade Agreement and WTO Agreement

(2) Without limiting the authority conferred by subsection (1), the Governor in Council may make such regulations as the Governor in Council deems necessary for the purpose of implementing, in relation to fertilizers or supplements, Article 1711 of the North American Free Trade Agreement or paragraph 3 of Article 39 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement.

(2) Le gouverneur en conseil peut en outre prendre, concernant les engrais ou les suppléments, les règlements qu'il estime nécessaires pour la mise en oeuvre de l'article 1711 de l'Accord de libre-échange nord-américain ou du paragraphe 3 de l'article 39 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord sur l'OMC.

Règlements relatifs à l'Accord de libre-échange nord-américain et à l'Accord sur l'OMC

Definitions

(3) In subsection (2),

(3) Les définitions qui suivent s'appliquent au paragraphe (2).

Définitions

"North American Free Trade Agreement" « *Accord de libre-échange nord-américain* »

"North American Free Trade Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *North American Free Trade Agreement Implementation Act*;

« Accord de libre-échange nord-américain » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord de libre-échange nord-américain*.

« Accord de libre-échange nord-américain » "North American Free Trade Agreement"

"WTO Agreement" « *Accord sur l'OMC* »

"WTO Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

« Accord sur l'OMC » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

« Accord sur l'OMC » "WTO Agreement"

FERTILIZERS ACT

CLAUSE 115

Overview

The *Fertilizers Act* prohibits any person from selling or importing any fertilizer unless it has been registered in accordance with regulations made under section 5. The Act was amended under the *North American Free Trade Agreement Implementation Act* to add authority to make regulations, for the purpose of implementing, in relation to fertilizers or supplements, Article 1711 of the NAFTA and to add a definition of "North American Free Trade Agreement".

TRIPS Commitment

Article 39(3) of TRIPS requires WTO Members, when requiring the submission of undisclosed test or other data as a condition of approving the marketing of agricultural chemical products which utilize new chemical entities, to protect such data against unfair commercial use and disclosure.

Clause 115

This clause amends section 5 by adding authority to make regulations for the purpose of implementing, in relation to fertilizers or supplements, Article 39(3) of TRIPS. It also adds a definition of the "World Trade Organization Agreement".

FINANCIAL ADMINISTRATION ACT

CLAUSE 116

FINANCIAL ADMINISTRATION ACT

CLAUSE 116

Overview

One of the purposes of the *Financial Administration Act* is to govern the operation of Crown corporations.

WTO Obligations

A number of provisions of the WTO Agreement are applicable to activities of Crown corporations, particularly the *Agreement on Government Procurement*. The *Agreement on Government Procurement* covers the procurement activities of the following federal Crown corporations:

1. Canada Post Corporation
2. National Capital Commission
3. St. Lawrence Seaway Authority to the extent procurements respect the protection of the commercial confidentiality of information provided.
4. Royal Canadian Mint to the extent procurements respect the protection of the commercial confidentiality of information provided and excluding procurements by or on behalf of the Mint of direct inputs for use in minting anything other than Canadian legal tender.
5. Canadian Museum of Civilization
6. Canadian Museum of Nature
7. National Gallery of Canada
8. National Museum of Science and Technology
9. Defence Construction (1951) Ltd.

The *Agreement on Government Procurement* is scheduled to enter into force on January 1, 1996.

116. The *Financial Administration Act* is amended by adding the following after section 89.1:

116. La *Loi sur la gestion des finances publiques* est modifiée par adjonction, après l'article 89.1, de ce qui suit :

Implementation of World Trade Organization Agreement

Mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce

Directive

89.2 (1) Notwithstanding subsection 85(1), the Governor in Council may give a directive pursuant to subsection 89(1) to any parent Crown corporation for the purpose of implementing any provision of the WTO Agreement that pertains to that Crown corporation.

Instructions

89.2 (1) Malgré le paragraphe 85(1), le gouverneur en conseil peut, dans le cadre du paragraphe 89(1), donner à une société d'État mère des instructions destinées à la mise en oeuvre des dispositions de l'Accord sur l'OMC qui la concernent.

Regulations

(2) The Governor in Council may, on the recommendation of the Treasury Board and the appropriate Minister made at the request of a Crown corporation, make such regulations in relation to that corporation as the Governor in Council considers necessary for the purpose of implementing any provision of the WTO Agreement that pertains to that corporation.

Règlements

(2) Le gouverneur en conseil peut, sur recommandation du Conseil du Trésor et du ministre de tutelle faite à la demande d'une société d'État, prendre au sujet de celle-ci les règlements qu'il estime nécessaires à la mise en oeuvre des dispositions de l'Accord sur l'OMC qui la concernent.

Definition

(3) In subsections (1) and (2), "WTO Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

Définition de « Accord sur l'OMC »

(3) Pour l'application des paragraphes (1) et (2), « Accord sur l'OMC » s'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

Clause 116

Clause 116 amends the *Financial Administration Act* by adding a new section 89.2:

Subsection 89.2(1) provides that the Governor in Council may give a directive to any parent Crown corporation for the purpose of implementing any provision of the WTO Agreement that pertains to it.

Subsection 89.2(2) empowers the Governor in Council, on the recommendation of the Treasury Board and the appropriate Minister, at the request of the Crown corporation, to make regulations for the purpose of implementing any provision of the WTO Agreement that pertains to that Corporation.

Subsection 89.2(3) defines the term "WTO Agreement" to have the same meaning as in the *World Trade Organization Implementation Act*.

FOOD AND DRUGS ACT

CLAUSE 117

1993, c. 44, s. 158

117. Subsections 30(3) and (4) of the *Food and Drugs Act* are replaced by the following:

Regulations re the North American Free Trade Agreement and WTO Agreement

(3) Without limiting or restricting the authority conferred by any other provisions of this Act or any Part thereof for carrying into effect the purposes and provisions of this Act or any Part thereof, the Governor in Council may make such regulations as the Governor in Council deems necessary for the purpose of implementing, in relation to drugs, Article 1711 of the North American Free Trade Agreement or paragraph 3 of Article 39 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement.

Definitions

(4) In subsection (3),

"North American Free Trade Agreement" *«Accord de libre-échange nord-américain»*

"North American Free Trade Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *North American Free Trade Agreement Implementation Act*;

"WTO Agreement" *«Accord sur l'OMC»*

"WTO Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

1993, ch. 44, art. 158

117. Les paragraphes 30(3) et (4) de la *Loi sur les aliments et drogues* sont remplacés par ce qui suit :

Règlements relatifs à l'Accord de libre-échange nord-américain et à l'Accord sur l'OMC

(3) Sans que soit limité le pouvoir conféré par toute autre disposition de la présente loi de prendre des règlements d'application de la présente loi ou d'une partie de celle-ci, le gouverneur en conseil peut prendre, concernant les drogues, les règlements qu'il estime nécessaires pour la mise en oeuvre de l'article 1711 de l'Accord de libre-échange nord-américain ou du paragraphe 3 de l'article 39 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord sur l'OMC.

Définitions

(4) Les définitions qui suivent s'appliquent au paragraphe (3).

« Accord de libre-échange nord-américain » *"North American Free Trade Agreement"*

« Accord de libre-échange nord-américain » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord de libre-échange nord-américain*.

« Accord sur l'OMC » *"WTO Agreement"*

« Accord sur l'OMC » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

FOOD AND DRUGS ACT

CLAUSE 117

Overview

The *Food and Drugs Act* establishes a regime for the regulation of the sale, marketing, advertising and labelling of foods and drugs in Canada. Section 30 provides for regulations to be made respecting the method of manufacture, testing and sale of new drugs. This section was amended, under the *North American Free Trade Agreement Implementation Act*, to provide authority, for the purpose of Article 1711(5) to (7) of the NAFTA, to make regulations that would prohibit or restrict a person seeking to establish the safety or effectiveness of new drugs from relying on test or other data submitted by another person.

TRIPS Commitment

Article 39(3) of TRIPS obligates WTO members, when requiring the submission of undisclosed test or other data as a condition of approving the marketing of pharmaceutical products, to protect such data against unfair commercial use and disclosure.

Clause 117

This clause amends section 30 by replacing the current regulation-making authority with an authority to make regulations "for the purpose of implementing, in relation to drugs, Article 1711 of the North American Free Trade Agreement or Article 39(3)" of TRIPS. It also adds a definition of the "World Trade Organisation Agreement".

INDUSTRIAL DESIGN ACT

CLAUSE 118

INDUSTRIAL DESIGN ACT

CLAUSE 118

Overview

The regime under the *Industrial Design Act* dates from 1861 and has remained substantially unchanged since that time, apart from a few incidental changes made when the *Copyright Act* was amended in 1989 and a few further procedural changes made under the *Intellectual Property Law Improvement Act* in 1993 and in the *North American Free Trade Agreement Implementation Act*. Registering a design under the Act gives the proprietor an exclusive right to the design for a maximum period of ten years. The current section 29 of the Act allows for the filing of an application for an industrial design if an application has previously been filed "in a foreign country that by treaty, convention or law affords a similar privilege to citizens of Canada". It would not, however, offer protection for an application that was filed elsewhere than in a foreign country, e.g. an application with the European Commission on behalf of a foreign country. Nor would it cover an application made in a WTO Member which had not yet provided reciprocal protection for Canadian applications.

TRIPS Commitment

The TRIPS Agreement requires national treatment protection for nationals of all WTO Members in respect of all intellectual property rights covered by the agreement (Art. 1(3)).

1993, c. 44, s. 171

118. (1) The portion of section 29 of the *Industrial Design Act* before paragraph (*a*) is replaced by the following:

Application filed in another country

29. (1) Subject to the regulations, an application for the registration of an industrial design filed in Canada by any person who has, or whose predecessor in title has, previously regularly filed an application for the registration of the same industrial design in or for a foreign country has the same force and effect as the same application would have if filed in Canada on the date on which the application for the registration of the same industrial design was first filed in or for that foreign country, if

(2) Section 29 of the Act is amended by adding the following after subsection (1):

Definitions

(2) In this section,

"foreign country" «*pays étranger*»

"foreign country"

(*a*) means a country that by treaty, convention or law affords a privilege to citizens of Canada that is similar to the privilege afforded by subsection (1) with respect to the effective date of an application for the registration of an industrial design, and

(*b*) includes a WTO Member;

"WTO Agreement" «*Accord sur l'OMC*»

"WTO Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*;

"WTO Member" «*membre de l'OMC*»

"WTO Member" means a Member of the World Trade Organization established by Article I of the WTO Agreement.

1993, ch. 44, art. 171

118. (1) Le passage de l'article 29 de la *Loi sur les dessins industriels* précédant l'alinéa *a*) est remplacé par ce qui suit :

Demande déjà déposée dans un autre pays

29. (1) Sous réserve des règlements, la demande d'enregistrement d'un dessin industriel, déposée au Canada par une personne qui a, ou dont le prédécesseur en titre a, auparavant dûment déposé une demande d'enregistrement du même dessin industriel dans un pays étranger, ou pour un pays étranger, a la même force et le même effet qu'elle aurait si elle était déposée au Canada à la date à laquelle la demande d'enregistrement de ce dessin industriel a été en premier lieu déposée dans ce pays étranger, ou pour ce pays étranger, si les conditions suivantes sont réunies :

(2) L'article 29 est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Définitions

(2) Les définitions qui suivent s'appliquent au présent article.

« Accord sur l'OMC » *"WTO Agreement"*

« Accord sur l'OMC » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce.*

« membre de l'OMC » *"WTO Member"*

« membre de l'OMC » Membre de l'Organisation mondiale du commerce instituée par l'article I de l'Accord sur l'OMC.

« pays étranger » *"foreign country"*

« pays étranger » S'entend d'un pays qui, par traité, convention ou loi, accorde aux citoyens du Canada un privilège semblable à celui qui est accordé en vertu du paragraphe (1) quant à la date de dépôt applicable à une demande d'enregistrement d'un dessin industriel et, notamment, d'un membre de l'OMC.

Clause 118

This clause amends section 29 to allow for an application to be filed in **or for** a foreign country, adds a definition of "foreign country" which includes all WTO Members and adds further definitions of "WTO Agreement" and "WTO Member".

INSURANCE COMPANIES ACT

CLAUSES 119 - 128

INSURANCE COMPANIES ACT

CLAUSES 119 - 128

Overview

The *Insurance Companies Act* regulates insurance companies that are incorporated under the Act. The Act contains comprehensive rules regarding the incorporation, ownership, powers and regulatory supervision of federally incorporated insurance companies. The Act also regulates foreign insurance companies carrying on business in Canada through a branch. Of particular importance to the *World Trade Organization Agreement Implementation Act* is the fact that the *Insurance Companies Act* contains limitations on the ability of non-residents to own life insurance companies.

WTO Commitments

Pursuant to the General Agreement on Trade in Services, which is one of the agreements that made up the WTO Agreements, Canada made a number of commitments in the area of financial services. Chief among these were the commitments to provide WTO members with national treatment and most-favoured-nation treatment. National treatment means providing to financial institutions owned by non-Canadians and to non-Canadian investors in financial institutions the same treatment as provided to Canadian owned institutions or to Canadian investors in financial institutions. Most-favoured -nation treatment means providing to financial institutions owned by WTO members and to WTO investors the same treatment as provided to institutions owned by residents of any other country or provided to investors from any other country.

Summary of the Amendments

These amendments implement national treatment and most-favoured-nation treatment by the removal of the 10/25 ownership constraints on life insurance companies on non-residents and consequential amendments which remove ancillary rules designed to prevent avoidance of the 10/25 rules. There are also consequential amendments to other provisions that are needed because of the deletion of these rules.

119. (1) Paragraph 38(1)(*c*) of the *Insurance Companies Act* is repealed.

(2) Paragraph 38(2)(*c*) of the English version of the Act is replaced by the following:

(*c*) with respect to any matter described in any of paragraphs (1)(*d*) to (*f*), two years.

120. Paragraphs 168(1)(*e*) and (*f*) of the Act are replaced by the following:

(*e*) a person who holds shares of the company where, by section 418 or 430, the person is prohibited from exercising the voting rights attached thereto;

(*f*) a person who is an officer, director or full time employee of an entity that holds shares of the company where, by section 418 or 430, the entity is prohibited from exercising the voting rights attached thereto;

121. (1) Paragraph 253(1)(*c*) of the Act is repealed.

(2) Paragraph 253(2)(*c*) of the English version of the Act is replaced by the following:

(*c*) with respect to any matter described in any of paragraphs (1)(*d*) to (*f*), two years.

119. (1) L'alinéa 38(1)*c*) de la *Loi sur les sociétés d'assurances* est abrogé.

(2) L'alinéa 38(2)*c*) de la version anglaise de la même loi est remplacé par ce qui suit :

(*c*) with respect to any matter described in any of paragraphs (1)(*d*) to (*f*), two years.

120. Les alinéas 168(1)*e*) et *f*) de la même loi sont remplacés par ce qui suit :

e) qui détiennent des actions de la société et à qui les articles 418 ou 430 interdisent d'exercer les droits de vote qui y sont attachés;

f) qui sont des administrateurs, dirigeants ou employés à temps plein d'une entité qui détient des actions de la société si les articles 418 ou 430 interdisent à cette entité d'exercer les droits de vote qui y sont attachés;

121. (1) L'alinéa 253(1)*c*) de la même loi est abrogé.

(2) L'alinéa 253(2)*c*) de la version anglaise de la même loi est remplacé par ce qui suit :

(*c*) with respect to any matter described in any of paragraphs (1)(*d*) to (*f*), two years.

Clause 119 - Repeal of paragraph 38(1)(c) and amendment of paragraph 38(2)(c)

Repeal of 38(1)(c)

Paragraph 38(1)(c) grants the Governor in Council authority to allow insurance companies to issue shares in respect of convertible securities that were outstanding on the day that the company's letters patent were issued despite the fact that the issuance of such voting shares might otherwise violate subsection 429(1). Subsection 429(1) is being repealed and thus there is no need for the Governor in Council to allow this as there is no impediment to such an issue of shares.

Amendment of 38(2)(c)

This amendment is consequential upon the amendment of paragraph 38(1)(c) as it is the deletion of the reference to that paragraph.

Clause 120 - Repeal of paragraphs 168(e) and (f)

Paragraphs 168(e) and (f) disqualify persons from being a director of an insurance company if such persons or the entity of which the person is a director, officer or full-time employee holds shares of a company but is prohibited from voting them pursuant to sections 431. Section 431 is being repealed and thus these paragraphs are being repealed.

Clause 121 - Repeal of paragraph 253(1)(c) and amendment of paragraph 253(2)(c)

Repeal of paragraph 253(1)(c)

Paragraph 253(1)(c) grants the Governor in Council authority to allow insurance companies to issue shares in respect of convertible securities that were outstanding on the day of the company's letters patent of amalgamation were issued despite the fact that the issuance of such voting shares might otherwise violate subsection 429(1). Subsection 429(1) is being repealed and thus there is no need for the Governor in Council to allow this as there is no impediment to such an issue of shares.

Amendment of paragraph 253(2)(c)

This amendment is consequential upon the amendment of paragraph 253(1)(c) as it is the deletion of the reference to that paragraph.

122. The Act is amended by adding the following before the heading "CONSTRAINTS ON OWNERSHIP" before section 407:

INTERPRETATION

Definition of "agent"

406.1 In this Part, "agent" means

(*a*) in relation to Her Majesty in right of Canada or of a province, any agent of Her Majesty in either of those rights, and includes a municipal or public body empowered to perform a function of government in Canada or any entity empowered to perform a function or duty on behalf of Her Majesty in either of those rights but does not include

(i) an official or entity performing a function or duty in connection with the administration or management of the estate or property of a natural person,

(ii) an official or entity performing a function or duty in connection with the administration, management or investment of a fund established to provide compensation, hospitalization, medical care, annuities, pensions or similar benefits to natural persons, or moneys derived from such a fund, or

(iii) the trustee of any trust for the administration of a fund to which Her Majesty in either of those rights contributes and of which an official or entity that is an agent of Her Majesty in either of those rights is a trustee; and

(*b*) in relation to the government of a foreign country or any political subdivision thereof, a person empowered to perform a function or duty on behalf of the government of the foreign country or political subdivision, other than a function or duty in connection with the administration or management of the estate or property of a natural person.

DIVISION II

122. La même loi est modifiée par adjonction, après l'intertitre « SECTION I » précédant l'article 407, de ce qui suit :

DÉFINITION

Définition

406.1 La définition qui suit s'applique à la présente partie.

« mandataire »

« mandataire » "agent"

a) À l'égard de Sa Majesté du chef du Canada ou d'une province, tout mandataire de Sa Majesté de l'un ou l'autre chef, et notamment les corps municipaux ou publics habilités à exercer une fonction exécutive au Canada, ainsi que les entités habilitées à exercer des attributions pour le compte de Sa Majesté du chef du Canada ou d'une province, à l'exclusion :

(i) des dirigeants ou entités exerçant des fonctions touchant à l'administration ou à la gestion de la succession ou des biens d'une personne physique,

(ii) des dirigeants ou entités exerçant des fonctions touchant à l'administration, à la gestion ou au placement soit d'un fonds établi pour procurer l'indemnisation, l'hospitalisation, les soins médicaux, la retraite, la pension ou des prestations analogues à des personnes physiques, soit de sommes provenant d'un tel fonds,

(iii) des fiduciaires d'une fiducie créée pour gérer un fonds alimenté par Sa Majesté du chef du Canada ou d'une province au cas où l'un des fiduciaires — dirigeant ou entité — est le mandataire de Sa Majesté de l'un ou l'autre chef;

b) à l'égard du gouvernement d'un pays étranger ou d'une de ses subdivisions politiques, la personne habilitée, pour le compte de ce gouvernement, à exercer des attributions non reliées à l'administration ou à la gestion de la succession ou des biens d'une personne physique.

SECTION II

Clause 122 - Definition of "agent" and adding of title "Division II"

The definition of "agent" is currently found in section 427 and is defined for the purposes of Division II of Part VII of the Act. "Agent" is the only definition in section 427 that will continue to be needed. It is being moved to the beginning of the Part to conform to normal drafting standards.

The insertion of the heading "Division II" before the heading "Constraints On Ownership" is to preserve the same number of Divisions within the Part so that no further consequential amendments will be needed.

123. The Act is amended by adding the following after section 408:

Exception for small holdings

408.1 Notwithstanding section 408, where, as a result of a transfer or issue of shares of a class of shares of a company to a person, the total number of shares of that class registered in the securities register of the company in the name of that person

(*a*) would not exceed five thousand, and

(*b*) would not exceed 0.1 per cent of the outstanding shares of that class,

the company is entitled to assume that no person is acquiring or increasing a significant interest in that class of shares of the company as a result of that issue or transfer of shares.

1993, c. 44, s. 174

124. The headings before section 426.1 and sections 426.1 and 427 of the Act are repealed.

1993, c. 44, s. 175

125. Section 429 of the Act is repealed.

123. La même loi est modifiée par adjonction, après l'article 408, de ce qui suit :

Exception

408.1 Par dérogation à l'article 408, si, après transfert ou émission d'actions d'une catégorie donnée à une personne, le nombre total d'actions de cette catégorie inscrites à son registre des valeurs mobilières au nom de cette personne n'excède pas cinq mille ni un dixième de un pour cent des actions en circulation de cette catégorie, la banque est en droit de présumer qu'il n'y a ni acquisition ni augmentation d'intérêt substantiel dans cette catégorie d'actions du fait du transfert ou de l'émission.

124. Les intertitres précédant l'article 426.1 et les articles 426.1 et 427 de la même loi sont abrogés.

1993, ch. 44, art. 174

125. L'article 429 de la même loi est abrogé.

1993, ch. 44, art. 175

Clause 123 - Exception for small holdings

The substance of this provision is currently found in section 437. Section 437 says that notwithstanding section 408 (an insurance company cannot record a transfer of its shares that has not been approved by the Minister if the result is that the transferee has thereby acquired or increased a significant interest in a class of shares of the company) and paragraphs 429(1)(a) and (b) (a life company cannot record a transfer of its shares if the result is that non-residents would thereby acquire or increase their interest in voting shares of the company to a percentage exceeding 25% or if the result is that the non-resident to whom the shares are being transferred would thereby acquire or increase their interest in voting shares of the company to a percentage exceeding 10%) a company can assume that certain small transactions do not cause these rules to be violated. Thus, this is a *de minimis* rule.

As section 429 is being repealed it is necessary to remove the references to that provision. Given that the rule now only applies to section 437, this section is being moved as a convenience to the user of the statute so that it will appear immediately after the operative rule to which it applies.

Clause 124 - Repeal of headings preceding section 426.1 and sections 426.1 and 427

This clause deletes the heading before these sections which are the definitions needed to make the non-resident rules work. As we are removing the non-resident constraints, the definitions are no longer needed.

Section 426.1 established definitions in order to make the non-resident rules work in conjunction with the NAFTA. Section 427 was suspended on the coming into force of the *North American Free Trade Implementation Act* as it contained the definitions that were used in the context of the Canada-United States Free Trade Agreement.

Clause 125 - Repeal of section 429

Section 429 is the section which generally prohibits a non-residents from having more than a 10% interest in any class of voting shares of a life company and prohibits non-residents as a group from having more than a 25% interest in any class of voting shares of such a company (i.e. the "10/25" rules). The repeal of this section accords national treatment to non-residents.

126. (1) Subsection 430(1) of the Act is repealed.

(2) Subsections 430(3) and (4) of the Act are replaced by the following:

Transitional

(3) Subsection (2) does not apply in respect of a government or agency referred to in that subsection that, on September 27, 1990, beneficially owned shares of a former-Act company where the exercise of the voting rights attached to those shares was not prohibited under subsection 36(2) of the *Canadian and British Insurance Companies Act*, as that subsection read immediately prior to June 1, 1992.

Transitional

(4) Subsection (3) ceases to apply where a government or agency referred to in that subsection acquires beneficial ownership of any additional voting shares of the former-Act company in such number that the percentage of the voting rights attached to all of the voting shares of the former-Act company beneficially owned by the government or agency is greater than the percentage of the voting rights attached to all of the voting shares of the former-Act company that were beneficially owned by the government or agency on September 27, 1990.

126. (1) Le paragraphe 430(1) de la même loi est abrogé.

(2) Les paragraphes 430(3) et (4) de la même loi sont remplacés par ce qui suit :

Disposition transitoire

(3) Le paragraphe (2) ne s'applique pas dans le cas où, le 27 septembre 1990, le gouvernement ou l'organisme mentionné à ce paragraphe détenait la propriété effective d'actions d'une société antérieure et que le paragraphe 36(2) de la *Loi sur les compagnies d'assurance canadiennes et britanniques*, en son état au 31 mai 1992, n'interdisait pas l'exercice des droits de vote attachés à ces actions.

Disposition transitoire

(4) Le paragraphe (3) cesse de s'appliquer dans le cas où le gouvernement ou l'organisme qui y est mentionné acquiert la propriété effective d'un nombre d'actions avec droit de vote de la société antérieure qui augmente le pourcentage des droits de vote attachés à l'ensemble des actions de la société antérieure qu'elle détenait à titre de véritable propriétaire le 27 septembre 1990.

Clause 126 - Repeal of subsection 430(1) and amendment of subsections 430(3) and (4)

Repeal of subsection 430(1)

Subsection 430(1) prohibits the voting of shares of a life company held by a non-resident in violation of the rule prohibiting the non-resident from owning more than 10% of any class of voting shares of such a company. As the repeal of section 429 has removed this rule, the prohibition is no longer relevant.

Amendment of subsections 430(3) and (4)

These subsections currently provide exceptions from the voting prohibitions set out in subsections 430(1) and (2). Due to the repeal of the 10/25 rules, these subsections are being amended so that exceptions only apply with respect to certain circumstances where persons are holding shares of insurance companies in violation of the rule that such shares cannot be held by or on behalf of the Crown in right of Canada or of a province or a foreign government. Basically the exception is that where, on the date of introduction of the rule, a person held shares in violation of the rule domestic and foreign governments couldn't hold such shares, that government or agency can continue to hold those shares and exercise the voting rights pertaining thereto but the exception ceases to apply if subsequent to that date the government or agency acquires shares that would entitle it to exercise voting rights in excess of the percentage it held on the date of introduction of the rule.

1993, c. 44, s. 176

127. Sections 431 and 431.1 of the Act are repealed.

128. Section 437 of the Act is repealed.

127. Les articles 431 et 431.1 de la même loi sont abrogés.

1993, ch. 44, art. 176

128. L'article 437 de la même loi est abrogé.

Clause 127 - Repeal of sections 431 and 431.1

Repeal of section 431

This section prohibited resident nominees who held shares of life companies on behalf of non-residents from voting those shares. The purpose of the rule was to stop non-residents from avoiding the 10/25 rules through the means of finding local nominees who would vote their shares. The section makes the actions of the resident nominee illegal. With the repeal of the 10/25 rules there is no longer any need for this subsection.

Repeal of section 431.1

This section stated that the non-resident rules did not apply to certain life companies that had always been controlled by non-residents or that were controlled by persons covered by either the Canada-United States Free Trade Agreement or the North American Free Trade Agreement as of the date the particular free trade agreement applied to those particular persons. With the repeal of the non-resident rules, these provisions are no longer necessary.

Clause 128 - Repeal of section 437

Although the clause talks about the repeal of section 437, this clause has to be read in conjunction with clause 123. By reading the two clauses together one can see that what is happening is that the substance of section 437 is being moved to section 408.1 for the reasons described in the notes to clause 123.

INTEGRATED CIRCUIT TOPOGRAPHY ACT

CLAUSES 129 - 131

INTEGRATED CIRCUIT TOPOGRAPHY ACT

CLAUSES 129 - 131

Overview

The *Integrated Circuit Topography Act* was enacted in 1990 and proclaimed in force in 1993. It provides for the protection of the lay-out design of microchips, or "integrated circuit products" for a maximum period of ten years. There have been no amendments other than changes to section 4 in respect of national treatment as a result of the *Intellectual Property Law Improvement Act*. The current Act does not explicitly bind the federal or provincial governments.

TRIPS Commitment

The TRIPS agreement requires national treatment protection for nationals of all WTO Members in respect of all intellectual property rights covered by the agreement (Art. 1(3)).

The TRIPS agreement also imposes certain conditions upon government use of integrated circuit lay-out designs without the consent of the right holder (Art. 37(2); Art. 31(a) to (k)).

Prescribed uses

7.2 The Commissioner may not, under section 7.1, authorize any use that is a prescribed use unless the proposed user complies with the prescribed conditions.

Usages prévus par règlement

7.2 Le commissaire ne peut s'appuyer sur l'article 7.1 pour autoriser des usages prévus par règlement, à moins que l'usager éventuel ne respecte les conditions réglementaires.

Appeal

7.3 Any decision made by the Commissioner under section 7.1 or 7.2 is subject to appeal to the Federal Court under the *Patent Act*.

Appel

7.3 Toute décision rendue par le commissaire dans le cadre des articles 7.1 ou 7.2 peut faire l'objet de l'appel devant la Cour fédérale prévu par la *Loi sur les brevets*.

Regulations

7.4 (1) The Governor in Council may make regulations for the purpose of implementing, in relation to registered topographies, paragraph 2 of Article 37 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement.

Règlements

7.4 (1) Le gouverneur en conseil peut prendre, concernant les topographies enregistrées, des règlements pour la mise en oeuvre du paragraphe 2 de l'article 37 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord sur l'OMC.

Definition of "WTO Agreement"

(2) In subsection (1), "WTO Agreement" has the same meaning as in subsection 4(5).

Définition de « Accord sur l'OMC »

(2) Dans le paragraphe (1), « Accord sur l'OMC » s'entend au sens du paragraphe 4(5).

No liability

(2) Her Majesty in right of Canada or a province is not, by reason only of the enactment of subsection (1), liable for any use of a registered topography before the day on which subsection (1) comes into force.

Non-responsabilité

(2) L'adoption du paragraphe (1) n'a pas pour effet de rendre Sa Majesté du chef du Canada ou d'une province responsable de l'usage d'une topographie enregistrée fait avant son entrée en vigueur.

Section 7.2 limits authorizations in respect of prescribed uses to situations where the proposed user complied with all prescribed conditions.

Section 7.3 provides for an appeal from any decision of the Commissioner to the Federal Court.

Section 7.4 provides authority for making regulations for the purpose of implementing Article 37(2) of TRIPS.

Sub-clause 131(2) - Transitional

No liability is imposed on either the federal or provincial governments by reason of any use of a registered topography before the day on which the Act comes into force.

INVESTMENT CANADA ACT

CLAUSES 132 - 135

INVESTMENT CANADA ACT

CLAUSES 132 - 135

Overview

The *Investment Canada Act* provides for the review of certain investments in Canada by foreign investors. Investments requiring review (and approval by the Minister) are:

- direct acquisitions of Canadian businesses with assets of $5 million or more;
- indirect acquisitions of Canadian businesses with a) assets of $50 million or more or b) with assets between $5 million and $50 million for which the Canadian business represents more than 50 percent of the total transaction; and
- any acquisition or new business related to Canada's national identity or cultural heritage, if the Minister authorizes the review in the public interest.

An indirect acquisition is one in which the Canadian business is acquired by acquiring its parent outside Canada.

Investments by foreign investors that must be notified under the *Investment Canada Act* are:

- establishment of a new business;
- direct and indirect acquisitions of Canadian businesses with assets below the thresholds.

Under the NAFTA, the review threshold for direct acquisitions involving U.S. and Mexican investors is $150 million in constant 1992 dollars ($152 million for 1993), and indirect acquisitions involving U.S. and Mexican investors are no longer reviewable. This preferential treatment does not apply to the following sectors: uranium; financial services except insurance; transportation, and cultural industries as defined.

1993, c. 44, s. 178

132. Sections 14.01 and 14.02 of the *Investment Canada Act* are repealed.

132. Les articles 14.01 et 14.02 de la *Loi sur Investissement Canada* sont abrogés.

1993, ch. 44, art. 178

1988, c. 65, s. 135; 1993, c. 35, s. 3, c. 44, s. 178

133. Sections 14.03 to 14.2 of the Act are replaced by the following:

133. Les articles 14.03 à 14.2 de la même loi sont remplacés par ce qui suit :

1988, ch. 65, art. 135; 1993, ch. 44, art. 178

Limits for WTO investors

14.1 (1) Notwithstanding the limits set out in subsection 14(3), an investment described in paragraph 14(1)(*a*), (*b*) or (*c*) by

(*a*) a WTO investor, or

(*b*) a non-Canadian, other than a WTO investor, where the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, controlled by a WTO investor,

is reviewable pursuant to section 14 only where the value, calculated in the manner prescribed, of the assets described in paragraph 14(3)(*a*) or (*b*), as the case may be, is equal to or greater than the applicable amount determined pursuant to subsection (2).

Limites applicables aux investisseurs OMC

14.1 (1) Par dérogation au paragraphe 14(3), l'investissement visé aux alinéas 14(1)*a*), *b*) ou *c*) qui est effectué soit par un investisseur OMC, soit, dans le cas où l'entreprise canadienne qui en fait l'objet est, avant qu'il ne soit effectué, sous le contrôle d'un investisseur OMC, par un non-Canadien — autre qu'un investisseur OMC — n'est sujet à l'examen prévu à l'article 14 que si la valeur, calculée selon les modalités réglementaires, des actifs visés aux alinéas 14(3)*a*) ou *b*), selon le cas, est égale ou supérieure au montant déterminé en application du paragraphe (2).

Amount for subsequent years

(2) For the purposes of subsection (1), the amount for any year shall be determined by the Minister in January of that year by rounding off to the nearest million dollars the amount arrived at by using the formula:

$$\frac{\text{Current Nominal GDP at Market Prices}}{\text{Previous Year Nominal GDP at Market Prices}} \times \text{amount determined for previous year}$$

where

"Current Nominal GDP at Market Prices" means the average of the Nominal Gross Domestic Products at market prices for the most recent four consecutive quarters; and

"Previous Year Nominal GDP at Market Prices" means the average of the Nominal Gross Domestic Products at market prices for the four consecutive quarters for the comparable period in the year preceding the year used in calculating the Current Nominal GDP at Market Prices.

Calcul du montant

(2) Pour l'application du paragraphe (1), le montant, pour chaque année, est le résultat, calculé par le ministre au mois de janvier de l'année en question et arrondi au million le plus proche, de la formule suivante :

$$\frac{\text{PIB nominal actuel aux prix du marché}}{\text{PIB nominal de l'année précédente aux prix du marché}} \times \text{montant de l'année précédente}$$

a) le PIB nominal actuel aux prix du marché étant la moyenne du produit intérieur brut nominal aux prix du marché pour les quatre trimestres consécutifs les plus récents;

b) le PIB nominal de l'année précédente aux prix du marché étant la moyenne du produit intérieur brut nominal aux prix du marché, pour les mêmes quatre trimestres consécutifs de l'année précédant l'année utilisée pour le calcul du PIB nominal actuel aux prix du marché.

Publication in *Canada Gazette*

(3) As soon as possible after determining the amount for any particular year, the Minister shall publish the amount in the *Canada Gazette*.

Publication dans la *Gazette du Canada*

(3) Aussitôt que possible après avoir fait ce calcul pour une année donnée, le ministre fait publier le montant en question dans la *Gazette du Canada*.

Investments not reviewable

(4) Notwithstanding paragraph 14(1)(*d*), an investment described in that paragraph by

(*a*) a WTO investor, or

(*b*) a non-Canadian, other than a WTO investor, where the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, controlled by a WTO investor,

that is implemented after this section comes into force is not reviewable pursuant to section 14.

Investissements soustraits à l'examen

(4) Par dérogation à l'alinéa 14(1)*d*), l'investissement visé à cet alinéa qui est effectué, après l'entrée en vigueur du présent article, soit par un investisseur OMC, soit, dans le cas où l'entreprise canadienne qui en fait l'objet est, avant qu'il ne soit effectué, sous le contrôle d'un investisseur OMC, par un non-Canadien — autre qu'un investisseur OMC — n'est pas sujet à l'examen prévu à l'article 14.

Clause 132

This clause repeals the provisions implementing the obligations made Chapter 11 (Investment) of the NAFTA.

Clause 133

This clause repeals the provisions implementing the commitments made under the Canada-United States Free Trade Agreement and enacts new provisions to implement the WTO Agreement.

Sub-section 14.1(1): The threshold for direct acquisitions reviewable under the *Investment Canada Act* applicable to investors is set out in this section. Under the FTA, the review threshold for U.S. investors was raised in stages to $150 million in 1992 and thereafter indexed for inflation (based on the increase in the GDP price index). In the NAFTA, Canada committed to extend this preferential threshold to all NAFTA investors and to increase the indexing factor for 1995 and subsequent years to take into account both inflation and real economic growth (based on the increase in nominal GDP).

This preferential review threshold was applicable only to NAFTA investors but is now extended to WTO investors as defined.

Sub-section 14.1(2): As in the case under NAFTA, beginning in 1995, the indexing factor for the review threshold will be adjusted to take into account not only inflation but also real economic growth. A formula specifies how this is to be calculated in January of each year: the ratio of current year nominal GDP to previous year nominal GDP, multiplied by the threshold amount for the previous year.

Sub-section 14.1(3): The new threshold for WTO investors as calculated in January of each year is to be published in the Canada Gazette as soon as possible.

Sub-section 14.1(4): For WTO investors, indirect acquisitions are not reviewable. An indirect acquisition is one in which the Canadian business is acquired by acquiring its parent located outside Canada.

"financial institution" « *institution financière* »

"financial service" « *service financier* »

"WTO Agreement" « *Accord sur l'OMC* »

"WTO investor" « *investisseur OMC* »

"financial institution" means any entity authorized to do business under the laws applicable to a WTO Member or any of its political subdivisions relating to financial institutions, as defined by the laws applicable to that WTO Member or any of its political subdivisions, and includes a holding company thereof;

"financial service" means a service of a financial nature offered by a financial institution, excluding the underwriting and selling of insurance policies;

"WTO Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*;

"WTO investor" means

(*a*) an individual, other than a Canadian, who is a national of a WTO Member or who has the right of permanent residence in relation to that WTO Member,

(*b*) a government of a WTO Member, whether federal, state or local, or an agency thereof,

(*c*) an entity that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1) or (2), and that is a WTO investor-controlled entity, as determined in accordance with subsection (7),

(*d*) a corporation or limited partnership

(i) that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1),

(ii) that is not a WTO investor within the meaning of paragraph (*c*),

(iii) of which less than a majority of its voting interests are owned by WTO investors,

(iv) that is not controlled in fact through the ownership of its voting interests, and

(v) of which two thirds of the members of its board of directors, or of which two thirds of its general partners, as the case may be, are any comque donne cette législation des institutions financières, ou société de portefeuille la contrôlant.

« investisseur OMC » "WTO investor" « investisseur OMC »

a) Le particulier — autre qu'un Canadien — qui est un ressortissant d'un membre de l'OMC ou qui a le droit d'établir sa résidence permanente chez ce membre;

b) le gouvernement d'un membre de l'OMC ou celui d'un de ses États ou d'une de ses administrations locales, ou tout organisme d'un tel gouvernement;

c) l'unité sous contrôle d'un investisseur OMC, au sens du paragraphe (7), qui n'est pas une unité sous contrôle canadien visée aux paragraphes 26(1) ou (2);

d) la personne morale ou société en commandite qui n'est ni une unité sous contrôle canadien visée au paragraphe 26(1), ni un investisseur OMC au sens de l'alinéa *c*), ni contrôlée en fait au moyen de la propriété de ses intérêts avec droit de vote et dont, d'une part, la majorité de ceux-ci n'appartient pas à des investisseurs OMC, d'autre part, les deux tiers des administrateurs ou des associés gérants, selon le cas, sont des Canadiens et des investisseurs OMC;

e) la fiducie qui n'est ni une unité sous contrôle canadien visée aux paragraphes 26(1) ou (2), ni un investisseur OMC au sens de l'alinéa *c*), ni contrôlée en fait au moyen de la propriété de ses intérêts avec droit de vote et dont les deux tiers des fiduciaires sont des Canadiens et des investisseurs OMC;

f) toute autre forme d'organisation commerciale précisée par règlement et contrôlée par un investisseur OMC.

« membre de l'OMC » Membre de l'Organisation mondiale du commerce instituée par l'article I de l'Accord sur l'OMC. "WTO Member" « membre de l'OMC »

« service financier » Service de nature financière offert par une institution financière, à l'exclusion de la vente de polices d'assu- "financial service" « service financier »

"Financial institution" reflects the definition in the NAFTA, and covers any company doing business under the laws applicable to a WTO Member authorized to provide financial services. In this context, each party to the WTO is free to determine the types of companies authorized to do business as financial institutions.

"Financial service" also reflects the NAFTA definition except that in the *Investment Canada Act* it excludes insurance services. The reason for the exclusion of insurance is to ensure that WTO investors who acquire insurance businesses receive the benefit of the preferential review threshold and non-reviewability of indirect acquisitions. This is the same as the treatment of insurance under the FTA and the NAFTA: with the exception of insurance, financial services provided by a financial institution do not receive the preferential review.

"WTO Agreement" has the same meaning as the term "agreement" in subsection 2(1) of the Act.

"WTO investor" includes: an individual who is a national of a WTO country; a WTO government (any level); an entity controlled by a WTO investor; a corporation that is controlled by a WTO investor; a trust that is controlled by a WTO investor; and any other form of business organization (as specified in the regulations) that is controlled by a WTO investor. This last category has been added to take into account that Mexico has other forms of business organization not used in Canada or the U.S. (e.g., certain types of trusts).

(iv) the reference in subparagraph 27(*d*)(i) to "Canada" shall be read and construed as a reference to "a WTO Member"; and

(*b*) where two persons, one being a Canadian and the other being a WTO investor, own equally all of the voting shares of a corporation, the corporation is deemed to be WTO investor-controlled.

censée être sous contrôle d'un investisseur OMC.

Regulations

14.2 The Governor in Council may make such regulations as the Governor in Council deems necessary for carrying out the purposes and provisions of section 14.1, including regulations defining the expression "transportation service" for the purposes of paragraph 14.1(5)(*c*).

14.2 Le gouverneur en conseil peut prendre les règlements qu'il juge nécessaires pour la mise en oeuvre de l'article 14.1, notamment des règlements définissant le terme « services de transport » pour l'application de l'alinéa 14.1(5)*c*).

Règlements

1988, c. 65, s. 136; 1993, c. 44, s. 179

134. Subsections 24(1.1) to (3) of the Act are replaced by the following:

134. Les paragraphes 24(1.1) à (3) de la même loi sont remplacés par ce qui suit :

1988, ch. 65, art. 136; 1993, ch. 44, art. 179

Authority to purchase cultural business

(2) Notwithstanding section 90 of the *Financial Administration Act*, where a NAFTA investor is, pursuant to a review under this Part, required to divest control of a cultural business, as defined in subsection 14.1(6), that has been acquired in the manner described in subparagraph 28(1)(*d*)(ii), where the circumstances described in subsection 14(2) do not apply, Her Majesty in right of Canada may acquire all or part of the cultural business and dispose of all or any part of the cultural business so acquired.

(2) Par dérogation à l'article 90 de la *Loi sur la gestion des finances publiques*, dans le cas où, d'une part, un investisseur ALÉNA doit, par suite d'un examen fait au titre de la présente partie, abandonner le contrôle d'une entreprise culturelle — au sens du paragraphe 14.1(6) — qu'il a acquis de la façon visée au sous-alinéa 28(1)*d*)(ii) et, d'autre part, la condition mentionnée au paragraphe 14(2) ne s'applique pas, Sa Majesté du chef du Canada peut acquérir l'entreprise, en tout ou en partie, et prendre toute mesure d'aliénation à son égard.

Acquisition d'une entreprise culturelle

Designation of agent

(3) For the purposes of subsection (2), the Governor in Council may, on the recommendation of the Minister and the Treasury Board, by order, designate any Minister of the Crown in right of Canada, or any Crown corporation within the meaning of the *Financial Administration Act*, to act as agent on behalf of Her Majesty with full authority to do all things necessary, subject to such terms and conditions not inconsistent with the obligations of the parties to the NAFTA Agreement under Article 2106 of the Agreement, as the Governor in Council considers appropriate.

(3) Pour l'application du paragraphe (2) et sur recommandation du ministre et du Conseil du Trésor, le gouverneur en conseil peut, par décret et aux conditions qu'il estime indiquées et qui sont compatibles avec les obligations des parties à l'Accord ALÉNA prévues à l'article 2106 de celui-ci, désigner parmi les ministres fédéraux, et les sociétés d'État au sens de la *Loi sur la gestion des finances publiques*, les mandataires de Sa Majesté et leur conférer les pouvoirs nécessaires en l'occurrence.

Mandataires

Section 14.2: This section authorizes the Governor in Council to make regulations to implement section 14.1 of the *Investment Canada Act* described above. For example, the higher review threshold does not apply to "transportation services", which may be defined in the regulations if required.

Clause 134

This clause implements Article 2106 and Annex 2106 of the NAFTA, which specify that Canada's obligations concerning cultural industries under the FTA continue between Canada and the U.S. and are also extended as between Canada and any other NAFTA country (i.e., Mexico).

Canada's obligations concerning cultural industries under NAFTA were not extended to WTO Members. Canada's commitment under the GATS was to only extend the preferential thresholds previously extended to Mexico and the United States under the NAFTA.

Subsections 24(1.1) to (3) are replaced by the following provisions:

Sub-section 24(2): Under the FTA and NAFTA, in the event that Canada requires divestiture of a cultural business, acquired indirectly by an American investor, pursuant to a review under the *Investment Canada Act*, Canada was obligated to purchase at fair market value that cultural business. This section replicates this FTA obligation but restricts its application only to NAFTA investors.

Sub-section 24(3): This section permits the designation of an agent to act on behalf of the Crown in the case of a divestiture and requirement by Canada to purchase a cultural business and to do all things necessary that are not inconsistent with the NAFTA.

Definitions

(4) In this section,

"controlled by a NAFTA investor" « sous le contrôle d'un investisseur ALÉNA »

"controlled by a NAFTA investor", with respect to a Canadian business, means, notwithstanding subsection 28(2),

(*a*) the ultimate direct or indirect control in fact of the Canadian business by a NAFTA investor through the ownership of voting interests, or

(*b*) the ownership by a NAFTA investor of all or substantially all of the assets used in carrying on the Canadian business;

"NAFTA Agreement" « Accord ALÉNA »

"NAFTA Agreement" has the meaning given to the word "Agreement" by the *North American Free Trade Agreement Implementation Act*;

"NAFTA country" « pays ALÉNA »

"NAFTA country" means a country that is a party to the NAFTA Agreement;

"NAFTA investor" « investisseur ALÉNA »

"NAFTA investor" means

(*a*) an individual, other than a Canadian, who is a national as defined in Article 201 of the NAFTA Agreement,

(*b*) a government of a NAFTA country, whether federal, state or local, or an agency thereof,

(*c*) an entity that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1) or (2), and that is a NAFTA investor-controlled entity, as determined in accordance with subsection (5),

(*d*) a corporation or limited partnership

(i) that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1),

(ii) that is not a NAFTA investor within the meaning of paragraph (*c*),

Définitions

(4) Les définitions qui suivent s'appliquent au présent article.

« Accord ALÉNA » « NAFTA Agreement"

« Accord ALÉNA » S'entend au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord de libre-échange nord-américain*.

« investisseur ALÉNA » « NAFTA investor"

« investisseur ALÉNA »

a) Le particulier — autre qu'un Canadien — qui est un ressortissant au sens de l'article 201 de l'Accord ALÉNA;

b) le gouvernement d'un pays ALÉNA ou celui d'un de ses États ou d'une de ses administrations locales, ou tout organisme d'un tel gouvernement;

c) l'unité sous contrôle d'un investisseur ALÉNA, au sens du paragraphe (5), qui n'est pas une unité sous contrôle canadien visée aux paragraphes 26(1) ou (2);

d) la personne morale ou société en commandite qui n'est ni une unité sous contrôle canadien visée au paragraphe 26(1), ni un investisseur ALÉNA au sens de l'alinéa *c*), ni contrôlée en fait au moyen de la propriété de ses intérêts avec droit de vote et dont, d'une part, la majorité de ceux-ci n'appartient pas à des investisseurs ALÉNA, d'autre part, les deux tiers des administrateurs ou des associés gérants, selon le cas, sont des Canadiens et des investisseurs ALÉNA;

e) la fiducie qui n'est ni une unité sous contrôle canadien visée aux paragraphes 26(1) ou (2), ni un investisseur ALÉNA au sens de l'alinéa *c*), ni contrôlée en fait au moyen de la propriété de ses intérêts avec droit de vote et dont les deux tiers des fiduciaires sont des Canadiens et des investisseurs ALÉNA;

Sub-section 24(4): This section defines the terms required to implement the sections above.

"Controlled by a NAFTA investor" is defined in terms of the country of ultimate control.

"NAFTA country" is defined in generic terms as any country that is a party to the NAFTA, rather than specifying the U.S. and Mexico.

"NAFTA investor" includes: an individual who is a national of a NAFTA country; a NAFTA government (any level); an entity controlled by a NAFTA investor; a corporation that is controlled by a NAFTA investor; a trust that is controlled by a NAFTA investor; and any other form of business organization (as specified in the regulations) that is controlled by a NAFTA investor.

"Cultural business" for the purposes of this section has the same definition as found in subsection 14.1(6) of the *Investment Canada Act* which is the same as that in the FTA and NAFTA.

(iii) of which less than a majority of its voting interests are owned by NAFTA investors,

(iv) that is not controlled in fact through the ownership of its voting interests, and

(v) of which two thirds of the members of its board of directors, or of which two thirds of its general partners, as the case may be, are any combination of Canadians and NAFTA investors,

(*e*) a trust

(i) that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1) or (2),

(ii) that is not a NAFTA investor within the meaning of paragraph (*c*),

(iii) that is not controlled in fact through the ownership of its voting interests, and

(iv) of which two thirds of its trustees are any combination of Canadians and NAFTA investors, or

(*f*) any other form of business organization specified by the regulations that is controlled by a NAFTA investor.

Interpretation

(5) For the purposes only of determining whether an entity is a NAFTA investor-controlled entity under paragraph (*c*) of the definition "NAFTA investor" in subsection (4),

(*a*) subsections 26(1) and (2) and section 27 apply and, for that purpose,

(i) every reference in those provisions to "Canadian" or "Canadians" shall be read and construed as a reference to "NAFTA investor" or "NAFTA investors", respectively,

(ii) every reference in those provisions to "non-Canadian" or "non-Canadians" shall be read and construed as a reference to "non-Canadian, other than a NAFTA investor," or "non-Canadians, other than NAFTA investors," respectively, except for the reference to "non-Canadians" in subparagraph 27(*d*)(ii),

f) toute autre forme d'organisation commerciale précisée par règlement et contrôlée par un investisseur ALÉNA.

« pays ALÉNA » Pays partie à l'Accord ALÉNA.

« pays ALÉNA »
"NAFTA country"

« sous le contrôle d'un investisseur ALÉNA » Par dérogation au paragraphe 28(2), s'entend, à l'égard d'une entreprise canadienne :

« sous le contrôle d'un investisseur ALÉNA »
"controlled by a NAFTA investor"

a) soit du contrôle ultime de fait, direct ou indirect, de celle-ci par un investisseur ALÉNA au moyen de la propriété d'intérêts avec droit de vote;

b) soit du fait qu'un investisseur ALÉNA est propriétaire de la totalité ou de la quasi-totalité des actifs d'exploitation de celle-ci.

Mentions

(5) Pour l'application de l'alinéa *c*) de la définition de « investisseur ALÉNA », au paragraphe (4), la détermination du statut de l'unité sous contrôle d'un investisseur ALÉNA est à effectuer selon les règles suivantes :

a) les paragraphes 26(1) et (2) et l'article 27 s'appliquent et, à cette fin, les mentions, dans ces dispositions, de « Canadien », de « Canadiens », de « non-Canadien », de « non-Canadiens » et des adjectifs correspondants, ainsi que de « sous contrôle canadien » et de « Canada », valent respectivement mention de « investisseur ALÉNA », de « investisseurs ALÉNA », de « non-Canadien — autre qu'un investisseur ALÉNA — », de « non-Canadiens — autres que des investisseurs ALÉNA — », des adjectifs correspondants, de « sous contrôle d'un investisseur ALÉNA » et de « pays ALÉNA » — à l'exception de

Sub-section 24(5): The rules for interpreting Canadian status in Sections 26 and 27 of the *Investment Canada Act* are also used in determining whether an entity is a "NAFTA investor-controlled entity", but with "NAFTA investor" replacing "Canadian".

which shall be read and construed as a reference to "not NAFTA investors",

(iii) every reference in those provisions to "Canadian-controlled" shall be read and construed as a reference to "NAFTA investor-controlled", and

(iv) the reference in subparagraph 27(*d*)(i) to "Canada" shall be read and construed as a reference to "a NAFTA country"; and

(*b*) where two persons, one being a Canadian and the other being a NAFTA investor, own equally all of the voting shares of a corporation, the corporation is deemed to be NAFTA investor-controlled.

l'adjectif « non canadiens », au sous-alinéa 27*d*)(ii), qui vaut mention de « n'étant pas des investisseurs ALÉNA »;

b) lorsque deux personnes — un Canadien et un investisseur ALÉNA — possèdent à part égale toutes les actions avec droit de vote d'une personne morale, celle-ci est censée être sous contrôle d'un investisseur ALÉNA.

1988, c. 65, s. 137

135. Subsection 37(1) of the Act is replaced by the following:

Ministerial opinions

37. (1) Where any question arises under this Act as to whether an individual or an entity is a Canadian, the Minister shall, on application by or on behalf of the individual or entity, forthwith consider the application and any information and evidence submitted therewith and, unless the Minister concludes that the information and evidence submitted therewith is not sufficient to enable the Minister to reach an opinion on the question, shall provide the applicant with a written opinion for the guidance of the applicant.

1988, ch. 65, art. 137

135. Le paragraphe 37(1) de la même loi est remplacé par ce qui suit :

Opinions du ministre

37. (1) Lorsque dans le cadre de la présente loi se pose la question de savoir si un individu ou une unité est un Canadien, le ministre prend en considération immédiatement la demande qui lui est faite par l'individu ou l'unité ou en leur nom et étudie les renseignements et les éléments de preuve qui lui sont présentés; sauf s'il en vient à la conclusion que ces renseignements et éléments de preuve ne sont pas suffisants pour lui permettre de se faire une opinion sur la question, il donne au demandeur une opinion écrite à titre d'information.

Clause 135

Sub-section 37(1) requires the Minister responsible for the *Investment Canada Act*, upon application by an individual or entity, to issue an opinion as to whether the applicant is a Canadian or American. This clause replaces sub-section 37(1) and repeats the provision except for the word "American". An individual or entity who is American (or from any WTO country) may obtain an opinion from the Minister under sub-section 37(2) as to their status as an American (or as an individual or entity from a WTO country).

Sub-section 37(1) This provision replaces the former sub-section 37(1) and makes a consequential amendment by removing the term "American" which, following repeal of the former section 14.1, will not appear in the *Investment Canada Act*.

INVESTMENT COMPANIES ACT

CLAUSES 136 - 139

INVESTMENT COMPANIES ACT

CLAUSES 136 - 139

Overview

The *Investment Companies Act* regulates companies incorporated under federal law to carry on the business of investment. The business of investment means the borrowing of money in order to use the proceeds to make loans or acquire other specified financial assets. The Act contains rules regarding the registration and regulation of such companies. Of particular importance to the *World Trade Organization Agreement Implementation Act* is the fact that the *Investment Companies Act* contains limitations on the ability of non-residents to own sales finance companies which are companies that have more than 25% of their assets composed of loans by the company or purchases of obligations representing part or all of the sale price of mechanise or services.

WTO Commitments

Pursuant to the General Agreement on Trade in Services, which is one of the agreements that made up the WTO Agreements, Canada made a number of commitments in the area of financial services. Chief among these were the commitments to provide WTO members with national treatment and most-favoured-nation treatment. National treatment means providing to financial institutions owned by non-Canadians and to non-Canadian investors in financial institutions the same treatment as provided to Canadian owned institutions or to Canadian investors in financial institutions. Most-favoured -nation treatment means providing to financial institutions owned by WTO members and to WTO investors the same treatment as provided to institutions owned by residents of any other country or provided to investors from any other country.

Summary of the Amendments

These amendments implement national treatment and most-favoured-nation treatment by the removal of the 10/25 ownership constraints on sales finance companies. There are also consequential amendments to other provisions that are needed because of the deletion of these rules.

136. The portion of subsection 3(2) of the *Investment Companies Act* before paragraph (*a*) is replaced by the following:

Exemption from application

(2) The Minister may exempt any investment company from the application of this Act if the Minister is satisfied that

1988, c. 65, s. 138; 1991, c. 47, s. 737; 1993, c. 44, s. 180

137. The heading before section 13.1 and sections 13.1 to 19 of the Act are repealed.

138. Subsection 20(1) of the Act is replaced by the following:

Definitions

"Corporation" « *Société* »

"sales finance company" « *société de crédit* »

20. (1) In this section and section 21,

"Corporation" means the Canada Deposit Insurance Corporation;

"sales finance company" means an investment company at least twenty-five per cent of the assets of which, valued in accordance with the regulations, consist of

(*a*) loans, whether secured or unsecured, made by the company, or

(*b*) purchases by the company of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange, promissory notes or other obligations representing part or all of the sale price of merchandise or services,

and the value of assets of an investment company deemed by subsection 2(4) not to be assets that consist of loans described in paragraph (*a*) of the definition "business of investment" in subsection 2(1) shall not be included in calculating the aggregate value of its assets described in paragraphs (*a*) and (*b*).

Loans by Corporation

(1.1) Where the Corporation is satisfied that a sales finance company has substantially exhausted the sources of funds reasonably available to it, the Corporation may, out of amounts advanced to the Corporation pursuant to section 33, make short term loans to the sales finance company secured by such security as the Corporation deems adequate, to enable the sales finance company to meet requirements for liquid funds to discharge its maturing debt obligations.

136. Le passage du paragraphe 3(2) de la *Loi sur les sociétés d'investissement* précédant l'alinéa *a*) est remplacé par ce qui suit :

Exemption

(2) Le ministre peut exempter une société d'investissement de l'application de la présente loi s'il est convaincu :

1988, ch. 65, art. 138; 1991, ch. 47, art. 737; 1993, ch. 44, art. 180

137. L'intertitre précédant l'article 13.1 et les articles 13.1 à 19 de la même loi sont abrogés.

138. Le paragraphe 20(1) de la même loi est remplacé par ce qui suit :

Définitions

« Société » "Corporation"

« société de crédit » "sales finance company"

20. (1) Les définitions qui suivent s'appliquent au présent article et à l'article 21.

« Société » Société d'assurance-dépôts du Canada.

« société de crédit » Société d'investissement dont l'actif, évalué conformément aux règlements, est formé, dans une proportion de vingt-cinq pour cent au moins :

a) de prêts, garantis ou non, qu'elle consent;

b) de titres de créance représentant tout ou partie du prix de vente de marchandises ou de prestation de services — notamment contrats de vente conditionnelle, comptes à recevoir, actes de vente, nantissements mobiliers, lettres de change ou billets à ordre — qu'elle a achetés.

Pour le calcul de la valeur des éléments d'actif visés aux alinéas *a*) et *b*), ne sont pas pris en compte ceux qui, aux termes du paragraphe 2(4), sont réputés ne pas être des éléments d'actif consistant en des prêts visés à l'alinéa *a*) de la définition de « opérations d'investissement » au paragraphe 2(1).

Prêts par la Société

(1.1) La Société peut, sur les avances qui lui sont faites en application de l'article 33, consentir des prêts à court terme moyennant une garantie qu'elle estime suffisante à toute société de crédit dont elle est convaincue qu'elle a presque épuisé les sources de crédit auxquelles elle pourrait normalement avoir accès, afin de lui permettre d'avoir assez de liquide pour acquitter les dettes venant à échéance.

Clause 136 - Amendment of subsection 3(2) preceding paragraph 3(2)(a)

This amendment deletes the reference to sections 14 to 19 which are being repealed as well as making a minor grammatical change.

Clause 137 - Repeal of heading preceding section 13.1 and repeal of sections 13.1 to 19

These sections generally prohibit non-residents as a group from having more than a 25% interest in any class of shares of an investment company that is a sales finance company and prohibit any particular non-resident and associated shareholders from having more than 10% of the shares of such a company (i.e. the "10/25" rules). The repeal of these sections accords national treatment to non-residents.

Clause 138 - Replacement of subsection 20(1)

The definition of sales finance company was previously contained in section 14 which is being repealed. As the expression is used in section 20 and 21 the definition is being placed in this section. A definition of "Corporation" being the Canada Deposit Insurance Corporation which is currently defined in these sections by means of a parenthetically expression is also included.

Subsection 20(1.1) is the same as the current subsection 20(1) except for the deletion of the reference to sections 15, 16 and 18 which are being repealed.

R.S., c. 18 (3rd Supp.), s. 139

139. Section 21 of the Act is replaced by the following:

Information to be available to the Corporation

21. (1) The Corporation, in relation to the exercise of its powers under section 20, is entitled to review all information filed in the Office of the Superintendent of Financial Institutions or provided or submitted to or filed with the Superintendent by a sales finance company and by the president, manager, secretary and auditor of the company pursuant to sections 5 to 8.

Examination by and information through Superintendent

(2) The Superintendent shall, notwithstanding any other Act of Parliament, at the request of the Corporation made in relation to the exercise of its powers under section 20,

(*a*) examine on behalf of the Corporation the affairs of a sales finance company; and

(*b*) obtain for review by the Corporation any information relating to a sales finance company that the Superintendent can reasonably obtain pursuant to section 5, 6, 7 or 8 or that can reasonably be obtained by an examiner.

Report to Minister and Corporation

(3) Where, pursuant to section 25 or 27, the Superintendent makes a special report to the Minister in relation to a sales finance company, the Superintendent shall send a copy thereof to the Corporation and shall advise the Corporation of any action taken by the Minister as a consequence of the report.

L.R., ch. 18 (3e suppl.), art. 139

139. L'article 21 de la même loi est remplacé par ce qui suit :

Renseignements à mettre à la disposition de la Société

21. (1) Pour l'exercice des pouvoirs qui lui sont conférés par l'article 20, la Société a droit à la communication des renseignements transmis au Bureau du surintendant des institutions financières par une société de crédit ou par le président, le directeur, le secrétaire ou le vérificateur de celle-ci, conformément aux articles 5 à 8.

Obtention de renseignements par le surintendant

(2) Malgré toute autre loi fédérale, le surintendant est tenu, sur demande de la Société faite dans le cadre des pouvoirs prévus par l'article 20 :

a) d'examiner pour le compte de celle-ci les affaires d'une société de crédit;

b) d'obtenir, pour examen par celle-ci, tous les renseignements relatifs à la société de crédit qu'il peut normalement obtenir en application des articles 5, 6, 7 ou 8 ou qu'un inspecteur peut normalement obtenir.

Rapport au ministre et à la Société

(3) Le surintendant transmet à la Société un exemplaire de tout rapport spécial concernant une société de crédit qu'il transmet au ministre en application de l'article 25 ou 27, et informe la Société des mesures prises par le ministre à la suite de ce rapport.

Clause 139 - Amendment of section 21

This amendment is the same as the current section 21 except for the deletion of the references to sections 15, 16 and 18 which are being repealed.

MEAT IMPORT ACT

CLAUSE 140

R.S., c. M-3

Meat Import Act

Repeal of R.S., c. M-3

140. The *Meat Import Act* is repealed.

Loi sur l'importation de la viande

L.R., ch. M-3

Abrogation de L.R., ch. M-3

140. La *Loi sur l'importation de la viande* est abrogée.

MEAT IMPORT ACT

CLAUSE 140

Overview

The *Meat Import Act* came into force on February 11, 1982. It authorizes the Minister of Agriculture and Agri-Food, with the concurrence of the Minister of Foreign Affairs, to restrict the quantity of meat imported into Canada each year and to adjust, suspend or revoke any such restrictions. The Minister's discretion under the *Act* is governed by the formula and considerations set out in the schedule to the *Act* and by the minimum global access commitment agreed to by Canada under the GATT.

WTO Agreement Commitments

Article 4 of the Agreement on Agriculture sets out the Market Access conditions for agriculture products. Article 4.2 provides that "Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted to ordinary customs duties..." This provision prohibits Canada from maintaining quantitative import restrictions, voluntary restraint arrangements, or similar border measures, other than ordinary tariffs. WTO members are required to convert these non-tariff barriers into tariff rate quotas, which are set out in Members' Schedules of Agricultural Commitments appended to the WTO Agreement. In Canada's Final Schedule of Agriculture Commitments Canada committed to provide a tariff rate quota of 76,409 tonnes of beef and veal (product weight basis).

Summary of the Amendment

Clause 140 repeals the *Meat Import Act*, thereby meeting Canada's commitment to eliminate this non-tariff barrier. The new tariff equivalents (31.1% to be reduced to 26.5% in the year 2000), that will apply to beef imported over the tariff rate quota, are contained in Schedule I, Part D, Section IV. Under NAFTA Canada had already exempted the United States and Mexico from the provisions of the Act. Therefore, the new tariff equivalents do not apply to imports originating in the United States or Mexico.

PATENT ACT

CLAUSES 141 - 143

141. Section 2 of the *Patent Act* is amended by adding the following in alphabetical order:

"country" «*pays*»

"country" includes a Member of the World Trade Organization, as defined in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*;

141. L'article 2 de la *Loi sur les brevets* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

«pays» *"country"*

« pays » Notamment un membre de l'Organisation mondiale du commerce au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

142. Section 19.1 of the Act is amended by adding the following after subsection (3):

Limitation on use of semi-conductor technology

(4) The Commissioner may not, under section 19, authorize any use of semi-conductor technology other than a public non-commercial use.

142. L'article 19.1 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

Limitation — semi-conducteurs

(4) Le commissaire ne peut s'appuyer sur l'article 19 pour autoriser l'usage de la technologie des semi-conducteurs, sauf dans les cas où l'autorisation est demandée à des fins publiques non commerciales.

143. The Act is amended by adding the following after section 19.3:

Regulations

19.4 (1) The Governor in Council may make regulations for the purpose of implementing, in relation to patents, subparagraphs (*a*) to (*k*) of Article 31 and paragraph 2 of Article 37 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the Agreement.

Definition of "Agreement"

(2) In subsection (1), "Agreement" has the same meaning as in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

143. La même loi est modifiée par adjonction, après l'article 19.3, de ce qui suit :

Règlements

19.4 (1) Le gouverneur en conseil peut prendre, concernant les brevets, des règlements pour la mise en oeuvre des alinéas *a*) à *k*) de l'article 31 et du paragraphe 2 de l'article 37 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord.

Définition de « Accord »

(2) Au paragraphe (1), « Accord » s'entend au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

PATENT ACT

CLAUSES 141 - 143

Overview

The *Patent Act* protects inventions for a period of 20 years. Canada's current principal international treaty obligation with respect to patents is the Paris Convention for the Protection of Industrial Property. Generally speaking, this requires that we give patentees of other treaty countries the same protection as Canadian patentees. It also has certain procedural and substantive requirements. The Paris Convention also applies to industrial designs and trade-marks.

The current section 19 of the *Patent Act* provides for general principles of government use of a patented invention. It does not, however, limit such use in the case of semi-conductor technology to public non-commercial use.

TRIPS Commitment

The *Patent Act* already complies with many of the obligations of the TRIPS Agreement. Among the new obligations are:

(1) national treatment protection for all WTO members (TRIPS Art. 3(1)); and

(2) the requirement that government use of semi-conductor technology be limited to public non-commercial use (TRIPS Art. 37(2) and 31(a) to (k)).

Clause 141 - Definition

A definition of "country" which includes WTO Members is being added because each WTO Member must accord to nationals of other WTO Members treatment no less favourable than that which it accords to its own nationals with regard to the protection of patents.

Clause 142 - Limitation on use of semi-conductor technology

Section 19.1(4) is being added to limit government use of semi-conductor technology to public non-commercial use.

Clause 143 - Regulation making authority

Section 19.4 is being added to allow the Governor in Council to make regulations for the purpose of implementing, in relation to patents, Articles 31(a) to (k) of the TRIPS Agreement.

PEST CONTROL PRODUCTS ACT

CLAUSES 144

1993, c. 44, s. 200

144. Subsections 6(2) and (3) of the *Pest Control Products Act* are replaced by the following:

144. Les paragraphes 6(2) et (3) de la *Loi sur les produits antiparasitaires* sont remplacés par ce qui suit :

1993, ch. 44, art. 200

Regulations re NAFTA and WTO Agreement

(2) Without limiting the authority conferred by subsection (1), the Governor in Council may make such regulations as the Governor in Council deems necessary for the purpose of implementing, in relation to control products, Article 1711 of the North American Free Trade Agreement or paragraph 3 of Article 39 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the World Trade Organization Agreement.

(2) Le gouverneur en conseil peut en outre prendre, concernant les produits antiparasitaires, les règlements qu'il estime nécessaires pour la mise en oeuvre de l'article 1711 de l'Accord de libre-échange nord-américain ou du paragraphe 3 de l'article 39 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord sur l'OMC.

Règlements relatifs à l'Accord de libre-échange nord-américain et à l'Accord sur l'OMC

Definitions

(3) In subsection (2),

(3) Les définitions qui suivent s'appliquent au paragraphe (2).

Définitions

"North American Free Trade Agreement" « *Accord de libre-échange nord-américain* »

"North American Free Trade Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *North American Free Trade Agreement Implementation Act*;

« Accord de libre-échange nord-américain » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord de libre-échange nord-américain*.

« *Accord de libre-échange nord-américain* » "*North American Free Trade Agreement*"

"World Trade Organization Agreement" « *Accord sur l'OMC* »

"World Trade Organization Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

« Accord sur l'OMC » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*.

« *Accord sur l'OMC* » "*World Trade Organization Agreement*"

PEST CONTROL PRODUCTS ACT

CLAUSES 144

Overview

The *Pest Control Products Act* prohibits any person from selling or importing any pest control product unless it has been registered in accordance with regulations made under section 6. The Act was amended under the *North American Free Trade Agreement Implementation Act* to add authority to make regulations, for the purpose of implementing, in relation to control products, Article 1711 of the NAFTA and to add a definition of "North American Free Trade Agreement".

TRIPS Commitment

Article 39(3) of TRIPS requires WTO Members, when requiring the submission of undisclosed test or other data as a condition of approving the marketing of agricultural chemical products which utilize new chemical entities, to protect such data against unfair commercial use and disclosure.

Clause 144

This clause amends section 6 by adding authority to make regulations for the purpose of implementing, in relation to control products, Article 39(3) of TRIPS. It also adds a definition of the "World Trade Organization Agreement".

SPECIAL IMPORT MEASURES ACT

CLAUSES 145 - 190

- new rules governing the treatment of sales below cost;

- new rules governing the termination of investigations based on insignificant margins of dumping or amounts of subsidy or negligible volumes of dumped or subsidized goods;

- provisions for the review of determinations, orders or findings at the discretion of the Minister of Finance based on WTO Panel decisions.

145. (1) The definitions "amount of the subsidy", "material injury" and "Subsidies and Countervailing Duties Agreement" in subsection 2(1) of the *Special Import Measures Act* are repealed.

(2) The definitions "margin of dumping", "order or finding", "properly documented", "retardation" and "subsidy" in subsection 2(1) of the Act are replaced by the following:

"margin of dumping" « *marge de dumping* »

"margin of dumping", in relation to any goods, means, subject to sections 30.1, 30.2 and 30.3, the amount by which the normal value of the goods exceeds the export price of the goods;

"order or finding" « *ordonnance ou conclusions* »

"order or finding", in relation to the Tribunal,

(*a*) means an order or finding made by the Tribunal pursuant to section 43 or 44 that has not been rescinded pursuant to subsection 91(3), and

(*b*) includes, for the purposes of sections 3 to 6, 76 and 76.1, an order or finding made by the Tribunal pursuant to subsection 91(3)

that has not been rescinded pursuant to section 76 or 76.1 but, where the order or finding has been amended one or more times pursuant to either of those sections, as last so amended;

"properly documented" « *dossier complet* »

"properly documented", in relation to a complaint respecting the dumping or subsidizing of goods, means that

(*a*) the complaint

(*i*) alleges that the goods have been or are being dumped or subsidized, specifies the goods and alleges that the dumping or subsidizing has caused injury or retardation or is threatening to cause injury,

(*ii*) states in reasonable detail the facts on which the allegations referred to in subparagraph (i) are based, and

(iii) makes such other representations as the complainant deems relevant to the complaint, and

(*b*) the complainant provides

(i) such information as is available to the complainant to prove the facts referred to in subparagraph (*a*)(ii),

(*ii*) such information as is prescribed, and

145. (1) Les définitions de « Accord », « montant de la subvention », et « préjudice sensible », au paragraphe 2(1) de la *Loi sur les mesures spéciales d'importation*, sont abrogées.

(2) Les définitions de « dossier complet », « marge de dumping », « ordonnance ou conclusions », « retard sensible » et « subvention », au paragraphe 2(1) de la même loi, sont respectivement remplacées par ce qui suit :

« dossier complet » "properly documented"

« dossier complet » Est complet tout dossier d'une plainte concernant le dumping ou le subventionnement de marchandises dans lequel :

a) d'une part :

(i) il est déclaré que les marchandises qui y sont désignées ont été ou sont sous-évaluées ou subventionnées et que leur dumping ou leur subventionnement a causé un dommage ou un retard ou menace de causer un dommage,

(ii) sont énoncés de manière suffisamment détaillée les faits sur lesquels se fondent les déclarations visées au sous-alinéa (i),

(iii) sont présentées les autres observations que le plaignant estime utiles;

b) d'autre part, sont fournis par le plaignant :

(i) les renseignements dont il dispose pour établir les faits visés au sous-alinéa *a*)(ii),

(ii) les renseignements réglementaires,

(iii) les autres renseignements que le sous-ministre peut valablement exiger.

« marge de dumping » "margin of dumping"

« marge de dumping » Sous réserve des articles 30.1, 30.2 et 30.3, l'excédent de la valeur normale de marchandises sur leur prix à l'exportation.

« ordonnance ou conclusions » "order or finding"

« ordonnance ou conclusions » L'ordonnance ou les conclusions non annulées aux termes des articles 76 ou 76.1, et les plus récentes dans les cas de modification, rendues par le Tribunal :

a) aux termes des articles 43 ou 44 sans annulation aux termes du paragraphe 91(3);

b) en outre, pour l'application des articles 3 à 6 et des articles 76 et 76.1, aux termes du paragraphe 91(3).

Clause-by-Clause Explanatory Notes

For purposes of the following text:

"AD" means the *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* as contained in Annex 1A of the *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations* signed in Marrakesh, 15 April 1994;

"SCM" means the *Agreement on Subsidies and Countervailing Measures* as contained in Annex 1A of the *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations* signed in Marrakesh, 15 April 1994;

"Tribunal" means the Canadian International Trade Tribunal;

"WTO" means World Trade Organization;

"*Act*" means the *Special Import Measures Act*.

INTERPRETATION

Clause 145

Section 2 of the *Special Import Measures Act* provides definitions in subsection 2(1) and interpretative provisions in the remaining subsections which are to be used in the interpretation and application of the *Act*.

Sub-clause 145(1) repeals the definitions "amount of the subsidy", "material injury", and "Subsidies and Countervailing Duties Agreement" in subsection 2(1) of the *Special Import Measures Act* and replaces them with "amount of subsidy"; "injury"; and "Subsidies Agreement". Each of these new definitions are discussed in respect of *sub-clause 145(3)*.

Sub-clause 145(2) replaces five definitions in the *Act*:

"margin of dumping" (AD Articles 2.1 and 5.8): The new definition retains the concept that the margin of dumping is the amount by which the normal value of goods exceeds the export price. The new portion of the definition provides for special rules to be used in determining the margin of dumping during an investigation as outlined in the new sections 30.1 to 30.3 of the *Act*. These special rules allow Revenue Canada to calculate a single margin of dumping for goods from an individual country. This country-level analysis allow us to meet our WTO obligations to terminate investigations where the margin of dumping is insignificant (see *clause 160* below).

(iii) such other information as the Deputy Minister may reasonably require;

"retardation" means material retardation of the establishment of a domestic industry;

"subsidy" means

(a) a financial contribution by a government of a country other than Canada in any of the circumstances outlined in subsection (1.6) that confers a benefit to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback, or

(b) any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, being part of Annex 1A to the WTO Agreement, that confers a benefit;

« retard » Le retard sensible de la mise en production d'une branche de production nationale.

« subvention »

a) Les contributions financières du gouvernement d'un pays autre que le Canada dans les circonstances exposées au paragraphe (1.6) qui confèrent un avantage aux personnes se livrant à la production ou à la commercialisation, à un stade quelconque, ou au transport de marchandises données, ou à leur exportation ou importation. La présente définition exclut le montant des droits ou des taxes internes imposés par le gouvernement du pays d'origine ou d'exportation sur des marchandises qui, en raison de leur exportation du pays d'exportation ou d'origine, en ont été exonérées ou en ont été ou en seront libérées par remboursement ou drawback;

b) toute forme de soutien du revenu ou des prix, au sens de l'article XVI de l'Accord général sur les tarifs douaniers et le commerce de 1994 figurant à l'annexe 1A de l'Accord sur l'OMC, qui confère un avantage.

"retardation" « retard »

"subsidy" « subvention »

« retard » "retardation"

« subvention » "subsidy"

"order or finding": This definition is in respect of any order or finding of the Canadian International Trade Tribunal (CITT). The only change to the current definition is the addition of a reference to the new section 76.1. The new section 76.1 deals with orders or findings of the Tribunal resulting from a review of a previous order or finding as a result of a request by the Deputy Minister of Finance in response to a decision by a WTO Dispute Settlement Body (see *clause 180* below).

"properly documented" in relation to a complaint respecting the dumping or subsidizing of goods (AD Article 5.2 and SCM Article 11.2): A properly documented complaint forms the basis on which the Deputy Minister of National Revenue normally initiates a dumping or subsidy investigation. The new definition of *"properly documented"* includes the current definition in respect of types of information, evidence and allegations required in a complaint. The new subparagraph (b)(ii) requires the complainant to provide such information as is prescribed. The prescribed information includes reasonably available information concerning:

1. the description of the goods; volumes and values of domestic production;

2. the identification of countries of origin or export of goods and, where possible, individual exporters; and

3. the identification of known importers.

There is also a consequential amendment reflecting the new injury test of "has caused injury or retardation or is threatening to cause injury" which reflects the existing wording in the AD and SCM Agreements.

"retardation" (AD Article 3 (Footnote 9) and SCM Article 15 (Footnote 45)): Retardation is a special form of injury where the injury is not in respect of a domestic industry but rather to the establishment of such an industry. "Retardation" has been redefined in terms of the domestic industry in accordance with the AD and SCM Agreements rather than *the production in Canada of like goods* as is the case with the current definition.

"subsidy" (SCM Article 1): The definition of subsidy has been fundamentally changed from a cost to government approach to one based on determining a benefit to the recipient. In effect, the simple measure of the subsidy will be the difference between what it would cost a company to obtain the good or service in the marketplace and cost of the goods or service when supplied by a government. Included in the new definition of subsidy are any income or price support schemes mentioned in Article XVI of the General Agreement on Tariffs and Trade 1994. As is the case with the current definition, the new definition refers to a financial contribution by a government of a country other than Canada. However, the concept of financial contribution is further modified by a new subsection 2(1.6) [see *sub-clause 145(4)* below]. The new definition of *"subsidy"* continues to provide an illustrative listing of who may receive a benefit and prohibits the

When domestic support measure ceases to be a non-actionable subsidy

(1.4) A domestic support measure referred to in paragraph (*c*) of the definition "non-actionable subsidy" in subsection (1) ceases to be a non-actionable subsidy on the day on which the implementation period in respect of the Agreement on Agriculture referred to in that paragraph, as defined in Article 1 of that Agreement for the purposes of Article 13 of that Agreement, expires.

Expiration des mesures de soutien interne

(1.4) Les mesures de soutien interne visées à l'alinéa *c*) de la définition de « subvention ne donnant pas lieu à une action » au paragraphe (1) cessent d'être de telles mesures à la date à laquelle expire la période de mise en oeuvre relative à l'Accord sur l'agriculture visé à cet alinéa, au sens de l'article 1 de cet accord pour l'application de l'article 13 de l'Accord sur l'OMC.

Threat of injury

(1.5) For the purposes of this Act, the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent.

Menace de dommage

(1.5) Pour l'application de la présente loi, pour qu'il puisse être décidé que le dumping ou le subventionnement de marchandises menace de causer un dommage ou cause une menace de dommage, il faut que les circonstances dans lesquelles le dumping ou le subventionnement est susceptible de causer un dommage soient nettement prévues et imminentes.

Financial contribution

(1.6) For the purposes of paragraph (*a*) of the definition "subsidy" in subsection (1), there is a financial contribution by a government of a country other than Canada where

(*a*) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;

(*b*) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;

(*c*) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or

(*d*) the government permits or directs a non-governmental body to do any thing referred to in any of paragraphs (*a*) to (*c*) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

Contribution financière

(1.6) Pour l'application de l'alinéa *a*) de la définition de « subvention » au paragraphe (1), les cas suivants sont réputés constituer des contributions financières versées par le gouvernement d'un pays autre que le Canada :

a) des pratiques gouvernementales comportant un transfert direct de fonds ou d'éléments de passif ou des transferts indirects de fonds ou d'éléments de passif;

b) des sommes qui, en l'absence d'une exonération ou d'une déduction, seraient perçues par le gouvernement ou des recettes publiques qui sont abandonnées ou non perçues;

c) le gouvernement fournit des biens et des services autres qu'une infrastructure générale, ou achète des biens;

d) le gouvernement permet à un organisme non gouvernemental d'accomplir l'un des gestes mentionnés aux alinéas *a*) à *c*) — ou le lui ordonne — dans les cas où le pouvoir ou l'obligation de les accomplir relèverait normalement du gouvernement, et cet organisme accomplit ces gestes essentiellement de la même manière le gouvernement.

Article 4.1(ii) and SCM Article 16.2.

Subsection 2(1.4) - *Where domestic support measure ceases to be non-actionable subsidy* expands on paragraph (*c*) of the definition of *"non-actionable subsidy"*. The specific agricultural support measures noted in Annex I to the Agreement on Agriculture cease to be non-actionable when the implementation period applicable to those programs as defined in the Agreement on Agriculture expires. Article 1(f) of that Agreement states that the implementation period will end nine years after the implementation of the WTO.

Subsection 2(1.5) - *Threat of injury* deals with threat in relation to *"injury"*. Any threat of material injury to a domestic industry means that the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent. This definition implements Canada's obligations under AD Article 3.7 and SCM Article 15.7 of the WTO Agreement.

Subsection 2(1.6) - *Financial contribution* clarifies the meaning of the term "financial contribution" by a government of a country other than Canada in paragraph (*a*) of the definition of *"subsidy"*. This term refers to the direct or indirect transfer of funds or liabilities, foregoing of amounts owing and the provision of goods or services. These criteria are based on SCM Article 14.

"WTO Agreement" «*Accord sur l'OMC*»

"WTO Agreement" has the meaning assigned to the term "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

(4) Section 2 of the Act is amended by adding the following after subsection (1):

When domestic industry based on regional markets

(1.1) In exceptional circumstances, the territory of Canada may, for the production of any goods, be divided into two or more regional markets and the domestic producers of like goods in any of those markets may be considered to be a separate domestic industry where

(*a*) the producers in the market sell all or almost all of their production of like goods in the market; and

(*b*) the demand in the market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

Producers related to exporters or importers

(1.2) For the purposes of the definition "domestic industry" in subsection (1), a domestic producer is related to an exporter or an importer of dumped or subsidized goods where

(*a*) the producer either directly or indirectly controls, or is controlled by, the exporter or importer,

(*b*) the producer and the exporter or the importer, as the case may be, are directly or indirectly controlled by a third person, or

(*c*) the producer and the exporter or the importer, as the case may be, directly or indirectly control a third person,

and there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer.

Where there is deemed to be control

(1.3) For the purposes of subsection (1.2), a person is deemed to control another person where the first person is legally or operationally in a position to exercise restraint or direction over the other person.

(4) L'article 2 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Branche de production nationale divisée en marchés régionaux

(1.1) Dans des circonstances exceptionnelles, le territoire canadien peut, en ce qui concerne la production de marchandises, être divisé en deux ou plusieurs marchés régionaux, et les producteurs de marchandises similaires à l'intérieur de chacun de ces marchés sont réputés constituer une branche de production nationale distincte, si, à la fois :

a) ils vendent la totalité ou la quasi-totalité de leur production de marchandises similaires sur ce marché;

b) la demande sur ce marché n'est pas satisfaite dans une mesure substantielle par les producteurs de marchandises similaires situés ailleurs au Canada.

Liens entre producteurs et exportateurs ou importateurs

(1.2) Pour l'application de la définition de « branche de production nationale » au paragraphe (1), le producteur est lié à l'exportateur ou à l'importateur dans l'un ou l'autre des cas suivants :

a) directement ou indirectement, le producteur contrôle l'importateur ou l'exportateur, ou est contrôlé par l'un ou l'autre;

b) le producteur et l'exportateur ou l'importateur, selon le cas, sont contrôlés directement ou indirectement par un tiers;

c) le producteur et l'exportateur ou l'importateur, selon le cas, contrôlent directement ou indirectement un tiers,

et il y a des motifs de croire que le producteur ne se comporte pas envers l'exportateur ou l'importateur de la même manière qu'un producteur non lié.

Présomptions applicables aux subventions

(1.3) Pour l'application du paragraphe (1.2), une personne est réputée en contrôler une autre lorsqu'elle est, en fait ou en droit, en mesure de contraindre ou de diriger l'autre.

Subsidies and Countervailing Measures in the new section 31.1 (see *clause 162* below).

"WTO Agreement": This definition refers to the agreement establishing the World Trade Organization as defined by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*. *WTO Agreement* is used to place other definitions, such as *Subsidies Agreement*, in context.

Sub-clause 145(4) provides for five new interpretative provisions which expand on some of the new and amended definitions noted in *sub-clauses 145(2) and (3)*.

Subsection 2(1.1) - *Where domestic industry based on regional markets* modifies the new definition of *"domestic industry"*. In most cases, a dumping or countervail investigation is initiated on a national basis. However, such an approach is not always appropriate. In exceptional circumstances, the effects of dumped or subsidized goods may be confined to a definable area. In such circumstances, the new subsection 2(1.1) allows the national territory of Canada to be divided into two or more separate regional markets thereby allowing the domestic producers in each of those markets to be treated as a separate domestic industry. In order for a regional market to be found to exist, two conditions must first be met:

- first, the producers in such a market must sell all or almost all of their production of like goods in that market, and,

- second, the demand in that market must not be fulfilled to any substantial degree by producers in other parts of Canada.

This provision implements Canada's rights under AD Article 4.1(ii) and SCM Article 16.2 to undertake dumping and subsidy investigations on a regional basis. The current legislation contains the right by reference in subsection 42(3) which will be deleted when the WTO Agreement is implemented.

Subsection 2(1.2) - *Producers related to exporters or importers* further modifies the new definition of *"domestic industry"*. It provides direct guidance for determining when two or more companies are related to each other. Specifically, where a Canadian producer is related to an importer or exporter of goods subject to an investigation or is an importer itself, the domestic industry may be interpreted as meaning the rest of the domestic producers. A new element to the determination as to whether a Canadian producer is related to an importer or exporter is the requirement to show that the specific producer behaves differently towards the exporter or importer than would a non-related producer. This is based on our WTO obligations under AD Article 4.1(ii) and SCM Article 16.2.

Subsection 2(1.3) - *Where there is deemed to be control* provides criteria for determining the existence of control by one company over another, for purposes of subsection 2(1.2). This provision is based on our WTO obligations under AD

When domestic support measure ceases to be a non-actionable subsidy

(1.4) A domestic support measure referred to in paragraph (*c*) of the definition "non-actionable subsidy" in subsection (1) ceases to be a non-actionable subsidy on the day on which the implementation period in respect of the *Agreement on Agriculture* referred to in that paragraph, as defined in Article 1 of that Agreement for the purposes of Article 13 of that Agreement, expires.

Expiration des mesures de soutien interne

(1.4) Les mesures de soutien interne visées à l'alinéa *c*) de la définition de « subvention ne donnant pas lieu à une action » au paragraphe (1) cessent d'être de telles mesures à la date à laquelle expire la période de mise en oeuvre relative à l'Accord sur l'agriculture visé à cet alinéa, au sens de l'article 1 de cet accord pour l'application de l'article 13 de l'Accord sur l'OMC.

Threat of injury

(1.5) For the purposes of this Act, the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent.

Menace de dommage

(1.5) Pour l'application de la présente loi, pour qu'il puisse être décidé que le dumping ou le subventionnement de marchandises menace de causer un dommage ou cause une menace de dommage, il faut que les circonstances dans lesquelles le dumping ou le subventionnement est susceptible de causer un dommage soient nettement prévues et imminentes.

Financial contribution

(1.6) For the purposes of paragraph (*a*) of the definition "subsidy" in subsection (1), there is a financial contribution by a government of a country other than Canada where

(*a*) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;

(*b*) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;

(*c*) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or

(*d*) the government permits or directs a non-governmental body to do any thing referred to in any of paragraphs (*a*) to (*c*) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

Contribution financière

(1.6) Pour l'application de l'alinéa *a*) de la définition de « subvention » au paragraphe (1), les cas suivants sont réputés constituer des contributions financières versées par le gouvernement d'un pays autre que le Canada :

a) des pratiques gouvernementales comportant un transfert direct de fonds ou d'éléments de passif ou des transferts indirects de fonds ou d'éléments de passif;

b) des sommes qui, en l'absence d'une exonération ou d'une déduction, seraient perçues par le gouvernement ou des recettes publiques qui sont abandonnées ou non perçues;

c) le gouvernement fournit des biens et des services autres qu'une infrastructure générale, ou achète des biens;

d) le gouvernement permet à un organisme non gouvernemental d'accomplir l'un des gestes mentionnés aux alinéas *a*) à *c*) — ou le lui ordonne — dans les cas où le pouvoir ou l'obligation de les accomplir relèverait normalement du gouvernement, et cet organisme accomplit ces gestes essentiellement de la même manière le gouvernement.

Article 4.1(ii) and SCM Article 16.2.

Subsection 2(1.4) - *Where domestic support measure ceases to be non-actionable subsidy* expands on paragraph (*c*) of the definition of *"non-actionable subsidy"*. The specific agricultural support measures noted in Annex I to the Agreement on Agriculture cease to be non-actionable when the implementation period applicable to those programs as defined in the Agreement on Agriculture expires. Article 1(f) of that Agreement states that the implementation period will end nine years after the implementation of the WTO.

Subsection 2(1.5) - *Threat of injury* deals with threat in relation to *"injury"*. Any threat of material injury to a domestic industry means that the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent. This definition implements Canada's obligations under AD Article 3.7 and SCM Article 15.7 of the WTO Agreement.

Subsection 2(1.6) - *Financial contribution* clarifies the meaning of the term "financial contribution" by a government of a country other than Canada in paragraph (*a*) of the definition of *"subsidy"*. This term refers to the direct or indirect transfer of funds or liabilities, foregoing of amounts owing and the provision of goods or services. These criteria are based on SCM Article 14.

(5) Subsection 2(5) of the Act is repealed.

(5) Le paragraphe 2(5) de la même loi est abrogé.

(6) Section 2 of the Act is amended by adding the following after subsection (7):

(6) L'article 2 de la même loi est modifié par adjonction, après le paragraphe (7), de ce qui suit :

Criteria and conditions for non-specificity

(7.1) A subsidy is not specific where the criteria or conditions governing eligibility for, and the amount of, the subsidy are

(*a*) objective;

(*b*) set out in a legislative, regulatory or administrative instrument or other public document; and

(*c*) applied in a manner that does not favour or is not limited to a particular enterprise.

Critères et conditions de non spécificité des subventions

(7.1) Une subvention n'est pas spécifique si le droit de bénéficier de la subvention et le montant de celle-ci est subordonné à des critères ou conditions :

a) objectifs;

b) énoncés dans un document public, notamment un texte législatif, réglementaire ou administratif;

c) appliqués de manière à ne pas favoriser une entreprise donnée ou à ne pas restreindre la subvention à celle-ci.

When subsidy is specific

(7.2) A subsidy is specific where it is

(*a*) limited, pursuant to an instrument or document referred to in paragraph (7.1)(*b*), to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or

(*b*) a prohibited subsidy.

Spécificité

(7.2) Une subvention est spécifique dans les cas suivants :

a) l'autorité qui l'accorde restreint, dans le cadre de ses attributions et conformément aux textes ou documents visés à l'alinéa (7.1)*b*), à certaines entreprises la possibilité de bénéficier de la subvention;

b) elle est une subvention prohibée.

Determination of specificity by Deputy Minister

(7.3) Notwithstanding that a subsidy is not limited in the manner referred to in paragraph (7.2)(*a*), the Deputy Minister may determine the subsidy to be specific having regard as to whether

(*a*) there is exclusive use of the subsidy by a limited number of enterprises;

(*b*) there is predominant use of the subsidy by a particular enterprise;

(*c*) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and

(*d*) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

Exception

(7.3) Même si une subvention n'est pas restreinte conformément à l'alinéa (7.2)*a*), le sous-ministre peut conclure à sa spécificité compte tenu des éléments suivants :

a) la subvention est utilisée exclusivement par un nombre restreint d'entreprises;

b) la subvention est surtout utilisée par une entreprise donnée;

c) il y a octroi à un nombre restreint d'entreprises de montants de subvention disproportionnés;

d) la manière dont l'autorité qui accorde la subvention exerce son pouvoir discrétionnaire montre que la subvention n'est pas généralement accessible.

Sub-clause 145(5) repeals subsection 2(5) of the current Act dealing with the Deputy Minister of National Revenue's obligation to take into account the GATT 1947 Subsidies Code when interpreting or applying the definition "subsidized goods", "subsidy" or the expression "export subsidy". Since Canada will be operating its anti-dumping and countervailing regime under the new WTO agreement, reference to the old Subsidies Agreement in the current text is being deleted.

Sub-clause 145(6) adds four new subsections which deal with subsidies and the determination of whether or not they are specific within the meaning of Article 2 of the SCM Agreement. Specificity is a key concept in the determination of the existence of a countervailable subsidy. Those subsidies which are not specific are not countervailable. Subsidies which are specific are countervailable, with the exception of so called "green box" subsidies which include such items as: industrial research; pre-competitive development assistance; assistance to disadvantaged regions; assistance to adapt to new environmental standards; and research assistance for post-secondary and independent research institutions.

Subsection 2(7.1) - *Criteria and conditions for non-specificity* states those conditions where a subsidy may not be found to be specific. Where the criteria or conditions governing the eligibility for and amount of a subsidy are objective, set out in law or other public document, and applied in an objective manner, a subsidy will not be considered as being specific.

Subsection 2(7.2) - *When subsidy is specific* notes that a subsidy will be found to be specific, and therefore countervailable, where a public document limits access to the program to a particular enterprise within the jurisdiction of the granting authority. A subsidy will also be considered to be specific where the subsidy is prohibited (i.e., an export subsidy or a subsidy contingent on the use of domestic over exported goods in accordance with SCM Article 3).

Subsection 2(7.3) - *Determination of specificity by Deputy Minister* allows the Deputy Minister of National Revenue to determine, despite documented evidence to the contrary, that a subsidy is specific where there is exclusive use of a subsidy by a limited number of enterprises or predominant use by a particular enterprise or where disproportionately large amounts of the subsidy are granted to a limited number of enterprises or the manner in which discretion is exercised by the administering authority indicates that the subsidy is not generally available.

Additional considerations

(7.4) Where any of the factors listed in paragraphs (7.3)(*a*) to (*d*) is present, the Deputy Minister shall consider whether the presence is due to

(*a*) the extent of diversification of economic activities within the jurisdiction of the granting authority, or

(*b*) the length of time that the subsidy program has been in operation,

and where the Deputy Minister is of the opinion that the presence is due to one of the reasons set out in paragraph (*a*) or (*b*), the Deputy Minister may find the subsidy not to be specific notwithstanding that, were it not for that opinion, the Deputy Minister would have found the subsidy to be specific.

Éléments complémentaires

(7.4) En présence d'un des éléments énumérés aux alinéas (7.3)*a*) à *d*), le sous-ministre prend en compte les considérations suivantes :

a) l'importance de la diversification économique dans la juridiction de l'autorité qui accorde la subvention;

b) la période pendant laquelle le programme de subventions a été appliqué.

S'il estime que la présence d'un de ces éléments est causée par une de ces considérations, le sous-ministre peut déterminer que la subvention n'est pas spécifique.

146. (1) The portion of section 3 of the Act before paragraph (*a*) is replaced by the following:

Anti-dumping and countervailing duty

3. (1) Subject to section 7.1, there shall be levied, collected and paid on all dumped and subsidized goods imported into Canada in respect of which the Tribunal has made an order or finding, before the release of the goods, that the dumping or subsidizing of goods of the same description has caused injury or retardation or is threatening to cause injury, a duty as follows:

146. (1) Le passage de l'article 3 de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Droits antidumping et droits compensateurs

3. (1) Sous réserve de l'article 7.1, les marchandises sous-évaluées ou subventionnées importées au Canada alors que le Tribunal a établi avant leur dédouanement, par ordonnance ou dans ses conclusions, que le dumping ou le subventionnement de marchandises de même description a causé un dommage ou un retard ou menace de causer un dommage, sont assujetties aux droits suivants :

(2) Section 3 of the Act is amended by adding the following after subsection (1):

Duty where undertaking violated

(2) Where the Tribunal has made an order or finding referred to in subsection (1) in respect of goods that are subject to an undertaking referred to in section 7.1 and the undertaking is subsequently violated, there shall be levied, collected and paid on all of those goods that were released on or after the day on which the undertaking was violated, a duty as provided under paragraphs (1)(*a*) and (*b*).

(2) L'article 3 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Droits en cas de violation de l'engagement

(2) En cas de violation de l'engagement visé à l'article 7.1 portant sur des marchandises à l'égard desquelles le Tribunal a statué conformément au paragraphe (1), telles marchandises dédouanées à compter de la date de la violation sont assujetties aux droits prévus aux alinéas (1)*a*) et *b*).

Subsection 2(7.4) - *Additional considerations* requires that, when the Deputy Minister determines that one or more of the factors outlined in subsection 2(7.3) are present, the Deputy Minister must consider whether the presence of such factors is due to: the extent of economic diversification within the jurisdiction of the granting authority; or the length of time that the subsidy program has been in operation. If the Deputy Minister is of the opinion that the presence of the factors is due to one of these reasons, the Deputy Minister may find the subsidy not to be specific.

ANTI-DUMPING AND COUNTERVAILING DUTY

Clause 146

Section 3 of the *Special Import Measures Act* provides the authority for the levying and collection of anti-dumping and countervailing duties with respect to goods released by Revenue Canada *following* an injury order or finding by the Canadian International Trade Tribunal that the dumped or subsidized imports are causing injury to a domestic industry. The assessment of definitive duties commences the day following the day on which the Tribunal issues its injury order or finding.

Sub-clause 146(1) amends subsection 3(1) of the *Special Import Measures Act* by making it subject to the new section 7.1 (see *clause 149* below). Making section 3 subject to the new section 7.1 means that importers will not be liable for the payment of anti-dumping or countervailing duties on goods imported into Canada where undertakings respecting such goods are in place. This meets Canada's obligations under AD Article 9.2 and SCM Article 19.2 which prohibits the collection of definitive duties when undertakings are in place. In addition, the current injury standard of *"has caused, is causing or is likely to cause material injury or has caused or is causing retardation"* has been replaced with *"has caused injury or retardation or is threatening to cause injury"* based on AD Article 3 (footnote 9) and SCM Article 15 (footnote 45).

Sub-clause 146(2) adds a new subsection 3(2) to the *Act* which allows for the collection of anti-dumping and countervailing duties in accordance with Ad Article 8.6 and SCM Article 18.6 where the Tribunal has made an injury finding and the undertakings are subsequently violated.

Where undertaking subsequently terminated

(2) There shall be levied, collected and paid a duty as set out in subsections (3) and (4) on all dumped and subsidized goods imported into Canada

(*a*) that are the subject of an undertaking accepted by the Deputy Minister under subsection 49(1) that was terminated under paragraph 52(1)(*d*);

(*b*) in respect of which the Tribunal has made an order or finding, after the release of the goods, that the dumping or subsidizing of goods of the same description

(i) has caused injury, or

(ii) would have caused injury except for the fact that provisional duty was applied in respect of the goods; and

(*c*) that were released, where paragraph 52(1)(*a*), (*b*) or (*c*) applies, during the period beginning on the day on which the preliminary determination was made and ending on the day the undertaking was accepted, and

(i) where paragraph 52(1)(*a*) applies, during the period beginning on the later of

(A) the day on which the undertaking is violated, and

(B) the ninetieth day before the day on which notice of the termination was given under paragraph 52(1)(*e*),

and ending on the day on which the Tribunal makes the order or finding referred to in paragraph (*b*), or

(ii) where paragraph 52(1)(*b*) or (*c*) applies, beginning on the day on which notice of termination was given under paragraph 52(1)(*e*) and ending on the day on which the Tribunal makes the order or finding referred to in paragraph (*b*).

Amount of duty

(3) The duty applicable to goods under subsection (1) or (2) is

(*a*) in the case of dumped goods, an antidumping duty in an amount that is equal to the margin of dumping of the goods; and

(*b*) in the case of subsidized goods, a countervailing duty in an amount that is equal to the amount of subsidy on the goods.

Limitation

(4) The duty referred to in subsection (3) shall not exceed the duty, if any, paid or payable in respect of the goods under section 8.

Cas de clôture de l'engagement

(2) Sont assujetties aux droits figurant aux paragraphes (3) et (4) les marchandises sous-évaluées ou subventionnées importées au Canada :

a) qui font l'objet d'un engagement accepté par le sous-ministre en vertu du paragraphe 49(1) auquel il a été mis fin en vertu de l'alinéa 52(1)*d*);

b) à l'égard desquelles le tribunal a établi après leur dédouanement, par ordonnance ou dans ses conclusions, que le dumping ou le subventionnement de marchandises de même description :

(i) soit a causé un dommage,

(ii) soit aurait causé un dommage sans l'application de droits provisoires sur ces marchandises;

c) qui ont été dédouanées, lorsque les alinéas 52(1)*a*), *b*) ou *c*) s'appliquent, pendant la période commençant à la date de la décision provisoire et se terminant à la date de l'acceptation de l'engagement :

(i) lorsque l'alinéa 52(1)*a*) s'applique, pendant la période commençant à la plus tardive des dates suivantes :

(A) la date où l'engagement n'est pas honoré,

(B) le quatre-vingt-dixième jour précédant la date où avis qu'il y a été mis fin a été donné conformément à l'alinéa 52(1)*e*),

et se terminant à la date où le tribunal statue conformément à l'alinéa *b*),

(ii) lorsque l'alinéa 52(1)*b*) ou *c*) s'applique, commençant à la date où l'avis de clôture de l'engagement a été donné conformément à l'alinéa 52(1)*e*) et se terminant à la date où le tribunal statue conformément à l'alinéa *b*).

Montant des droits

(3) Les marchandises visées aux paragraphes (1) ou (2) sont assujetties aux droits suivants :

a) dans le cas de marchandises sous-évaluées, des droits antidumping d'un montant égal à la marge de dumping des marchandises;

b) dans le cas de marchandises subventionnées, des droits compensateurs d'un montant égal à celui de la subvention qui est octroyée pour elles.

Restriction

(4) Les droits visés au paragraphe (3) ne peuvent dépasser les droits éventuels payés ou exigibles en vertu de l'article 8.

Subsection 4(2) is a new duty liability provision applicable to situations where undertakings are terminated. Where an undertaking is terminated in accordance with paragraph 52(1)(d) (violation, new information or change in circumstances) and the Tribunal makes a past injury finding after the release of the goods, anti-dumping and countervailing duties may be collected for three specific time periods:

(i) from the date of the preliminary determination under section 38 of the *Act* to the date of acceptance of the undertaking in accordance with paragraph 4(2)(c);

(ii) where the undertaking is terminated due to a violation, for the time period from the date of violation or 90 days prior to the date of the notice of termination of the undertaking, whichever is later, to the date of the Tribunal's finding of past injury; and

(iii) where the undertaking is terminated because of new information or a change in circumstances, from the date of the notice of termination to the date of the Tribunal's finding of past injury.

Subsection 4(3) replaces the current paragraphs 4(c) and (d) and restricts the anti-dumping duty to an amount equal to the margin of dumping and the countervailing duty to an amount equal to the amount of subsidy.

Subsection 4(4) repeats the current requirement that the anti-dumping and countervailing duties payable must not exceed the amount of provisional duties, if any, paid or payable under section 8 of the *Act*.

150. (1) The portion of subsection 8(1) of the Act before paragraph (*a*) is replaced by the following:

Imposition of provisional duty

8. (1) Where the Deputy Minister makes a preliminary determination of dumping or subsidizing in an investigation under this Act and considers that the imposition of provisional duty is necessary to prevent injury, retardation or threat of injury, the importer of dumped or subsidized goods that are of the same description as any goods to which the preliminary determination applies and that are released during the period commencing on the day the preliminary determination is made and ending on the earlier of

(2) Subparagraph 8(2)(*a*)(iii) of the Act is replaced by the following:

(iii) the Tribunal makes an order or finding with respect to goods of that description if the order or finding is only to the effect that the dumping or subsidizing of those goods is threatening to cause injury; and

R.S., c. 1 (2nd Supp.), s. 198(1)

(3) Paragraph 8(2)(*b*) of the Act is replaced by the following:

(*b*) except to the extent of any duty payable in respect of the imported goods, be returned to the importer forthwith after a determination is made in respect of the imported goods by a designated officer pursuant to such of paragraphs 55(1)(*c*) to (*e*) as are applicable.

150. (1) Le passage du paragraphe 8(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Droits provisoires

8. (1) Dans le cas où le sous-ministre prend une décision provisoire de dumping ou de subventionnement dans le cadre d'une enquête prévue par la présente loi et où il estime que l'imposition de droits provisoires est nécessaire pour empêcher qu'un dommage ou un retard ne soit causé ou qu'il y ait menace de dommage, lorsque des marchandises sous-évaluées ou subventionnées de même description que celles faisant l'objet de la décision sont dédouanées au cours de la période commençant à la date de cette décision et se terminant à la première des dates suivantes :

(2) Le sous-alinéa 8(2)*a*)(iii) de la même loi est remplacé par ce qui suit :

(iii) le Tribunal rend, au sujet des marchandises répondant à cette description, une ordonnance ou des conclusions portant que le dumping ou le subventionnement des marchandises menace de causer un dommage;

L.R., ch. 1 (2e suppl.), par. 198(1)

(3) L'alinéa 8(2)*b*) de la même loi est remplacé par ce qui suit :

b) restitués à l'importateur, jusqu'à concurrence des droits payables sur les marchandises en cause, dès que l'agent désigné rend une décision sur ces marchandises conformément à celui des alinéas 55(1)*c*) à *e*) qui est applicable.

PROVISIONAL DUTY

Clause 150

Section 8 of the *Special Import Measures Act* provides the authority for the levying and collection of provisional duty, pending the completion of an inquiry by the Canadian International Trade Tribunal as to whether the dumped or subsidized imports are causing injury to a domestic industry. The assessment of provisional duties starts the day following the Deputy Minister's preliminary determination and ends on the day on which the Tribunal issues its order or finding on the question of injury. Provision is also made for the refunding of provisional duties in specific circumstances.

Sub-clause 150(1) contains a new condition precedent to the application of provisional duties in subsection 8(1) in accordance with our WTO commitment under AD Article 7.1(iii) and SCM Article 17.1(c). Provisional duties may only be imposed where, among other reasons, the Deputy Minister of National Revenue is of the opinion that *the imposition of provisional duty is necessary to prevent injury, retardation or threat of injury.*

Sub-clause 150(2) changes *"is likely to cause material injury"* to *"is threatening to cause injury"* in subparagraph 8(2)(a)(iii). This is a consequential change resulting from the new definition of injury in subsection 2(1) as modified by the *threat of injury* concept in the new subsection 2(1.5).

Sub-clause 150(3) reflects a consequential amendment to paragraph 8(2)(b) resulting from the re-numbering of section 55 to section *55(1)* (see *sub-clause 177(1)* below).

(4) Section 8 of the Act is amended by adding the following after subsection (4):

(4) L'article 8 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :

Suspension of collection

(5) Where the Deputy Minister accepts an undertaking with respect to dumped or subsidized goods, the collection of provisional duties on any dumped or subsidized goods, as the case may be, that are of the same description as any goods to which the preliminary determination applies is suspended for the period during which the undertaking is in force.

(5) L'acceptation par le sous-ministre d'un engagement portant sur des marchandises sous-évaluées ou subventionnées entraîne la suspension de la perception des droits provisoires sur les marchandises de même description que celles visées par la décision provisoire pendant la durée d'application de l'engagement.

Suspension de la perception

Resumption of collection

(6) Where the Deputy Minister terminates an undertaking pursuant to subsection 51(1) or 52(1) with respect to dumped or subsidized goods, the collection of provisional duties on those goods is resumed and the importer of dumped or subsidized goods that are of the same description as any goods to which the preliminary determination applied and that are released during the period beginning on the day on which the undertaking was terminated and ending on the earlier of

(*a*) the day on which the Deputy Minister causes the investigation to be terminated pursuant to subsection 41(1) with respect to goods of that description, and

(*b*) the day on which the Tribunal makes an order or finding with respect to goods of that description,

shall, on demand of the Deputy Minister for payment of provisional duty on the imported goods,

(*c*) pay or cause to be paid on the imported goods provisional duty in an amount not greater than the estimated margin of dumping of, or the estimated amount of the subsidy on, the imported goods, or

(*d*) post or cause to be posted security in a prescribed form and in an amount or to a value not greater than the estimated margin of dumping of, or the estimated amount of the subsidy on, the imported goods,

at the option of the importer.

(6) Dans les cas où le sous-ministre met fin à l'engagement en vertu des paragraphes 51(1) ou 52(1), la perception de droits provisoires sur les marchandises reprend et il incombe à l'importateur de marchandises de même description que celles faisant l'objet de la décision provisoire étant dédouanées au cours de la période commençant à la date à laquelle il est mis fin à l'engagement et se terminant à la première des dates suivantes :

a) la date où le sous-ministre fait clore, conformément au paragraphe 41(1), l'enquête sur les marchandises répondant à cette description,

b) la date où le Tribunal rend l'ordonnance ou les conclusions au sujet des marchandises répondant à cette description,

sur demande de paiement de droits provisoires sur les marchandises importées faite par le sous-ministre, au choix de l'importateur :

c) soit d'acquitter ou de veiller à l'acquittement des droits provisoires d'un montant ne dépassant pas la marge estimative de dumping des marchandises importées ou le montant estimatif de la subvention octroyée pour celles-ci;

d) soit de fournir ou de veiller à ce que soit fournie, en la forme que le sous-ministre prescrit, une caution ne dépassant pas la marge estimative de dumping des marchandises importées ou le montant estimatif de la subvention octroyée pour celles-ci.

Reprise de la perception

Sub-clause 150(4) adds two new subsections (5) and (6) to section 8 of the *Act*. Subsection 8(5) requires the suspension of the collection of provisional duties while an undertaking is in force. This change meets Canada's obligations under AD Article 9.2 and SCM Article 19.3 which prohibit the collection of such duties when undertakings are in place. Subsection 8(6) is a consequential amendment resulting from the acceptance of undertakings after the preliminary determination. Under subsection 8(6), the collection of provisional duties is resumed from the day on which the undertaking is terminated and ending on the earlier of the day on which the Deputy Minister terminates the investigation or the Tribunal makes an order or finding. On demand of the Deputy Minister, the importer of goods subject to the investigation must pay a provisional duty or post security in place of the provisional duty, at the option of the importer.

R.S., c. 1 (2nd Supp.), s. 199(1)

151. Subsection 11(1) of the Act is replaced by the following:

When duty payable

11. (1) The importer in Canada of any goods imported into Canada in respect of which duty, other than provisional duty, is payable shall, on demand of the Deputy Minister and notwithstanding any security posted pursuant to paragraph 8(1)(*d*) or subsection 13.2(4), pay or cause to be paid all such duties on the goods.

152. The Act is amended by adding the following after section 13.1:

Expedited Review of Normal Value, Export Price or Amount of Subsidy

Request for review

13.2 (1) An exporter to Canada of any goods to which an order or finding referred to in section 3 applies may request that the Deputy Minister review the normal value, export price or amount of subsidy in relation to those goods where

(*a*) the exporter establishes that the exporter is not associated with any other exporter from that country of goods to which the order or finding relates; and

(*b*) the exporter has not

(i) been given notice under subparagraph 34(1)(*a*)(i), paragraph 38(3)(*a*) or subsection 41(3) in respect of the goods, or

(ii) been requested to provide information in relation to those goods or in relation to any goods that are of the same description as those goods for the purposes of this Act.

Form of request

(2) A request under subsection (1) shall be made in the prescribed manner and form and shall contain the prescribed information.

Review

(3) Where the Deputy Minister receives a request under subsection (1), the Deputy Minister shall initiate a review, on an expedited basis, of the normal value, export price or amount of subsidy, as the case may be, and shall, on completion of the review, either confirm or amend the value, price or amount.

L.R., ch. 1 (2e suppl.), par. 199(1)

151. Le paragraphe 11(1) de la même loi est remplacé par ce qui suit :

Obligations de l'importateur

11. (1) L'importateur de marchandises que la présente loi assujettit à des droits, autres que provisoires, doit, sur demande du sous-ministre et malgré le fait qu'une caution ait été fournie aux termes de l'alinéa 8(1)*d*) ou du paragraphe 13.2(4), veiller à l'acquittement de ces droits.

152. La même loi est modifiée par adjonction, après l'article 13.1, de ce qui suit :

Réexamen accéléré de la valeur normale, du prix à l'exportation ou du montant de subvention

Demande de réexamen

13.2 (1) L'exportateur vers le Canada de marchandises touchées par une ordonnance ou des conclusions visées à l'article 3 peut demander au sous-ministre de réexaminer la valeur normale, le prix à l'exportation ou le montant de subvention relatif à ces marchandises si les conditions suivantes sont réunies :

a) l'exportateur établit qu'il n'est pas associé avec un autre exportateur du même pays dont les marchandises sont touchées par la même ordonnance ou les mêmes conclusions;

b) l'exportateur n'a pas :

(i) soit reçu l'avis prévu au sous-alinéa 34(1)*a*)(i), à l'alinéa 38(3)*a*) ou au paragraphe 41(3) relativement aux marchandises,

(ii) soit reçu une demande de fourniture de renseignements relativement à ces marchandises ou à des marchandises de même description que celles-ci pour l'application de la présente loi.

Forme de la demande

(2) La demande est présentée selon les modalités réglementaires de forme et de contenu.

Réexamen

(3) Sur réception de la demande, le sous-ministre procède au réexamen de façon expéditive et rend une décision confirmant ou modifiant la valeur normale, le prix à l'exportation ou le montant de subvention, selon le cas.

GENERAL RULES RELATING TO PAYMENT OF DUTIES

Clause 151

Clause 151 amends subsection 11(1) of the Act which deals with the demand for duty by the Deputy Minister by adding a reference to the security posted in accordance with subsection 13.2(4) during the course of an expedited review. This is a consequential amendment resulting from the new section 13.2 (see *clause 152* below).

Clause 152

Clause 152 establishes a new section 13.2 which implements Canada's WTO obligations to carry out expedited reviews in accordance with AD Article 9.5 and SCM Article 19.3. Section 13.2 will provide for an expedited review of normal values, export prices and amounts of subsidy for an exporter not previously investigated by Revenue Canada.

Subsection 13.2(1) sets out the criteria an exporter must meet in order to be able to request an expedited review. Such an exporter must not:

(i) be associated with any other exporters from the same country of goods to which an order or finding of the Tribunal applies;

(ii) have been given notice of the initiation of the investigation nor the preliminary or final determinations; and

(iii) has not been requested to provide information with respect to the specific goods under investigation for any other purpose of the *Act*.

Subsection 13.2(2) allows for the prescribing in regulation the manner for a request for an expedited review and for the Deputy Minister of National Revenue to prescribe the form to be used for such a request.

Subsection 13.2(3) requires the Deputy Minister to undertake an expedited review when a request which conforms to subsections 13.2(1) and (2) is received. At the conclusion of the review, the Deputy Minister must confirm or amend the normal value, export price or amount of subsidy, as required.

Posting of security

(4) An importer of goods that are of the same description as any goods to which a review under subsection (3) applies and that are released during the period beginning on the day the review is initiated and ending on the day on which the Deputy Minister completes the review shall, on demand of the Deputy Minister for payment of duty, post, or cause to be posted, security in the prescribed manner and form and in an amount, or of a value, equal to the margin of dumping of, or amount of subsidy on, the goods.

Caution

(4) L'importateur de marchandises de même description que celles visées par le réexamen prévu au paragraphe (3) qui sont dédouanées au cours de la période commençant à la date du début du réexamen et se terminant à la date de la décision du sous-ministre est tenu, sur demande de paiement des droits faite par le sous-ministre, de fournir ou de veiller à ce que soit fournie, selon les modalités réglementaires, une caution équivalente à la marge de dumping ou au montant de subvention relatif aux marchandises.

Confirmation, etc, deemed to be a determination

(5) A confirmation or amendment of a normal value, export price or amount of subsidy under subsection (3) shall, for the purposes of subsection 56(1), be deemed to be a determination of a normal value, export price or amount of subsidy, as the case may be, by a customs officer referred to in that subsection.

Détermination présumée

(5) La décision prise en application du paragraphe (3) est réputée, pour l'application du paragraphe 56(1), la détermination de la valeur normale, du prix à l'exportation ou du montant de subvention, selon le cas, effectuée par l'agent des douanes visé à ce paragraphe.

153. The heading "NORMAL VALUE AND EXPORT PRICE" before section 15 of the Act is replaced by the following:

153. L'intertitre « VALEUR NORMALE ET PRIX À L'EXPORTATION » précédant l'article 15 de la même loi est remplacé par ce qui suit :

NORMAL VALUE, EXPORT PRICE, MARGIN OF DUMPING AND AMOUNT OF SUBSIDY

VALEUR NORMALE, PRIX À L'EXPORTATION, MARGE DE DUMPING ET MONTANT DE SUBVENTION

154. (1) Paragraph 16(2)(*b*) of the Act is replaced by the following:

154. (1) L'alinéa 16(2)*b*) de la même loi est remplacé par ce qui suit :

(*b*) any sale of like goods by the exporter within a period, determined by the Deputy Minister, of not less than six months, where

(i) the sale is made at a price that is less than the cost of the goods,

(ii) either

(A) the sale is of a volume that, or is one of a number of sales referred to in subparagraph (i) the total volume of which, is not less than twenty per cent of the total volume of like goods sold during that period, or

(B) the average selling price of like goods sold by the exporter during that period is less than the average cost of those like goods, and

(iii) the sale is made at a price per unit that is not greater than the average cost of all like goods sold during that period.

b) la vente de marchandises similaires effectuée par l'exportateur au cours d'une période, choisie par le sous-ministre, d'au moins six mois lorsque, à la fois :

(i) la vente est effectuée à un prix inférieur au coût des marchandises,

(ii) ou bien :

(A) la vente — seule ou combinée avec d'autres ventes visées au sous-alinéa (i) — constitue un volume d'au moins vingt pour cent du volume total des marchandises similaires vendues au cours de cette période,

(B) le prix de vente moyen de marchandises similaires vendues par l'exportateur au cours de cette période est inférieur au coût moyen de ces marchandises,

(iii) la vente est effectuée à un prix unitaire non supérieur au coût moyen de toutes les marchandises similaires vendues au cours de cette période.

Subsection 13.2(4) requires the importer of goods which are subject to an expedited review to, on demand of the Deputy Minister, post a security in an amount equal to the margin of dumping or the amount of subsidy.

Subsection 13.2(5) deems the confirmation or amendment of the normal value, export price or amount of subsidy under subsection 13.2(3) to be a deemed determination for purposes of subsection 56(1). This provision allows the importer to access the appeal procedures of the *Act* covering the application of definitive anti-dumping and countervailing duties.

NORMAL VALUE, EXPORT PRICE, MARGIN OF DUMPING AND AMOUNT OF SUBSIDY

Clause 153

Clause 153 simply replaces the heading *"NORMAL VALUE AND EXPORT PRICE"* before section 15 of the *Act* with the new heading *"NORMAL VALUE, EXPORT PRICE, MARGIN OF DUMPING AND AMOUNT OF SUBSIDY"*.

Clause 154

Subsection 16(2) of the current *Special Import Measures Act* contains two prohibitions respecting the determination of normal values under section 15 of the *Act*. Specifically, where domestic sales are made to only one customer or are made at a loss, such sales must not be taken into account when determining normal value under section 15. Clause 154 provides for a new test dealing with the exclusion of sales at a loss in subsection 16(2) in conformity with our WTO commitments under AD Article 2.2.1 and footnotes 4 and 5.

Sub-clause 154(1) replaces the current paragraph 16(2)(b) which deals specifically with the exclusion of sales at a loss from the calculation of normal value. The new provision notes that any sale of like goods by the exporter during a period of not less than six months shall be excluded from the normal value calculation where three separate conditions are met:

(i) the sale price is less than the per unit cost of the goods;

(ii) the volume of sales below per unit costs noted in (i) is 20 per cent or

(2) Section 16 of the Act is amended by adding the following after subsection (2):

Meaning of "cost"

(3) For the purposes of paragraph (2)(*b*), "cost" means, in relation to goods, the cost of production of the goods and the administrative, selling and all other costs with respect to the goods.

(2) L'article 16 est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Définition de « coût »

(3) Pour l'application de l'alinéa (2)*b*), « coût » s'entend du coût de production de marchandises et des autres frais afférents, notamment les frais administratifs et les frais de vente.

155. Section 17 of the Act is replaced by the following:

Price of like goods

17. In determining the normal value of any goods under section 15, the price of like goods when sold by the exporter to purchasers during the period referred to in paragraph 15(*d*) in a sale or sales that comply with the terms and conditions referred to in section 15 or with those terms and conditions that apply by virtue of subsection 16(1) is, at the option of the Deputy Minister in any case or class of cases, except a case or class of cases to which subsection 30.2(3) applies,

(*a*) the weighted average of the prices at which like goods were sold by the exporter to purchasers during that period; or

(*b*) the price at which like goods were sold by the exporter in any sale during that period where, in the opinion of the Deputy Minister, the price is representative of the prices at which like goods were sold during that period.

155. L'article 17 de la même loi est remplacé par ce qui suit :

Prix des marchandises similaires

17. Dans le calcul de la valeur normale de marchandises en application de l'article 15, le prix auquel ont été effectuées une ou plusieurs ventes de marchandises similaires par l'exportateur, au cours de la période visée à l'alinéa 15*d*), aux conditions visées à cet article ou applicables en vertu du paragraphe 16(1) est, au choix du sous-ministre exercé par cas ou par catégorie de cas — sauf pour les cas ou catégories de cas auxquels le paragraphe 30.2(3) s'applique —, pour cette période :

a) soit la moyenne pondérée des prix auxquels l'exportateur a vendu des marchandises similaires;

b) soit le prix auquel l'exportateur a vendu des marchandises similaires, si le sous-ministre est d'avis que ce prix est représentatif des prix de vente des marchandises similaires.

156. Subparagraphs 19(*b*)(ii) and (iii) of the Act are replaced by the following:

(ii) a reasonable amount for administrative, selling and all other costs, and

(iii) a reasonable amount for profits.

156. Les sous-alinéas 19*b*)(ii) et (iii) de la même loi sont remplacés par ce qui suit :

(*ii*) un montant raisonnable pour les frais, notamment les frais administratifs et les frais de vente,

(iii) un montant raisonnable pour les bénéfices.

greater of the volume of sales of like goods during the period of not less than six months or the average selling price of the goods is less than the average cost of the goods; and

(iii) the unit sale price is equal to or less than the average cost of all like goods sold during the period.

Sub-clause 154(2) provides a new subsection 16(3) which is a consequential amendment defining the term "cost" used in the new paragraph 16(2)(b) to be *the cost of production of the goods and the administrative, selling and all other costs with respect to the goods.*

Clause 155

Section 17 of the *Special Import Measures Act* provides further guidance respecting the application of section 15 for purposes of determining normal values. The current section 17 requires that the sale price of goods used to determine normal values be the preponderant price of such sales or, where no preponderant price can be determined, the weighted average selling price of like goods sold by the exporter to domestic purchasers.

Clause 155 replaces the current section 17 of the *Special Import Measures Act*. In determining the normal value of any goods under section 15 of the *Act*, the new section 17 allows such a price to be based on a weighted average price under paragraph 17(a) *or* a representative price under paragraph 17(b). The concept of a preponderant price has been removed from the *Act* and the selection between the options is no longer sequential. These options allows for the establishment of normal values on a weighted average basis or an individual transaction basis (i.e., the representative price) in accordance with our obligations under AD Article 2.4.2. The reference to subsection 30.2(3) is a consequential amendment resulting from the requirement that where variations in price exist (i.e., targeted dumping), normal values for purposes of the preliminary and final determinations are to be determined on a weighted average basis (see *Clause 160* below).

Clause 156

Clause 156 amends the current provision dealing with the establishment of normal values on a cost-plus basis in paragraph 19(b) of the *Act*. The new provision uses the cost of production of the goods plus a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The addition of the word "reasonable" in subparagraphs 19(b)(ii) and (iii) brings the *Act* into conformity with our obligations under AD Article 2.2.

157. Clauses 20(*c*)(ii)(B) and (C) of the Act are replaced by the following:

(B) a reasonable amount for administrative, selling and all other costs, and

(C) a reasonable amount for profits,

157. Les divisions 20*c*)(ii)(B) et (C) de la même loi sont remplacées par ce qui suit :

(B) un montant raisonnable pour les frais, notamment les frais administratifs et les frais de vente,

(C) un montant raisonnable pour les bénéfices;

158. The Act is amended by adding the following after section 23:

Costs during start-up period

23.1 Where, in calculating the normal value of any goods, the investigation period includes a start-up period of production, the cost of production of the goods and the administrative, selling and all other costs with respect to the goods for that start-up period of production shall be determined in the prescribed manner.

158. La même loi est modifiée par adjonction, après l'article 23, de ce qui suit :

Frais de démarrage

23.1 Si, dans le calcul de la valeur normale de marchandises, la période visée par l'enquête comprend la période de démarrage de la production, le coût de production des marchandises et les autres frais afférents pour cette période, notamment les frais administratifs et les frais de vente, sont déterminés selon les modalités réglementaires.

159. (1) Section 25 of the Act is renumbered as subsection 25(1).

(2) The portion of subparagraph 25(1)(*b*)(ii) of the Act before clause (A) is replaced by the following:

(ii) by reason of a compensatory arrangement, made between any two or more of the following, namely, the manufacturer, producer, vendor, exporter, importer in Canada, subsequent purchaser and any other person, that directly or indirectly affects or relates to

159. (1) L'article 25 devient le paragraphe 25(1).

(2) Le passage du sous-alinéa 25(1)*b*)(ii) de la même loi précédant la division (A) est remplacé par ce qui suit :

(ii) un arrangement de nature compensatoire, d'une part, a eu lieu entre au moins deux des personnes suivantes : le fabricant, le producteur, le vendeur, l'exportateur, l'importateur se trouvant au Canada, l'acheteur subséquent et toute autre personne, et, d'autre part, a un effet ou porte sur, selon le cas :

Clause 157

Clause 157 amends the current provision dealing with the establishment of normal values for goods from state trading countries based on a cost-plus basis in subparagraph 20(c)(ii). The new provision uses the cost of production of the goods plus a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The addition of the word "reasonable" in clauses 20(c)(ii)(B) and (C) brings the *Act* into conformity with our obligations under AD Article 2.2.

Clause 158

Clause 158 provides for a new section 23.1 which deals with the costs of goods during start-up periods in accordance with our WTO obligations under AD Article 2.2.1.1 and the related footnote 6. Section 23.1 states that the cost of production of goods and the related administrative, selling and all other costs for purposes of determining normal value will be determined in the prescribed manner.

Clause 159

Section 25 of the *Special Import Measures Act* sets out special rules for the determination of export price when section 24 can or should not be used. The grounds for such a determination are that there is *no* exporter's sale price or importer's purchase price (for example, goods imported on consignment) *or* that the export price as determined under section 24 of the *Act* is unreliable. Unreliability is determined to exist where the sale of the goods exported to Canada is between associated persons or where a compensatory arrangement directly or indirectly affects the price or sale of the goods, the net return to the manufacturer, producer, vendor or exporter or the net cost to the importer. The section 25 export price is determined by taking the re-sale price of the goods in Canada and deducting all costs, charges and expenses related to the goods in order to arrive back at the ex-factory price in the country of export.

Sub-clause 159(1) simply re-numbers the existing section 25 as subsection 25(1).

Sub-clause 159(2) augments the current listing of persons who may be involved in a compensatory arrangement in subparagraph 25(1)(b)(ii) by adding *"subsequent purchaser in Canada"*. This change to the legislation clearly identifies the subsequent purchaser in Canada as a possible participant in a compensatory arrangement. This change is in conformity with Canada's WTO obligations under AD Article 2.3.

(3) Section 25 of the Act is amended by adding the following after subsection (1):

No deduction

(2) No deduction for duties imposed by virtue of this Act may be made under

(*a*) subparagraph (1)(*c*)(i), in the case of an export price determined under paragraph (1)(*c*), or

(*b*) subparagraph (1)(*d*)(v), in the case of an export price determined under paragraph (1)(*d*),

where, in the opinion of the Deputy Minister, the export price determined under either of those paragraphs without making such a deduction is equal to or greater than the normal value of the goods.

(3) L'article 25 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Absence de déduction

(2) Aucune déduction ne peut être faite au titre des droits imposés en vertu de la présente loi en vertu du sous-alinéa (1)*c*)(i), dans le cas d'un prix à l'exportation déterminé en vertu de l'alinéa (1)*c*), ou en vertu du sous-alinéa (1)*d*)(v), dans le cas d'un prix à l'exportation déterminé en vertu de l'alinéa (1)*d*), si, de l'avis du sous-ministre, la détermination du prix à l'exportation faite en vertu de l'un ou l'autre de ces alinéas, compte non tenu de cette déduction, donne un résultat qui n'est pas inférieur à la valeur normale des marchandises.

160. The Act is amended by adding the following after section 30:

Margin of Dumping

Determination of margin of dumping in respect of a country

30.1 For the purposes of subparagraphs 35(1)(*a*)(ii), 38(1)(*a*)(i) and 41(1)(*a*)(ii) and paragraphs 41.1(1)(*a*) and 41.1(2)(*a*), the margin of dumping in relation to goods from a particular country is the weighted average of the margins of dumping determined in accordance with section 30.2.

160. La même loi est modifiée par adjonction, après l'article 30, de ce qui suit :

Marge de dumping

Établissement de la marge quant à un pays

30.1 Pour l'application des sous-alinéas 35(1)*a*)(ii), 38(1)*a*)(i) et 41(1)*a*)(ii) et des alinéas 41.1(1)*a*) et (2)*a*), la marge de dumping relative à des marchandises provenant d'un pays donné est égale à la moyenne pondérée des marges de dumping établies conformément à l'article 30.2.

Margin of dumping re goods from an exporter

30.2 (1) Subject to subsection (2), the margin of dumping in relation to any goods from a particular exporter is zero or the amount determined by subtracting the weighted average export price of the goods from the weighted average normal value of the goods, whichever is greater.

Marge de dumping relative aux marchandises d'un exportateur

30.2 (1) Sous réserve du paragraphe (2), la marge de dumping relative à des marchandises d'un exportateur donné est égale à zéro ou, s'il est positif, au résultat obtenu en retranchant la moyenne pondérée du prix à l'exportation des marchandises de la moyenne pondérée de la valeur normale des marchandises.

Sub-clause 159(3) adds a new subsection 25(2) to the *Act*. The purpose of this subsection is to ensure that, where an exporter increases the export price of goods in order to eliminate the margin of dumping, anti-dumping duties assessed or owing under the Act are not included in all the costs which are "backed-out" of the resale price in Canada. If such anti-dumping duties were deducted, the result would be an artificial margin of dumping. This approach applies to situations where the goods are re-sold in the same condition as imported in accordance with paragraph 25(1)(c) or when goods are imported for the purpose of assembly, packaging or further manufacture in Canada in accordance with paragraph 25(1)(d). This change is in conformity with Canada's WTO obligations under AD Article 2.4.

Clause 160

Clause 160 adds sections 30.1 to 30.4 to the *Act*. Sections 30.1 and 30.2 provide the manner in which a margin of dumping is to be calculated during an anti-dumping investigation. Section 30.3 permits the margin of dumping to be based on a sample or the largest percentage of goods that can reasonably be investigated. Section 30.4 provides the manner in which an amount of subsidy is to be calculated in respect of any goods.

Section 30.1

Article 2.4.2 of the AD Agreement outlines the methodology for establishing a margin of dumping during the investigation phase of an anti-dumping action. Section 30.1 of the *Act* reflects this provision by establishing that the margin of dumping in respect of a country is the weighted average of the margins of dumping determined in accordance with section 30.2.

The margin of dumping determined pursuant to section 30.1 is limited in its applicability to the legislative provisions listed in that section. The primary application is to determine whether a margin of dumping found in respect of a country is *insignificant*. Based on the AD Agreement, a dumping investigation can only be initiated and completed where the margin of dumping is not *insignificant* as defined in sub-clause 145(3).

Subsection 30.2(1)

In order to determine a margin of dumping in respect of a country, it is first necessary to establish the margin of dumping for each exporter within that country. The purpose of subsection 30.2(1) is to provide the primary method for determining such a margin. In the investigation of an exporter, a specific normal value and export price is determined for each sale of the goods to Canada. An overall margin of dumping, based on all the goods, is then determined in accordance with subsection 30.2(1) by subtracting the weighted average normal value of the goods from the weighted average export price of the goods. If the goods have been sold to Canada at prices higher than the normal value,

Where variation in price

(2) Where, in the opinion of the Deputy Minister, there are significant variations in the prices of goods from a particular exporter

(*a*) among purchasers,

(*b*) among regions in Canada, or

(*c*) among time periods,

the Deputy Minister may determine the margin of dumping in relation to any goods from that exporter to be the weighted average of the margins of dumping in relation to the goods of that exporter that are sold in such individual sales of goods of that exporter as the Deputy Minister considers relevant.

Price of like goods

(3) Where subsection (2) applies and any of the normal values used to determine the margins of dumping in relation to goods sold in individual sales are determined in accordance with section 15, the price of like goods used to determine those normal values is the weighted average, determined in accordance with paragraph 17(*a*), of the prices at which the like goods were sold.

Margin of dumping based on sample

30.3 (1) The Deputy Minister may, where the Deputy Minister is of the opinion that it would be impracticable to determine a margin of dumping in relation to all goods under consideration because of the number of exporters, producers or importers, the variety or volume of goods or any other reason, determine margins of dumping in relation to

(*a*) the largest percentage of goods from each of the countries whose goods are under consideration that, in the opinion of the Deputy Minister, can reasonably be investigated; or

(*b*) samples of the goods from each of the countries whose goods are under consideration that, in the opinion of the Deputy Minister based on the information available at the time of selection, are statistically valid.

Cas où les prix varient

(2) S'il est d'avis qu'il y a des variations significatives dans les prix des marchandises d'un exportateur donné selon les acheteurs, les régions du Canada ou les périodes, le sous-ministre peut déterminer que la marge de dumping relative à n'importe quelles des marchandises de cet exportateur est la moyenne pondérée des marges de dumping relatives à celles des ventes de marchandises effectuées par celui-ci qu'il estime pertinentes.

Prix de marchandises similaires

(3) Dans les cas d'application du paragraphe (2) et où une des valeurs normales utilisées pour établir les marges de dumping relatives à des marchandises vendues séparément est déterminée conformément à l'article 15, le prix de marchandises similaires utilisé pour déterminer ces valeurs normales est la moyenne pondérée, déterminée conformément à l'alinéa 17*a*), des prix auxquels les marchandises similaires ont été vendues.

Échantillonnage

30.3 (1) S'il est d'avis que, à cause du nombre de producteurs, d'importateurs ou d'exportateurs, de la variété ou du volume des marchandises ou pour toute autre raison, il est impossible d'établir la marge de dumping relative à toutes les marchandises en cause, le sous-ministre peut, en ce qui concerne les marchandises provenant de chacun des pays dont les marchandises sont en cause, établir les marges de dumping relatives :

a) soit au pourcentage le plus élevé de celles-ci qui, à son avis, peut raisonnablement faire l'objet d'une enquête;

b) soit à un échantillonnage de celles-ci qui, à son avis, est statistiquement valide, sur le fondement des renseignements disponibles au moment du choix des échantillons.

a negative amount will occur. Since margins of dumping are not expressed in this manner, subsection 30.2(1) provides that the margin of dumping will be the greater of zero or the amount otherwise determined.

Subsection 30.2(2)

Article 2.4.2 of the Agreement further provides that the margin of dumping can be based on a comparison of a normal value established on a weighted average basis to prices of individual export transactions if there is a pattern of export prices which differ significantly among different purchasers, regions or time periods. Such a situation can occur, for example, when an exporter practises "targeted dumping" where only a portion of the sales to Canada are made at dumped prices. Determining a margin of dumping pursuant to subsection 30.2(1) would not be appropriate in such cases since the inclusion of the undumped goods in the overall calculation of dumping would disguise the fact that there may have been targeted dumping.

Accordingly, subsection 30.2(2) provides an alternate method of determining the margin of dumping in respect of an exporter. In this case, the Deputy Minister is permitted to select the sales which will be used to establish the margins of dumping. It should be noted that the use of this subsection will likely be the exception in most dumping investigations since the Deputy Minister will have to be of the opinion that the pricing variations are significant enough to warrant the use of this measure.

Subsection 30.2(3)

Subsection 30.2(3) has application where the margin of dumping for an exporter is being established pursuant to subsection 30.2(2) and when the normal value of any of the goods in the selected sales is being determined in accordance with section 15 of the Act. Under section 15 of the Act, normal values are based on the selling price of comparable or like goods sold in the country of export. Since there can often be a range of selling prices for the goods, section 17 of the *Act* provides two methods by which the selling price can be established. Subsection 30.2(2) limits the choice of these methods, however, to the use of the weighted average of the prices at which like goods were sold by the exporter to its home market customers.

Subsection 30.3(1)

In a dumping investigation, a margin of dumping will be determined in respect of each exporter. This is typically undertaken by reviewing the sales made to Canada by each exporter and determining the normal value of these goods by reference to the exporter's domestic sales of comparable goods. In many cases, however, there may be circumstances which make it impracticable to undertake a specific review of each exporter or of all of the goods covered by the investigation. In such cases, Article 6.10 of the AD Agreement permits the investigation to be limited in terms of the exporters or products reviewed. Subsection 30.3(1) reflects this measure by permitting the Deputy Minister to

Where information submitted

(2) Where subsection (1) applies, the Deputy Minister shall determine a margin of dumping in relation to any goods under consideration that were not included in the percentage or sample, as the case may be, referred to in that subsection where

(*a*) the exporter of the goods submits information for the purpose of determining a margin of dumping; and

(*b*) in the opinion of the Deputy Minister, it is practicable to do so.

Other cases

(3) Where subsection (1) applies with respect to goods under consideration, the margin of dumping in relation to those goods that were not included in the percentage or sample and those goods for which a margin of dumping was not determined in accordance with subsection (2) shall be determined in the prescribed manner.

Cas où des renseignements sont fournis

(2) Dans les cas d'application du paragraphe (1), le sous-ministre établit la marge de dumping relative aux marchandises en cause qui n'ont pas été incluses dans le pourcentage ou l'échantillonnage, selon le cas, si les conditions suivantes sont réunies :

a) l'exportateur des marchandises fournit les renseignements servant à établir une marge de dumping;

b) selon l'avis du sous-ministre, il est possible de le faire.

Autres cas

(3) Dans les cas d'application du paragraphe (1), est établie selon les modalités réglementaires la marge de dumping relative aux marchandises qui n'ont pas été incluses dans le pourcentage ou l'échantillonnage, selon le cas, et relativement auxquelles la marge de dumping n'a pas été établie en application du paragraphe (2).

Amount of Subsidy

Amount of subsidy

30.4 (1) Subject to subsections (2) and (3), the amount of subsidy in relation to any goods shall be determined in the prescribed manner.

Where no prescribed manner

(2) Where no manner of determining an amount of subsidy has been prescribed or, in the opinion of the Deputy Minister, sufficient information has not been provided or is not otherwise available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy shall, subject to subsection (3), be determined in such manner as the Minister may specify.

Exception

(3) An amount of subsidy shall not include any amount that is attributable to a non-actionable subsidy.

Montant de subvention

Montant de subvention

30.4 (1) Le montant de subvention relatif à des marchandises subventionnées est, sous réserve des paragraphes (2) et (3), établi selon les modalités réglementaires.

Absence de modalités réglementaires

(2) Si les règlements ne prévoient aucune façon d'établir le montant de subvention ou si, de l'avis du sous-ministre, des renseignements suffisants ne sont pas fournis ou ne sont pas disponibles pour permettre la détermination du montant de subvention selon les modalités réglementaires, ce montant est, sous réserve du paragraphe (3), établi selon les modalités fixées par le ministre.

Exception

(3) Un montant de subvention ne peut comprendre un montant attribuable à une subvention ne donnant pas lieu à une action.

limit the investigation to the largest percentage of goods from a country that can reasonably be investigated or to a statistically valid sample of goods from each country.

Subsection 30.3(2)

Subsection 30.3(2) applies where the Deputy Minister has limited the investigation in accordance with subsection 30.3(1). An exporter not selected for investigation can nevertheless be included in the investigation if information is provided to permit the determination of a margin of dumping and if it is practicable to do so. Since the completion of dumping investigations are subject to statutory time frames, it may not be possible to investigate all such exporters due to time constraints.

Subsection 30.3(3)

Subsection 30.3(3) permits the method by which the margin of dumping for those exporters not included in the investigation to be determined by regulation. The goods sold to Canada by those exporters who were investigated pursuant to subsection 30.3(1) and 30.3(2) will have a margin of dumping based on the actual prices and normal values of the export transactions reviewed. The regulations will detail the method by which the margin of dumping for the remaining exporters will be determined. In most instances, the margins of dumping for those exporters not included in the investigation will be based on the margins of dumping found in respect of those exporters who were selected for investigation and who provided sufficient information to enable the determination of normal values and export prices. Alternatively, the margin of dumping, if any, may be based on the difference between the average normal value found for the exporters investigated and the export price of the goods sold to Canada by exporters that were not required to provide information for purposes of the investigation.

Section 30.4

Clause 160 adds a new section 30.4 to the *Special Import Measures Act*.

Subsections 30.4(1) and 30.4(2) are essentially the same as paragraphs (a) and (b) of the definition of *"amount of the subsidy"* in section 2 of the current *Special Import Measures Act*. In accordance with SCM Article 14, the methodology to be prescribed by regulation for the calculation of amount of the subsidy will be based on benefit to the recipient rather than the current method of cost to government.

Subsection 30.4(3) requires the Deputy Minister to disregard any amount attributable to a non-actionable subsidy, as defined in subsection 2(1), in calculating the amount of subsidy. This implements our obligations under the provisions of the WTO SCM Agreement respecting the non-countervailability of non-actionable subsidies.

161. Section 31 of the Act is replaced by the following:

Initiation of investigation

31. (1) The Deputy Minister shall cause an investigation to be initiated respecting the dumping or subsidizing of any goods and whether there is a reasonable indication that such dumping or subsidizing has caused injury or retardation or is threatening to cause injury, forthwith on the Deputy Minister's own initiative or, subject to subsection (2), where the Deputy Minister receives a written complaint respecting the dumping or subsidizing of the goods, within thirty days after the date on which written notice is given by or on behalf of the Deputy Minister to the complainant that the complaint is properly documented, if the Deputy Minister is of the opinion that there is evidence

(*a*) that the goods have been dumped or subsidized; and

(*b*) that discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation or is threatening to cause injury.

Standing

(2) No investigation may be initiated under subsection (1) as a result of a complaint unless the complaint is supported by domestic producers whose production represents more than fifty per cent of the total production of like goods by those domestic producers who express either support for or opposition to the complaint and the production of the domestic producers who support the complaint represents twenty-five per cent or more of the total production of like goods by the domestic industry.

Meaning of "domestic industry"

(3) In subsection (2), domestic industry means, subject to subsection 2(1.1), the domestic producers as a whole of the like goods except that, where a domestic producer is related to an exporter or importer of allegedly dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

161. L'article 31 de la même loi est remplacé par ce qui suit :

Ouverture d'enquête

31. (1) De sa propre initiative ou, sous réserve du paragraphe (2), s'il reçoit une plainte écrite concernant le dumping ou le subventionnement de marchandises, dans les trente jours suivant la date à laquelle il informe ou fait informer, par avis écrit, le plaignant que le dossier est complet, le sous-ministre fait ouvrir une enquête portant sur le dumping ou le subventionnement des marchandises et sur la présence d'indications raisonnables que le dumping ou le subventionnement a causé un dommage ou un retard ou menace de causer un dommage, s'il est d'avis que des éléments de preuve indiquent, à la fois :

a) que les marchandises ont été sous-évaluées ou subventionnées;

b) de façon raisonnable que le dumping ou le subventionnement a causé un dommage ou un retard ou menace de causer un dommage.

Conditions d'ouverture

(2) L'enquête peut être ouverte si la plainte est appuyée par les producteurs nationaux dont la production compte pour plus de cinquante pour cent de la totalité de la production de marchandises similaires par les producteurs qui manifestent leur appui ou leur opposition à la plainte et si la production de ceux de ces producteurs qui appuient la plainte représente au moins vingt-cinq pour cent de la production de marchandises similaires par la branche de production nationale.

Définition de « branche de production nationale »

(3) Dans le paragraphe (2), on entend par branche de production nationale, sous réserve du paragraphe 2(1.1), l'ensemble des producteurs nationaux des marchandises similaires, sauf si un producteur national est lié à un exportateur ou à un importateur de marchandises présumées sous-évaluées ou subventionnées, ou est lui-même un importateur de telles marchandises, auquel cas le terme s'entend du reste de ces producteurs nationaux.

COMMENCEMENT OF INVESTIGATION

Clause 161

Clause 161 replaces section 31 of the current *Special Import Measures Act* with a new section 31.

Subsection 31(1) expressly requires the Deputy Minister to be satisfied, in an investigation, that there is evidence disclosing a reasonable indication that the dumping or subsidizing of goods *"has caused injury or retardation or is threatening to cause injury"*. This is in accordance with Canada's obligations under AD Article 8.2 and SCM Article 18.2.

Subsection 31(2) implements the new domestic complainant standing requirements for the initiation of an investigation as set out in Article 5.4 of the Anti-dumping Agreement and Article 11.4 of the SCM Agreement.

Pursuant to **subsection 31(3)**, the definition of *"domestic industry"*, for the purposes of the standing thresholds set out in subsection 31(2), means domestic producers as a whole in the national or a regional market, (subject only to the exclusion of domestic producers related to exporters or importers or domestic producers who are themselves importers).

Producers related to exporters or importers

(4) For the purposes of subsection (3), a domestic producer is related to an exporter or an importer where

(*a*) the producer either directly or indirectly controls, or is controlled by, the exporter or importer,

(*b*) the producer and the exporter or the importer, as the case may be, are directly or indirectly controlled by a third person, or

(*c*) the producer and the exporter or the importer, as the case may be, directly or indirectly control a third person,

and there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer.

Where there is deemed to be control

(5) For the purposes of subsection (4), a person is deemed to control another person where the first person is legally or operationally in a position to exercise restraint or direction over the other person.

Extension of thirty day period

(6) The period of thirty days referred to in subsection (1) is extended to forty-five days where, before the expiration of the thirty days, the Deputy Minister causes written notice to be given to the complainant and to the government of the country of export that the period of thirty days is insufficient to determine whether there is compliance with either or both of the conditions referred to in subsection (2) and subsection 31.1(1).

Initiation of investigation

(7) The Deputy Minister may, on receipt of a notice in writing from the Tribunal pursuant to section 46 respecting the dumping or subsidizing of any goods, cause an investigation to be initiated respecting the dumping or subsidizing of any goods described in the notice.

Initiation of investigation

(8) Where a reference is made to the Tribunal pursuant to subsection 33(2) and the Tribunal advises that the evidence discloses a reasonable indication that the dumping or subsidizing of the goods that are the subject of the reference has caused injury or retardation or is threatening to cause injury, the Deputy Minister shall initiate an investigation respecting the dumping or subsidizing of the goods forthwith after receipt of the advice.

Liens entre producteurs et exportateurs ou importateurs

(4) Pour l'application du paragraphe (3), le producteur national est lié à l'exportateur ou à l'importateur dans l'un ou l'autre des cas suivants :

a) directement ou indirectement, le producteur contrôle l'importateur ou l'exportateur, ou est contrôlé par l'un ou l'autre,

b) le producteur et l'exportateur ou l'importateur, selon le cas, sont contrôlés directement ou indirectement par un tiers,

c) le producteur et l'exportateur ou l'importateur, selon le cas, contrôlent directement ou indirectement un tiers,

et il y a des motifs de croire que le producteur ne se comporte pas envers l'exportateur ou l'importateur de la même manière qu'un producteur non lié.

Présomptions applicables aux subventions

(5) Pour l'application du paragraphe (4), une personne est réputée en contrôler une autre lorsqu'elle est, en fait ou en droit, en mesure de contraindre ou de diriger l'autre.

Prolongement du délai de trente jours

(6) Le délai de trente jours visé au paragraphe (1) est prolongé à quarante-cinq jours dans les cas où, avant l'expiration du délai de trente jours, le sous-ministre fait notifier le plaignant et le gouvernement du pays d'exportation que la période de trente jours est insuffisante pour déterminer s'il y a observation des deux conditions visées aux paragraphes (2) et 31.1(1), ou de l'une d'entre elles.

Ouverture de l'enquête

(7) Le sous-ministre peut, dès réception de l'avis écrit que lui transmet le Tribunal en vertu de l'article 46, faire ouvrir une enquête sur le dumping ou le subventionnement des marchandises visées par l'avis.

Enquête du tribunal

(8) Dans les cas où le Tribunal, saisi du renvoi prévu au paragraphe 33(2), avise que des éléments de preuve indiquent, de façon raisonnable, que le dumping ou le subventionnement des marchandises objet du renvoi a causé un dommage ou un retard ou menace de causer un dommage, le sous-ministre ouvre une enquête sur le dumping ou le subventionnement dès réception de l'avis.

Subsections 31(4) and **31(5)** establish criteria for determining when a producer is related to an exporter or importer, for the purposes of the definition of *"domestic industry"* in subsection 31(3). These criteria are identical to those elaborated on in subsection 2(1.2).

Subsection 31(6) recognises the additional burden which will be placed on the Deputy Minister prior to the initiation of an investigation by the need to ensure that i) the new standing requirements have been met, and ii) a subsidy has not been notified to the *"Committee"*, as defined, as non-actionable (refer to *clause 162).* The new subsection, therefore, provides for the extension, on an exceptional basis, of the current thirty-day time-frame for the initiation of an investigation after notice of a properly documented complaint, to forty-five days.

Subsection 31(7) modifies subsection 31(2) of the current *Special Import Measures Act*, by leaving to the Deputy Minister's discretion the question of whether or not to initiate an investigation of dumping/subsidizing of any goods in response to action taken by the Tribunal under section 46.

Subsection 31(8) modifies subsection 31(3) of the current *Special Import Measures Act* by replacing the present reference to, *"has caused, is causing or is likely to cause material injury or has caused or is causing retardation"* with a new injury standard, (i.e., *"has caused injury or retardation or is threatening to cause injury"*), which is based on AD Article 3 (footnote 9) and SCM Article 15 (footnote 45).

162. The Act is amended by adding the following after section 31:

No investigation where subsidy notified

31.1 (1) Subject to subsections (2) and (3), the Deputy Minister may not initiate an investigation with respect to a subsidy that has been notified to the Committee, in accordance with Article 8.3 of the Subsidies Agreement, as being a non-actionable subsidy.

Where determination that subsidy is actionable

(2) Subject to subection (3), the Deputy Minister may initiate an investigation with respect to a subsidy referred to in subsection (1) where there is a determination that the subsidy is not a non-actionable subsidy by

(*a*) the Committee, as the result of a review of the notification pursuant to a request under Article 8.4 of the Subsidies Agreement; or

(*b*) an arbitration body as a result of the submission to binding arbitration under Article 8.5 of the Subsidies Agreement of

(i) a determination by the Committee that the subsidy is a non-actionable subsidy, or

(ii) the failure of the Committee to make a determination pursuant to a request under Article 8.4 of the Subsidies Agreement.

Where redetermination that subsidy is actionable

(3) The Deputy Minister may initiate an investigation with respect to a subsidy that was determined, by the Committee or an arbitration body, to be a non-actionable subsidy where the Committee or an arbitration body makes a redetermination that the subsidy is no longer a non-actionable subsidy.

Notification

(4) The Deputy Minister shall forthwith notify the Deputy Minister of Finance and the complainant where the Deputy Minister is of the opinion that

(*a*) a subsidy that was not notified to the Committee in accordance with Article 8.3 of the Subsidies Agreement is a non-actionable subsidy; or

(*b*) a subsidy that was determined by the Committee or an arbitration body to be a non-actionable subsidy may, as a result of substantial modification to the nature or delivery of the subsidy, no longer be a non-actionable subsidy.

Where Deputy Minister of Finance receives notification

(5) The Deputy Minister of Finance shall, on receipt of notification under subsection (4), notify the Deputy Minister of International Trade and any other person who, in the opinion of the Deputy Minister of Finance, is interested, of the matters referred to in paragraphs (4)(*a*) and (*b*).

162. La même loi est modifiée par adjonction, après l'article 31, de ce qui suit :

Subventions ne donnant pas lieu à une action

31.1 (1) Sous réserve des paragraphes (2) et (3), le sous-ministre ne peut ouvrir une enquête au sujet d'une subvention qui, conformément à l'article 8.3 de l'Accord sur les subventions, a été notifiée au Comité comme une subvention ne donnant pas lieu à une action.

Subventions donnant lieu à une action

(2) Sous réserve du paragraphe (3), le sous-ministre peut ouvrir une enquête au sujet d'une subvention visée au paragraphe (1) si un des organismes suivants détermine que la subvention n'en est pas une ne donnant pas lieu à une subvention :

a) le Comité, à la suite de l'examen de la notification demandé en vertu de l'article 8.4 de l'Accord sur les subventions;

b) un organe d'arbitrage, dans l'éventualité où sont soumis à l'arbitrage contraignant, en vertu de l'article 8.5 de l'Accord sur les subventions, les cas suivants :

(i) la détermination par le Comité que la subvention en est une ne donnant pas lieu à une action,

(ii) le défaut du Comité d'effectuer la détermination visée à l'article 8.4 de l'Accord sur les subventions.

Cas de nouvelle détermination

(3) Dans le cas où le Comité ou un organe d'arbitrage renverse sa décision par laquelle une subvention a été déterminée comme ne donnant pas lieu à une action, le sous-ministre peut ouvrir une enquête sur cette subvention.

Notification par le sous-ministre

(4) Le sous-ministre avise sans délai le sous-ministre des Finances et le plaignant s'il est d'avis :

a) soit qu'une subvention qui n'a pas été notifiée au Comité conformément à l'article 8.3 de l'Accord sur les subventions en est une ne donnant pas lieu à une action;

b) soit qu'une subvention déterminée comme ne donnant pas lieu à une action par le Comité ou un organe d'arbitrage n'est plus telle à la suite d'une modification importante de sa nature ou de son octroi.

Notification par le sous-ministre des Finances

(5) Dès réception de la notification prévue au paragraphe (4), le sous-ministre des Finances notifie des faits visés aux alinéas (4)*a*) et *b*) le sous-ministre du Commerce extérieur et toute autre personne qu'il estime intéressée.

Clause 162

Clause 162 adds a new section 31.1 to the *Special Import Measures Act* to implement Canada's obligations under the provisions of the SCM Agreement respecting the treatment of non-actionable subsidies.

Subsection 31.1(1) implements Canada's obligations under SCM Article 10 (footnote 35), which prohibits the initiation of a countervailing duty investigation with respect to a subsidy which has been notified to the Subsidies Committee as non-actionable.

Subsection 31.1(2), consistent with Article 8.4 and 8.5 of the SCM Agreement authorises the Deputy Minister to initiate an investigation with respect to a notified subsidy which the Subsidies Committee or an arbitration body has, upon subsequent review, determined not to be a non-actionable subsidy.

Subsection 31.1(3) authorises the Deputy Minister to initiate an investigation with respect to a subsidy previously determined by the Subsidies Committee or an arbitration body to be non-actionable where either of those bodies subsequently re-determines the subsidy to not be non-actionable. This could occur, for instance, where the terms, (e.g., eligibility criteria, subsidy levels, etc.) or delivery, (e.g., exercise of administrative discretion), of the subsidy programme have been substantially modified.

Paragraph 31.1(4)(a), in conjunction with new subsection 30.4(3), implements Canada's obligations under Article 10 (footnote 35) with respect to any subsidy which, although not notified in accordance with Article 8.3 of the SCM Agreement, is determined by the Deputy Minister, during an investigation, to fully conform to the conditions for non-actionability. In these situations, the notification of the Deputy Minister of Finance effectively ends all further action by the Deputy Minister of National Revenue with respect to that subsidy.

Paragraph 31.1(4)(b) is a bridging provision between investigative and policy functions, i.e., where notice is given by the Deputy Minister under paragraph 31.1(4)(b), there may be policy considerations regarding government action as to whether, and the manner in which, the non-actionability of the subsidy should be challenged, (i.e., in the Committee, as defined, before an arbitration body or on a government-to-government basis).

Subsection 31.1(5) follows from paragraph 31.1(4)(b) and requires the Deputy Minister of Finance to notify the Deputy Minister of International Trade and other persons, as appropriate.

163. Paragraph 32(1)(*a*) of the Act is replaced by the following:

(*a*) where the complaint is properly documented, cause the complainant and the government of the country of export to be informed in writing that the complaint was received and that it is properly documented; or

163. L'alinéa 32(1)*a*) de la même loi est remplacé par ce qui suit :

a) si le dossier est complet, en fait informer par écrit le plaignant et le gouvernement du pays d'exportation;

164. Section 33 of the Act is replaced by the following:

Where Deputy Minister decides not to initiate investigation

33. (1) Where, after receipt of a properly documented complaint respecting the dumping or subsidizing of goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated, the Deputy Minister shall cause a written notice of the decision, setting out the reasons therefor, to be sent to the complainant and to the government of the country of export.

Reference to Tribunal

(2) Where, after receipt of a properly documented complaint respecting the dumping or subsidizing of goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated by reason only that in the opinion of the Deputy Minister the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods in respect of which the Deputy Minister has so decided has caused injury or retardation or is threatening to cause injury,

(*a*) the Deputy Minister may, on the date of the notice referred to in subsection (1), or

(*b*) the complainant may, within thirty days after the date of the notice referred to in subsection (1),

refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods in respect of which the Deputy Minister has so decided has caused injury or retardation or is threatening to cause injury.

164. L'article 33 de la même loi est remplacé par ce qui suit :

Décision de ne pas ouvrir d'enquête

33. (1) S'il est saisi d'un dossier complet mais décide de ne pas faire ouvrir d'enquête sur tout ou partie des marchandises en cause, le sous-ministre fait transmettre un avis écrit et motivé de sa décision au plaignant et, dans le cas de subventionnement, au gouvernement du pays d'exportation.

Renvoi devant le Tribunal

(2) Si le sous-ministre, saisi d'un dossier complet, décide de ne pas faire ouvrir d'enquête sur tout ou partie des marchandises pour la seule raison que, selon lui, les éléments de preuve n'indiquent pas, de façon raisonnable, que le dumping ou le subventionnement a causé un dommage ou un retard ou menace de causer un dommage, peuvent demander au Tribunal de se prononcer sur cette question :

a) le sous-ministre, à la date de l'avis visé au paragraphe (1);

b) le plaignant, dans les trente jours suivant la date de l'avis visé au paragraphe (1).

Clause 163

Paragraph 32(1)(a) implements Canada's obligations under AD Article 5.5 and SCM Article 13.1. These provisions require that notice of a properly documented complaint be given to the complainant and the government of the country of export prior to the initiation of a dumping or subsidy investigation. Presently, such notice is not given in dumping cases.

Clause 164

Subsection 33(2) includes the new injury standard, (i.e., *"has caused injury or retardation or is threatening to cause injury"*).

165. (1) Section 34 of the Act is renumbered as subsection 34(1).

(2) Paragraph 34(1)(*b*) of the Act is replaced by the following:

(*b*) in the case of an investigation initiated pursuant to subsection 31(1), the Deputy Minister may, on the date of the notice given to the complainant pursuant to paragraph (*a*), or any person or government that was given notice pursuant to paragraph (*a*) may, within thirty days from the date of the notice, refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of any goods in respect of which the Deputy Minister has caused the investigation to be initiated has caused injury or retardation or is threatening to cause injury.

(3) Section 34 of the Act is amended by adding the following after subsection (1):

Finding of Tribunal

(2) Where, pursuant to a reference under paragraph (1)(*b*), the Tribunal advises the Deputy Minister in writing that the evidence discloses a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury, the Deputy Minister shall continue the investigation.

166. Sections 35 and 36 of the Act are replaced by the following:

Termination of investigation

35. (1) Where, at any time before making a preliminary determination under subsection 38(1) in respect of goods imported from a country or countries,

(*a*) the Deputy Minister is satisfied in respect of some or all of those goods that

(i) there is insufficient evidence of dumping or subsidizing to justify proceeding with the investigation,

(ii) the margin of dumping of, or the amount of subsidy on, the goods from that country or from any of those countries is insignificant, or

(iii) the actual or potential volume of dumped or subsidized goods is negligible, or

165. (1) L'article 34 devient le paragraphe 34(1).

(2) L'alinéa 34(1)*b*) de la même loi est remplacé par ce qui suit :

b) s'il s'agit d'une enquête visée au paragraphe 31(1), le sous-ministre peut, à la date de l'avis donné conformément à l'alinéa *a*), ou toute personne ou tout gouvernement avisé conformément à cet alinéa peut, dans les trente jours suivant la date de l'avis, demander au Tribunal de se prononcer sur la question de savoir si les éléments de preuve indiquent, de façon raisonnable, que le dumping ou le subventionnement des marchandises en cause a causé un dommage ou un retard ou menace de causer un dommage.

(3) L'article 34 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Conclusion du Tribunal

(2) Si, à la suite d'un renvoi en vertu de l'alinéa (1)*b*), le Tribunal informe par écrit le sous-ministre que les éléments de preuve indiquent, de façon raisonnable, que le dumping ou le subventionnement des marchandises en cause a causé un dommage ou un retard ou menace de causer un dommage, le sous-ministre poursuit l'enquête.

166. Les articles 35 et 36 de la même loi sont remplacés par ce qui suit :

Clôture de l'enquête

35. (1) Si le sous-ministre, avant de rendre une décision provisoire en vertu du paragraphe 38(1), en arrive à l'une des conclusions suivantes au sujet de marchandises importées d'un ou de plusieurs pays donnés :

a) il est convaincu que, selon le cas :

(i) il n'y a pas assez d'éléments prouvant le dumping ou le subventionnement pour justifier la poursuite de l'enquête,

(ii) la marge de dumping des marchandises provenant d'un de ces pays, ou le montant de subvention les concernant, est minimal,

(iii) la quantité véritable ou éventuelle de produits bénéficiant du dumping ou de la subvention est négligeable;

Clause 165

Paragraph 34(1)(b) includes the new injury standard, (i.e., *"has caused injury or retardation or is threatening to cause injury"*).

New **subsection 34(2)** precludes the Deputy Minister from terminating an investigation on the grounds of no injury where the Tribunal, pursuant to a reference under paragraph 34(1)(b), advises the Deputy Minister that the evidence discloses a reasonable indication that the dumping/subsidizing of goods has caused injury, retardation or is threatening to cause injury.

Clause 166

New **subsection 35(1)** includes a consequential cross-reference to subsection 38(1) on preliminary determinations of dumping/subsidizing and injury.

The additional reference to goods *"imported from a country or countries"* denotes that the termination of an investigation under subsection 35(1) would be in respect of goods from a country and not in respect of goods of individual exporters. In an investigation involving goods from several countries, where the investigation is terminated with respect to goods from one or more countries, the investigation would continue with respect to goods from the remaining countries.

Subparagraph 35(1)(a)(ii) includes the new concept of *"insignificant"* margins of dumping or amounts of subsidy. Where the margin of dumping or an amount of subsidy with respect to goods from a country are *"insignificant"* [as defined in subsection 2(1)], AD Article 5.8 and SCM Article 11.9 require that the investigation to be terminated with respect to those goods.

Subparagraph 35(1)(a)(iii) implements Canada's obligations under AD Article 5.8 and SCM Article 11.9 which require that an investigation be immediately terminated where the actual or potential volume of dumped or subsidized imports is *"negligible"*, as defined in subsection 2(1).

(*b*) the Deputy Minister comes to the conclusion in respect of some or all of those goods that the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury,

the Deputy Minister shall, subject to subsections (2) and (3),

(*c*) cause the investigation to be terminated with respect to the goods in respect of which he is so satisfied or has come to that conclusion, and

(*d*) cause notice of the termination to be given and published as provided in paragraph 34(1)(*a*).

b) il conclut, au sujet de tout ou partie de ces marchandises, que les éléments de preuve n'indiquent pas, de façon raisonnable, que le dumping ou le subventionnement des marchandises a causé un dommage ou un retard ou menace de causer un dommage,

il doit, sous réserve des paragraphes (2) et (3) :

c) faire clore l'enquête sur les marchandises objet de ses conclusions;

d) faire donner et publier avis de cette clôture selon les modalités prévues à l'alinéa 34(1)*a*).

Notice and reference to Tribunal prior to termination

(2) Where, in the case of an investigation described in paragraph (1)(*b*) respecting the dumping or subsidizing of goods, the Deputy Minister comes to the conclusion referred to in that paragraph in respect of some or all of those goods,

(*a*) the Deputy Minister shall cause notice of the conclusion to be given and published as provided in paragraph 34(1)(*a*); and

(*b*) the Deputy Minister, on the date of the notice given to the complainant pursuant to paragraph (*a*), or any person or government that was given notice pursuant to paragraph (*a*) may, within thirty days after the date of the notice, refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods in respect of which the Deputy Minister has come to that conclusion has caused injury or retardation or is threatening to cause injury.

(2) Si le sous-ministre en arrive à la conclusion prévue à l'alinéa (1)*b*) :

Avis donné avant la clôture de l'enquête

a) il en fait donner et publier avis selon les modalités prévues à l'alinéa 34(1)*a*);

b) il peut, à la date de l'avis donné conformément à l'alinéa *a*), et toute personne ou tout gouvernement avisé conformément à cet alinéa peut, dans les trente jours suivant la date de l'avis, demander au Tribunal de se prononcer sur la question de savoir s'il existe des éléments de preuve indiquant, de façon raisonnable, que le dumping ou le subventionnement des marchandises en cause a causé un dommage ou un retard ou menace de causer un dommage.

Limitation on termination

(3) Where notice is given pursuant to paragraph (2)(*a*) in an investigation, the Deputy Minister may not terminate the investigation with respect to the goods to which the notice relates by reason only that the Deputy Minister has come to the conclusion referred to in paragraph (1)(*b*) in respect of those goods,

(*a*) where no reference is made to the Tribunal pursuant to paragraph (2)(*b*) within the thirty days referred to in that paragraph, until the thirty days have expired; or

(*b*) where a reference is made to the Tribunal, unless and until the Tribunal advises that in its opinion the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury.

(3) Le sous-ministre ne peut clore une enquête à l'égard de laquelle l'avis prévu à l'alinéa (2)*a*) a été donné pour la seule raison qu'il en est arrivé à la conclusion visée par l'alinéa (1)*b*) :

Délai

a) en l'absence de renvoi au Tribunal dans les trente jours visés à l'alinéa (2)*b*), qu'à l'expiration de ces trente jours;

b) en cas de renvoi au Tribunal, que si le Tribunal lui fait savoir qu'il partage sa conclusion.

Paragraph 35(1)(b) has been consequentially amended to include the new injury standard, (i.e., *"has caused injury or retardation or is threatening to cause injury"*).

Paragraph 35(1)(c) includes a consequential cross-reference to paragraph 34(1)(a) on the giving of notice.

Paragraph 35(2)(a) includes a consequential cross-reference to paragraph 34(1)(a) on the giving of notice.

Paragraph 35(2)(b) to clarify the operation of the thirty-day statutory time-frame, the word *"from"* has been replaced with the word *"after"*. This paragraph also includes the new injury standard.

Paragraph 35(3)(b) has been consequentially amended to include the new injury standard, (i.e., *"has caused injury or retardation or is threatening to cause injury"*).

Termination of investigation

36. Where a reference is made to the Tribunal pursuant to paragraph 34(1)(*b*) and the Tribunal advises with respect to any of the goods that are the subject of the reference that the evidence does not disclose a reasonable indication that the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury, the Deputy Minister shall terminate the investigation in respect of those goods forthwith after receipt of the advice and shall cause notice of the termination to be given and published as provided in paragraph 34(1)(*a*).

Clôture de l'enquête

36. Si le Tribunal, saisi d'un renvoi en vertu de l'alinéa 34(1)*b*), fait savoir au sous-ministre que, du moins pour certaines marchandises, les éléments de preuve présentés n'indiquent pas, de façon raisonnable, que le dumping ou le subventionnement des marchandises en cause a causé un dommage ou un retard ou menace de causer un dommage, celui-ci clôt l'enquête sur ces marchandises dès réception de l'avis et fait donner et publier un avis de clôture selon les modalités prévues à l'alinéa 34(1)*a*).

167. (1) The portion of subsection 38(1) of the Act before paragraph (*a*) is replaced by the following:

Preliminary determination of dumping or subsidizing and of injury, etc.

38. (1) Subject to sections 39 and 40, after the fifty-ninth day and on or before the ninetieth day following the initiation of an investigation under section 31, the Deputy Minister shall make a preliminary determination of dumping or subsidizing with respect to the goods in respect of which the investigation has not been terminated pursuant to section 35 or 36 and that there is evidence that discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation or is threatening to cause injury after estimating and specifying, in relation to each exporter of goods in respect of which the investigation is made, as follows:

167. (1) Le passage du paragraphe 38(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Décision provisoire de dumping ou de subventionnement

38. (1) Sous réserve des articles 39 et 40, entre le soixantième et le quatre-vingt dixième jour suivant l'ouverture de l'enquête prévue à l'article 31, le sous-ministre rend une décision provisoire de dumping ou de subventionnement concernant les marchandises au sujet desquelles n'a pas eu lieu la clôture d'enquête prévue aux articles 35 ou 36, et les éléments de preuve présentés indiquent, de façon raisonnable, que le dumping ou le subventionnement a causé un dommage ou un retard ou menace de causer un dommage, après avoir, pour chacun des exportateurs des marchandises pour lesquelles l'enquête est menée :

(2) Subparagraph 38(1)(*b*)(iii) of the Act is replaced by the following:

(iii) subject to subsection (2), where the whole or any part of the subsidy on the goods to which the preliminary determination applies is a prohibited subsidy, specifying that there is a prohibited subsidy on the goods and estimating the amount of the prohibited subsidy thereon; and

(2) Le sous-alinéa 38(1)*b*)(iii) de la même loi est remplacé par ce qui suit :

(iii) sous réserve du paragraphe (2), précisé, s'il y a lieu, que les marchandises font l'objet d'une subvention prohibée et le montant estimatif de cette subvention;

Section 36 has been consequentially amended to include the new injury standard, (i.e., *"has caused injury or retardation or is threatening to cause injury"*). In addition, section 36 includes a consequential cross-reference to paragraph 34(1)(a) on the giving of notice.

PRELIMINARY DETERMINATION

Clause 167

Sub-clause 167(1): The subsection 38(1) requirement that a preliminary determination be made only after the fifty-ninth day following initiation of an investigation, implements Canada's obligation under AD Article 7 and SCM Article 17, which prohibit the application of provisional measures sooner than sixty days after the date of initiation of an investigation. In this regard, provisional duties are payable immediately after a preliminary determination.

Subsection 38(1) also includes a consequential cross-reference to section 31 on the initiation of an investigation.

The subsection 38(1) requirement *"that there is evidence"* that discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation is or threatening to cause injury, implements Canada's obligation under AD Article 3.1 and SCM 15.1 that a determination of injury be based on *"positive evidence"*. The *reasonable indication of injury, retardation or threat of injury* standard reflects the fact this is only a preliminary determination subject to the Tribunal's definitive finding on the issue of whether the dumping or subsidizing of imports *has caused injury, retardation or is threatening to cause injury*.

The reference to *"exporter"* in subsection 38(1), which replaces the word *"importer"*, reflects the practice of determining a margin of dumping or an amount of a subsidy in respect of goods from an exporter.

Sub-clause 167(2): Subparagraph 38(1)(b)(iii) is to be read in conjunction with the retroactive countervailing duty provisions in new section 6 of the *Special Import Measures Act (clause 147)*. The purpose of the subparagraph is to signal to the Tribunal that it is dealing with a prohibited subsidy for the purposes of a Tribunal order referred to in section 6. This is consistent with SCM Article 20.6, which allows for the retroactive assessment of countervailing duties on massive importations of goods which have benefited from subsidies bestowed inconsistently with the provisions of GATT 1994 and the SCM Agreement, (i.e., prohibited subsidies).

(3) Subsection 38(2) of the Act is replaced by the following:

Exception

(2) The Deputy Minister shall not specify or estimate anything pursuant to subparagraph (1)(*b*)(iii) where the Deputy Minister is of the opinion that, having regard to the country that is providing the export subsidy, the nature of the goods on which there is an export subsidy and the circumstances under which the export subsidy is provided, provision of the export subsidy in relation to those goods is not inconsistent with that country's obligations under the international agreement known as the General Agreement on Tariffs and Trade, 1994.

(4) The portion of subsection 38(3) of the Act before paragraph (*b*) is replaced by the following:

Notice of preliminary determination

(3) Where the Deputy Minister makes a preliminary determination under subsection (1), the Deputy Minister shall

(*a*) cause notice of the determination to be given and published as provided in paragraph 34(1)(*a*); and

168. (1) The portion of subsection 41(1) of the Act before subparagraph (*a*)(iii) is replaced by the following:

Final determination or termination

41. (1) Within ninety days after making a preliminary determination under subsection 38(1) in respect of goods imported from a country or countries, the Deputy Minister shall

(*a*) where, on the available evidence, the Deputy Minister is satisfied, in relation to the goods from that country or countries in respect of which the investigation is made, that

(i) the goods have been dumped or subsidized,

(ii) the margin of dumping of, or the amount of subsidy on, the goods from that country or from any of those countries is not insignificant, and

(ii.1) either the actual or potential volume of dumped or subsidized goods is not negligible,

make a final determination of dumping or subsidizing with respect to the goods after specifying, in relation to each exporter of goods from that country or countries in respect of which the investigation is made as follows:

(3) Le paragraphe 38(2) de la même loi est remplacé par ce qui suit :

Exception

(2) Il n'y a ni précision ni estimation aux termes du sous-alinéa (1)*b*)(iii) si, eu égard au pays qui octroie la subvention, à la nature des marchandises et aux circonstances entourant l'octroi, le sous-ministre est d'avis que cet octroi n'est pas contraire aux obligations de ce pays aux termes de l'accord international dénommé l'Accord général sur les tarifs douaniers et le commerce de 1994.

(4) Le passage du paragraphe 38(3) de la même loi précédant l'alinéa *b*) est remplacé par ce qui suit :

Avis de la décision provisoire

(3) Dès qu'il rend une décision en vertu du paragraphe (1), le sous-ministre :

a) en fait donner et publier avis selon les modalités prévues à l'alinéa 34(1)*a*);

168. (1) Le passage du paragraphe 41(1) de la même loi précédant le sous-alinéa *a*)(iii) est remplacé par ce qui suit :

Décision définitive ou clôture de l'enquête

41. (1) Dans les quatre-vingt-dix jours suivant sa décision rendue en vertu du paragraphe 38(1) au sujet de marchandises importées d'un ou de plusieurs pays, le sous-ministre, selon le cas :

a) si, au vu des éléments de preuve disponibles, il est convaincu, au sujet des marchandises visées par l'enquête, des faits suivants :

(i) les marchandises ont été sous-évaluées ou subventionnées,

(ii) la marge de dumping ou le montant de subvention octroyé, relativement aux marchandises provenant d'un ou de plusieurs de ces pays, n'est pas minimal,

(ii.1) le volume actuel ou éventuel de marchandises sous-évaluées ou subventionnées n'est pas négligeable,

rend une décision définitive de dumping ou de subventionnement après avoir précisé, pour chacun des exportateurs — visés par l'enquête — des marchandises provenant d'un ou de plusieurs de ces pays :

Sub-clause 167(3): Subsection 38(2) has been consequentially amended to refer to the *"General Agreement on Tariffs and Trade 1994"*, which is legally distinct from the current GATT.

Sub-clause 167(4): Subsection 38(3) includes consequential cross-references to subsection 38(1) on preliminary determinations of dumping/subsidizing and injury and paragraph 34(1)(a) on the giving of notice.

FINAL DETERMINATION

Clause 168

Sub-clause 168(1): Subsection 41(1) includes a consequential cross-reference to subsection 38(1) on preliminary determinations which are made in respect of goods from a country or countries rather than on an individual exporter basis.

Subparagraphs 41(1)(a)(ii) and (ii.1) include the new concepts of *"insignificant"* in relation to margins of dumping or amounts of subsidy and *"negligible" in* relation to actual/potential import volumes. These concepts are defined in subsection 2(1) [see discussion under *clause 166* above].

The reference to *"exporter"* in paragraph 41(1)(a), which replaces the word *"importer"*, reflects the practice of determining a margin of dumping or an amount of a subsidy in respect of goods from an exporter.

(2) Clause 41(1)(*a*)(iv)(C) of the Act is replaced by the following:

(C) subject to subsection (2), where the whole or any part of the subsidy on the goods is a prohibited subsidy, specifying the amount of the prohibited subsidy on the goods; or

(3) Paragraph 41(1)(*b*) of the Act is replaced by the following:

(*b*) where, on the available evidence, there is no exporter described in paragraph (*a*) with respect to whom the Deputy Minister is satisfied in accordance with that paragraph, cause the investigation to be terminated with respect to the goods.

169. The Act is amended by adding the following after section 41.1:

Deputy Minister to be guided by Canada's obligations

41.2 The Deputy Minister shall, in an investigation respecting the subsidizing of any goods, take into account the provisions of paragraphs 10 and 11 of Article 27 of the Subsidies Agreement.

170. Section 42 of the Act is replaced by the following:

Tribunal to make inquiry

42. (1) The Tribunal, forthwith after receipt by the Secretary pursuant to subsection 38(3) of a notice of a preliminary determination, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:

(*a*) in the case of any goods to which the preliminary determination applies, as to whether the dumping or subsidizing of the goods

(i) has caused injury or retardation or is threatening to cause injury, or

(ii) would have caused injury or retardation except for the fact that provisional duty was imposed in respect of the goods;

(*b*) in the case of any dumped goods to which the preliminary determination applies, as to whether

(i) either

(A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures, or

(2) La division 41(1)*a*)(iv)(C) de la même loi est remplacée par ce qui suit :

(C) sous réserve du paragraphe (2), le montant, s'il y a lieu, de la subvention prohibée octroyée pour elles;

(3) L'alinéa 41(1)*b*) de la même loi est remplacé par ce qui suit :

b) fait clore l'enquête sur les marchandises au sujet desquelles, au vu des éléments de preuve disponibles, il n'y a pas d'exportateur à l'égard de qui il en arrive à la constatation prévue à l'alinéa *a*).

169. La même loi est modifiée par adjonction, après l'article 41.1, de ce qui suit :

Applicabilité des accords internationaux

41.2 Dans le cadre d'une enquête portant sur le subventionnement de marchandises, le sous-ministre tient compte des paragraphes 10 et 11 de l'article 27 de l'Accord sur les subventions.

170. L'article 42 de la même loi est remplacé par ce qui suit :

Enquête du Tribunal

42. (1) Dès réception par le secrétaire de l'avis de décision provisoire prévu au paragraphe 38(3), le Tribunal fait enquête sur celles parmi les questions suivantes qui sont indiquées dans les circonstances, à savoir :

a) si le dumping des marchandises en cause ou leur subventionnement :

(i) soit a causé un dommage ou un retard ou menace de causer un dommage,

(ii) soit aurait causé un dommage ou un retard sans l'application de droits provisoires aux marchandises;

b) si, dans le cas de marchandises sous-évaluées objet de la décision provisoire :

(i) d'une part :

(A) ou bien a eu lieu une importation considérable de marchandises similaires sous-évaluées dont le dumping a causé un dommage ou en aurait causé si des mesures antidumping n'avaient pas été prises,

(B) ou bien l'importateur des marchandises était ou aurait dû être au courant du dumping que pratiquait l'exportateur et du fait que ce dumping causerait un dommage,

Sub-clause 168(2): Clause 41(1)(a)(iv)(C) parallels subparagraph 38(1)(b)(iii) *(clause 167)* and is to be read in conjunction with the retroactive countervailing duty provisions in new section 6 of the *Special Import Measures Act (clause 147)*. The purpose of the clause is to signal to the Tribunal that it is dealing with a prohibited subsidy for the purposes of a Tribunal order referred to in section 6. This is consistent with SCM Article 20.6, which allows for the retroactive assessment of countervailing duties on massive importations of goods which have benefited from subsidies bestowed inconsistently with the provisions of GATT 1994 and the SCM Agreement, (i.e., prohibited subsidies).

Sub-clause 168(3): The reference to *"exporter"* in paragraph 41(1)(b), which replaces the word *"importer"*, reflects the practice of determining a margin of dumping or an amount of a subsidy in respect of goods from an exporter.

Clause 169

Section 41.2 implements Canada's obligations under SCM Article 27 on special and differential treatment for developing countries in countervailing duty investigations. In this regard, paragraphs 10 and 11 of Article 27 provide for higher insignificant amount of subsidy and negligible import volume thresholds in the case of developing countries and requires that an investigation be terminated with respect to these countries where either the amount of subsidy or volume of subsidized imports fall below these higher thresholds.

INQUIRIES BY TRIBUNAL

Clause 170

Section 42 of the current *Special Import Measures Act* provides the authority for the Tribunal, upon notice of a preliminary determination by the Deputy Minister, to undertake an inquiry regarding whether the dumping or subsidizing of goods as described in the preliminary determination *"has caused, is causing or is likely to cause material injury or has caused or is causing retardation"* to the production in Canada of like goods. Section 42 also allows the Tribunal, as part of its inquiry, to determine whether there have been massive importations of dumped goods or goods benefiting from an *export* subsidy which have caused material injury. A finding of massive dumping or subsidization would result in a retroactive assessment of duties under section 5 and 6 of the *Act*. Finally, the current subsection 42(3) required that the Tribunal be guided by Canada' obligations regarding the determination of the domestic industry, including, where applicable, the determination of the existence of a regional market.

Clause 170 replaces the current section 42 with a new section.

Assessment of cumulative effect

(3) In making or resuming its inquiry under subsection (1), the Tribunal may make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if

(a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and

(b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and

(i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or

(ii) like goods of domestic producers.

Tribunal to be guided by Canada's obligations

(4) The Tribunal shall, in making a cumulative assessment under subsection (3), take into account the provisions of paragraph 12 of Article 27 of the Subsidies Agreement.

When domestic industry based on regional markets

(5) Where subsection 2(1.1) applies in respect of the dumping or subsidizing of goods to which the preliminary determination applies, the Tribunal shall not find that the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury unless

(a) there is a concentration of those goods into the regional market; and

(b) the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

Évaluation des effets cumulatifs

(3) Le Tribunal peut, lors de l'ouverture ou de la poursuite de l'enquête, évaluer les effets cumulatifs du dumping ou du subventionnement des marchandises, visées par la décision provisoire, importées au Canada en provenance de plus d'un pays, s'il conclut à la fois que :

a) relativement aux importations de marchandises de chacun de ces pays, la marge de dumping ou le montant de subvention n'est pas minimal et que le volume des importations n'est pas négligeable;

b) l'évaluation des effets cumulatifs est indiquée compte tenu des conditions de concurrence entre les marchandises, visées par la décision provisoire, importées au Canada en provenance d'un de ces pays et :

(i) soit les marchandises, visées par la décision provisoire, importées au Canada en provenance d'un autre de ces pays,

(ii) soit les marchandises similaires des producteurs nationaux.

Applicabilité des accords internationaux

(4) Dans le cadre de l'examen des effets cumulatifs, le Tribunal tient compte du paragraphe 12 de l'article 27 de l'Accord sur les subventions.

Marchés régionaux

(5) Dans les cas d'application du paragraphe 2(1.1) au dumping ou au subventionnement de marchandises visées par la décision provisoire, le Tribunal ne peut arriver à la conclusion que le dumping ou le subventionnement de ces marchandises a causé un dommage ou un retard ou menace de causer un dommage que :

a) s'il y a concentration des marchandises sur le marché régional;

b) si le dumping ou le subventionnement des marchandises a causé un dommage ou un retard ou menace de causer un dommage aux producteurs de presque toute la production des marchandises similaires sur le marché régional.

A new subsection 42(3) provides direction to the Tribunal regarding an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies. There are two conditions precedent to the assessment of the cumulative effect of the dumped or subsidized goods: paragraph 42(3)(a) requires that the margin of dumping and the amount of subsidy with respect to goods from each country not be insignificant and that the volume of goods from each country not be negligible; and paragraph 42(3)(b) requires that the assessment of the cumulative effect be appropriate given the conditions of competition between goods from one country and all other countries or between the imported goods and the like goods of domestic producers. This provision in respect of cumulation implements our WTO rights in accordance with Ad Article 3.3 and SCM Article 15.3.

Subsection 42(4) is new and modifies subsection 42(3). Specifically, where a cumulative assessment includes subsidized goods from a developing country, the Tribunal is directed to take into account Article 27.12 of the Subsidies Agreement. That Article requires the level at which a subsidy is to be determined as insignificant in respect of subsidized goods from a developing country be less than two per cent of the value of the goods. This measure differs from the one per cent as defined under the term "insignificant" in subsection 2(1) of the revised *Act*. In addition, for developing countries which have eliminated export subsidies prior to the period of eight years from the date of entry into force of the WTO Agreement, their level of "insignificant" subsidy will be less than three per cent.

The current subsection 42(3) has been replaced by three separate provisions in the new Act: the new definition of "domestic industry" in **subsection 2(1)**; the concept of domestic industries based on a regional market in **subsection 2(1.1)** and the **new subsection 42(5)**. The latter provision addresses the injury criteria that must be met in order for the Tribunal to make an injury finding respecting a regional market: paragraph 42(5)(a) requires that there be a concentration of dumped or subsidized goods in the regional market and paragraph 42(5)(b) requires that the resultant injury be to the producers of all or almost all of the production in the regional market. These provisions are in accordance with our WTO commitments under AD Article 4.1(ii) and SCM Article 16.2. In addition to the foregoing, the current injury standard of *"has caused, is causing or is likely to cause material injury or has caused or is causing retardation"* has been replaced with *"has caused injury or retardation or is threatening to cause injury"* based on AD Article 3 (footnote 9) and SCM Article 15 (footnote 45).

171. Section 46 of the Act is replaced by the following:

Tribunal to advise Deputy Minister

46. Where, during an inquiry referred to in section 42 respecting the dumping or subsidizing of goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that

(*a*) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped or subsidized, and

(*b*) the evidence discloses a reasonable indication that the dumping or subsidizing referred to in paragraph (*a*) has caused injury or retardation or is threatening to cause injury,

the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (*a*), shall so advise the Deputy Minister.

172. (1) The portion of subsection 49(1) of the Act before paragraph (*a*) is replaced by the following:

Acceptance of undertaking

49. (1) Subject to subsection (2), the Deputy Minister may, in an investigation respecting the dumping or subsidizing of goods, accept an undertaking or undertakings with respect to dumped or subsidized goods where the Deputy Minister is of the opinion that observance of the undertaking or undertakings, as the case may be, will eliminate

(2) Paragraph 49(1)(*b*) of the Act is replaced by the following:

(*b*) any injury, retardation or threat of injury that is being caused by the dumping or subsidizing.

(3) Paragraph 49(2)(*b*) of the Act is replaced by the following:

(*b*) unless the Deputy Minister has made a preliminary determination under subsection 38(1); or

(4) Section 49 of the Act is amended by adding the following after subsection (2):

Request to complete investigation and inquiry

(3) Where the exporter, in the case of an investigation and inquiry with respect to dumped goods, or the government of the exporting country, in the case of an investigation and inquiry with respect to subsidized goods, wishes to offer an undertaking with respect to the dumped or subsidized goods, as the case may be, but wishes the investigation and inquiry with respect to the goods to be completed,

171. L'article 46 de la même loi est remplacé par ce qui suit :

Notification du sous-ministre par le Tribunal

46. Si, au cours de l'enquête visée à l'article 42 au sujet du dumping ou du subventionnement de marchandises objet d'une décision provisoire prévue à la présente loi, le Tribunal est d'avis :

a) d'une part, que les éléments de preuve indiquent que des marchandises dont l'utilisation et les autres caractéristiques sont très proches de celles qui font l'objet de la décision provisoire ont été ou sont sous-évaluées ou subventionnées;

b) d'autre part, que les éléments de preuve indiquent de façon raisonnable que le dumping ou le subventionnement visé à l'alinéa *a*) a causé un dommage ou un retard ou menace de causer un dommage,

il en avise le sous-ministre par un écrit donnant la description des marchandises mentionnées en premier lieu à l'alinéa *a*).

172. (1) Le passage du paragraphe 49(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Acceptation de l'engagement

49. (1) Sous réserve du paragraphe (2), le sous-ministre peut, au cours d'une enquête de dumping ou de subventionnement de marchandises, accepter les engagements qui, d'après lui :

(2) L'alinéa 49(1)*b*) de la même loi est remplacé par ce qui suit :

b) soit font disparaître le dommage, le retard ou la menace de dommage que cause le dumping ou le subventionnement.

(3) L'alinéa 49(2)*b*) de la même loi est remplacé par ce qui suit :

b) que s'il a rendu une décision provisoire en vertu du paragraphe 38(1);

(4) L'article 49 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Demande de poursuite de l'enquête

(3) Dans le cadre d'une enquête menée à la fois par le sous-ministre et le Tribunal, si l'exportateur, dans le cas de marchandises sous-évaluées, ou le gouvernement du pays d'exportation, dans le cas de marchandises subventionnées, désire offrir un engagement relativement aux marchandises sous-évaluées ou subventionnées, selon le cas, mais désire aussi que l'enquête soit complétée :

Clause 171

Section 46 of the current *Special Import Measures Act* provides that the Canadian International Trade Tribunal may direct the Deputy Minister of National Revenue to initiate an investigation into the dumping or subsidizing of certain goods if, during the course of an inquiry, the Tribunal forms the opinion that goods like those being investigated are being dumped or subsidized and that there is some evidence that such dumping or subsidizing causes injury.

Clause 171 modifies the current section 46 in two ways: First, the Tribunal is no longer authorized to *direct* the Deputy Minister to initiate an investigation. This change will allow the Deputy Minister to determine whether there is sufficient evidence of dumping or subsidization required to initiate the investigation. Such a determination falls directly within the jurisdiction of the Deputy Minister and is consistent with our WTO obligations under AD Article 5.7 and SCM Article 11.7. Second, the current injury test of *"has caused, is causing or is likely to cause material injury or has caused or is causing retardation"* has been replaced with *"has caused injury or retardation or is threatening to cause injury"* in paragraph 46(b) based on AD Article 3 (footnote 9) and SCM Article 15 (footnote 45).

UNDERTAKINGS

Clause 172

Sub-clause 172(2): New paragraph 49(1)(b) has been consequentially amended to include the new injury standard.

Sub-clause 172(3): New paragraph 49(2)(b) implements Canada's obligations under AD Article 8.2 and SCM Article 18.2, which require a preliminary determination of dumping/subsidizing of goods and resulting injury as a prerequisite to the acceptance of an undertaking. This represents a significant change from the current Canadian practice of only accepting undertakings prior to a preliminary determination.

Sub-clause 172(4): New subsection 49(3), in conjunction with new subparagraph 50(a)(iii) and paragraph 50(b), implements Canada's obligations under AD Article 8.4 and SCM Article 18.4, which require an investigation to be completed after an undertaking has been accepted if the exporter (in the cade of dumping) or government of the country (in the case of subsidies) offering the undertaking, so requests.

New subsection 49(4) is consistent with Canada's rights under AD Article 8.3 and SCM Article 18.3, which allows for the non-acceptance of undertaking offers where impractical or for other general policy reasons.

174. Subsection 51(1) of the Act is replaced by the following:

Deputy Minister to terminate undertaking

51. (1) The Deputy Minister shall forthwith terminate an undertaking in respect of which the Deputy Minister receives, within thirty days after the date of the notice of acceptance of an undertaking or undertakings with respect to dumped or subsidized goods given pursuant to paragraph 50(*a*)(i) but before an order is made by the Tribunal under subsection 43(1) in respect of the goods, a request for termination from

(*a*) in the case of dumped goods, the importer or exporter of the goods or the complainant in the investigation respecting the goods; and

(*b*) in the case of subsidized goods, the importer, exporter or government of the country of export of the goods or the complainant in the investigation respecting the goods.

175. Subsection 52(1) of the Act is replaced by the following:

Termination of undertakings by Deputy Minister

52. (1) Where, at any time after accepting an undertaking or undertakings with respect to any dumped or subsidized goods that were the subject of an investigation, the Deputy Minister

(*a*) is satisfied that the undertaking or any of the undertakings has been or is being violated,

(*b*) would not have accepted the undertaking or undertakings if the information available at that time had been available when the undertaking was accepted, or

(*c*) would not have accepted the undertaking or undertakings if the circumstances prevailing at that time had prevailed when the undertaking was accepted,

the Deputy Minister shall forthwith

(*d*) terminate the undertaking or undertakings,

(*e*) cause notice of the termination of the undertaking or undertakings to be given and published as provided in paragraph 34(1)(*a*) and filed with the Secretary in writing, and

(*f*) where the investigation has been suspended under subparagraph 50(*a*)(iii), cause it to be resumed.

174. Le paragraphe 51(1) de la même loi est remplacé par ce qui suit :

Fin de l'engagement sur demande

51. (1) Le sous-ministre met fin sans délai à un engagement si, dans les trente jours suivant l'avis donné conformément à l'alinéa 50*a*)(i) mais avant qu'une ordonnance ne soit rendue par le Tribunal en vertu du paragraphe 43(1), il en est requis par :

a) s'il s'agit de marchandises sous-évaluées, l'importateur, l'exportateur ou le plaignant;

b) s'il s'agit de marchandises subventionnées, l'importateur, l'exportateur ou le gouvernement du pays d'exportation, ou le plaignant.

175. Le paragraphe 52(1) de la même loi est remplacé par ce qui suit :

Fin de l'engagement

52. (1) Dans les cas où, après avoir accepté un engagement dans une enquête, le sous-ministre :

a) ou bien est convaincu que l'engagement n'a pas été ou n'est pas honoré;

b) ou bien n'aurait pas accepté l'engagement si les renseignements dont il dispose lui avaient été accessibles au moment de son acceptation;

c) ou bien n'aurait pas accepté l'engagement si les circonstances avaient été les mêmes au moment de son acceptation,

il doit immédiatement :

d) mettre fin à l'engagement;

e) faire donner et publier avis de la fin de l'engagement selon les modalités prévues à l'alinéa 34(1)*a*) et faire déposer cet avis auprès du secrétaire;

f) faire reprendre l'enquête qui a été suspendue en vertu du sous-alinéa 50*a*)(iii).

Clause 174

Under new **subsection 51(1)** the right of an importer, exporter, government of a country of export or a complainant to request termination of an undertaking within thirty days after notice of acceptance of the undertaking, is subject to the condition that the request be made before the Tribunal makes its order. This is consistent with AD Article 8.4 and SCM Article 18.4, which provide that in the event of an affirmative determination of dumping/subsidizing and injury, the undertaking is to continue in force.

Clause 175

New **paragraph 52(1)(f)** amends paragraph 52(1)(g) of the current Act to reflect the fact that an investigation is no longer necessarily suspended as a result of the acceptance of an undertaking by the Deputy Minister since, pursuant to new subsection 49(3), an exporter or government of a country of export whose undertaking offer has been accepted, can request that the investigation and inquiry be continued.

Termination where no dumping, etc.

(1.1) Where, at any time after the Deputy Minister accepts an undertaking or undertakings with respect to any dumped or subsidized goods that were the subject of an investigation,

(*a*) there has been a determination under subsection 41(1) or section 41.1 that

(i) there has been no dumping or subsidizing of the goods,

(ii) the margin of dumping of, or the amount of the subsidy on, the goods is insignificant, or

(iii) the actual or potential volume of dumped or subsidized goods is negligible,

(*b*) an order or finding has been made under subsection 43(1) that there has been no injury, retardation or threat of injury as a result of the dumping or subsidizing of the goods, or

(*c*) the Tribunal has, under subsection 76(4), (4.1) or (4.11) or 76.1(2), rescinded an order or finding with respect to the goods,

the Deputy Minister shall forthwith

(*d*) terminate the undertaking or undertakings, and

(*e*) cause notice of the termination of the undertaking or undertakings to be given and published as provided in paragraph 34(1)(*a*) and filed with the Secretary in writing.

Clôture en cas d'absence de dumping, de subventionnement, etc.

(1.1) Dans les cas où, après que le sous-ministre a accepté un engagement dans une enquête :

a) une des décisions suivantes est prise en vertu du paragraphe 41(1) ou de l'article 41.1 :

(i) il n'y a pas dumping ou subventionnement des marchandises,

(ii) la marge de dumping ou le montant de subvention relativement aux marchandises est minimal,

(iii) le volume actuel ou éventuel de marchandises sous-évaluées ou subventionnées est négligeable,

b) une ordonnance ou des conclusions rendues en vertu du paragraphe 43(1) établissent qu'il n'y a pas eu dommage, retard ou menace de dommage à la suite du dumping ou du subventionnement des marchandises,

c) le Tribunal a annulé, en vertu des paragraphes 76(4), (4.1) ou (4.11) ou 76.1(2), une ordonnance ou des conclusions relatives aux marchandises,

il doit immédiatement :

d) mettre fin à l'engagement;

e) faire donner et publier avis de la fin de l'engagement selon les modalités prévues à l'alinéa 34(1)*a*) et faire déposer cet avis auprès du secrétaire.

Termination where conditions no longer exist

(1.2) Except where the Tribunal has made an order or finding under subsection 43(1) that the dumping or subsidizing of the goods to which the preliminary determination applies has caused injury or retardation or is threatening to cause injury, and that order or finding has not been rescinded under subsection 76(4), (4.1) or (4.11) or 76.1(2), the Deputy Minister shall terminate the undertaking or undertakings where, at any time after accepting the undertaking or undertakings, the Deputy Minister is satisfied that, notwithstanding the termination of the undertaking or undertakings, the condition in paragraph 49(1)(*a*) or (*b*), as the case may be, would no longer exist.

Clôture en cas de modification de la situation

(1.2) Sauf dans les cas où le Tribunal a statué en vertu du paragraphe 43(1) que le dumping ou le subventionnement des marchandises visées par une décision provisoire a causé un dommage ou un retard ou menace de causer un dommage, et où la décision de celui-ci n'a pas été annulée en vertu du paragraphe 76(4), (4.1) ou (4.11) ou 76.1(2), le sous-ministre met fin à l'engagement s'il est convaincu que, à tout moment après l'acceptation de celui-ci, la situation visée aux alinéas 49(1)*a*) ou *b*), selon le cas, prendrait fin malgré la clôture de l'engagement.

Effect of termination of undertaking

(1.3) A termination of an undertaking under subsection (1.2) terminates all proceedings under this Act respecting the dumping or subsidizing of the goods to which the undertaking relates, unless, in any case where the Deputy Minister has accepted two or more undertakings, the Deputy Minister, for good reason, otherwise directs.

Effet de la clôture de l'engagement

(1.3) La clôture visée au paragraphe (1.2) met fin à toutes les procédures engagées sous le régime de la présente loi en matière de dumping ou de subventionnement des marchandises visées par l'engagement, sauf si, dans les cas où le sous-ministre a accepté plusieurs engagements, il a des motifs valables de donner des instructions contraires.

New **subsection 52(1.1)** requires the Deputy Minister to immediately terminate an undertaking and give notice thereof in accordance with paragraph 34(1)(a) where, following a request under subsection 49(3) that an investigation and inquiry be completed,

(a) the Deputy Minister determines under subsection 41(1) or, upon referral back by a Court, under section 41.1, that:

(i) there has been no dumping or subsidizing;

(ii) the margin of dumping of, or the amount of subsidy on the goods is *"insignificant"* [as defined in subsection 2(1)]; or

(iii) the actual or potential volume of dumped or subsidized goods is *"negligible"* [as defined in subsection 2(1)];

or

(b) the Tribunal makes an order under subsection 43(1) that there has been no injury, retardation or threat of injury as a result of the dumping or subsidizing of goods; or

(c) the Tribunal, upon review, rescinds an order or finding with respect to the goods, under subsection 76(4), 76(4.1), 76(4.11) or 76.1(2).

New **subsection 52(1.2)**, which implements Canada's obligations under AD Article 11.5 and SCM Article 21.5, requires the Deputy Minister to terminate an undertaking where the Deputy Minister is satisfied that there is no longer any dumping/subsidizing of the goods which has caused injury or retardation or is threatening to cause injury unless the Tribunal has made an order or finding of injury, retardation or threat of injury with respect to the goods, which has not been rescinded under subsection 76(4), 76(4.1), 76(4.11) or 76.1(2).

New **subsection 52(1.3)**, clarifies that the termination of an undertaking(s) will normally result in the termination of all proceedings with respect to all goods of the same description as those to which the undertaking(s) applied. This is based on the fact that, in accordance with the definition of *"undertaking"* in subsection 2(1) of the Act, undertakings are given by exporters who individually or collectively account for all or substantially all exports to Canada of the dumped or subsidized goods.

176. Subsection 53(1) of the Act is replaced by the following:

Review and renewal of undertaking by Deputy Minister

53. (1) Except where the Tribunal has made an order or finding under subsection 43(1) that the dumping or subsidizing of the goods to which the preliminary determination applies has caused injury or retardation or is threatening to cause injury and that order or finding has not been rescinded under subsection 76(4), (4.1) or (4.11) or 76.1(2), the Deputy Minister shall review the undertaking before the expiration of five years from the date on which it was accepted and before the expiration of each subsequent period, if any, for which it is renewed pursuant to this section and if, on any such review, the Deputy Minister is satisfied

(*a*) that the undertaking continues to serve the purpose for which it was intended, and

(*b*) that the Deputy Minister is not required to terminate it under section 52,

the Deputy Minister shall renew the undertaking for a further period of not more than five years.

176. Le passage du paragraphe 53(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Réexamen et renouvellement des engagements

53. (1) Sauf dans les cas où le Tribunal a statué en vertu du paragraphe 43(1) que le dumping ou le subventionnement des marchandises visées par une décision provisoire a causé un dommage ou un retard ou menace de causer un dommage, et où la décision de celui-ci n'a pas été annulée en vertu du paragraphe 76(4), (4.1) ou (4.11) ou 76.1(2), le sous-ministre réexamine l'engagement avant l'expiration des cinq ans suivant la date de son acceptation ou, en cas de renouvellement aux termes du présent article, avant l'expiration de chaque période de renouvellement; il renouvelle l'engagement pour une durée maximale de cinq ans s'il est convaincu :

a) d'une part, que l'engagement a encore sa raison d'être;

b) d'autre part, qu'il n'est pas tenu d'y mettre fin en vertu de l'article 52.

177. (1) Section 55 of the Act is renumbered as subsection 55(1).

(2) Paragraphs 55(1)(*b*) and (*c*) of the Act are replaced by the following:

(*b*) has, where applicable, received from the Tribunal an order or finding described in any of sections 4 to 6 with respect to the goods to which the final determination applies,

(*c*) in respect of any goods referred to in subsection (2), whether the goods are in fact goods of the same description as goods described in the order or finding,

177. (1) L'article 55 de la même loi devient le paragraphe 55(1).

(2) Les alinéas 55(1)*b*) et *c*) de la même loi sont remplacés par ce qui suit :

b) reçu, le cas échéant, l'ordonnance ou les conclusions du Tribunal visées à l'un des articles 4 à 6 au sujet des marchandises objet de la décision définitive,

le sous-ministre fait déterminer par un agent désigné, dans les six mois suivant la date de l'ordonnance ou des conclusions :

c) la question de savoir si les marchandises visées au paragraphe (2) sont en fait de même description que celles désignées dans l'ordonnance ou les conclusions;

Clause 176

New **subsection 53(1)** on the review and renewal of undertakings by the Deputy Minister implements Canada's rights/obligations under AD Article 11 and SCM Article 21 respecting the duration and review of undertakings.

RE-DETERMINATIONS AND APPEALS

Clause 177

Section 55 of the current *Special Import Measures Act* provides that, where the Deputy Minister has made a final determination and receives from the Tribunal a finding described in any of sections 3 to 6, the Deputy Minister shall cause a designated officer to determine:

(i) whether the goods released during the provisional period and, where applicable in the case of a Tribunal finding of massive dumping or massive subsidization, during the period up-to 90 days prior to the preliminary determination are goods described in the order or finding;

(ii) the normal value, export price and amount of subsidy on the goods released; and

(iii) the amount, if any, of the export subsidy.

The designated officer's determination shall be made no later than six months following the injury finding by the Tribunal.

Sub-clause 177(1) re-numbers section 55 as subsection 55(1).

Sub-clause 177(2) changes the reference to the time period to which the section 55 determination applies from *"the period described in subparagraph 4(b)(i) or (ii) or paragraph 5(b) or 6(b)"* to *"any goods referred to in subsection (2)"*. This change is a consequential amendment to subsection 55(1) resulting from the addition of the new subsection 55(2) indicating where subsection (1) applies.

(3) Section 55 of the Act is amended by adding the following after subsection (1):

Application

(2) Subsection (1) applies only in respect of

(*a*) goods released on or after the day on which a preliminary determination has been made, and on or before the day on which an undertaking has been accepted, in respect of the goods;

(*b*) goods described in paragraph 5(*b*) or 6(*b*);

(*c*) goods that are released on or after the day on which an undertaking with respect to those goods has been terminated pursuant to section 52 and on or before the day on which the Tribunal makes an order or finding pursuant to subsection 43(1) with respect to the goods; and

(*d*) goods described in paragraph 4(1)(*b*) or (2)(*c*).

(3) L'article 55 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Champ d'application

(2) Le paragraphe (1) ne s'applique qu'aux marchandises :

a) dédouanées à compter de la date de la décision provisoire et à la date de l'acceptation d'un engagement relatif à ces marchandises ou avant cette date;

b) désignées aux alinéas 5*b*) ou 6*b*);

c) dédouanées à compter de la date de la clôture d'un engagement relatif à ces marchandises en vertu de l'article 52 et à la date à laquelle le Tribunal rend une ordonnance ou des conclusions au sujet de ces marchandises en vertu du paragraphe 43(1) ou avant cette date;

d) désignées aux alinéas 4(1)*b*) ou (2)*c*).

178. Section 60 of the Act is renumbered as subsection 60(1) and is amended by adding the following:

Decision of Deputy Minister

(2) Notwithstanding subsection 25(2), any duties imposed, by virtue of this Act, on goods sold to an importer in Canada shall be included in the costs referred to in subparagraph 25(1)(*c*)(i) or (*d*)(v), as the case may be, where, in any re-determination referred to in subsection (1), the Deputy Minister is of the opinion that

(*a*) the goods were resold by the person referred to in paragraph 25(1)(*c*) who purchased the goods from the importer or by a subsequent purchaser at a price that is lower than the total of

(i) the price at which the seller acquired the goods, and

(ii) the administrative, selling and all other costs directly or indirectly attributable to the sale of the goods; and

(*b*) the export price, determined under section 24, of the goods is unreliable for a reason set out in subparagraph 25(1)(*b*)(ii).

178. L'article 60 de la même loi devient le paragraphe 60(1) et est modifié par adjonction de ce qui suit :

Décision du sous-ministre

(2) Par dérogation au paragraphe 25(2), les droits imposés en vertu de la présente loi sur les marchandises vendues à un importateur au Canada sont inclus dans les frais mentionnés aux sous-alinéas 25(1)*c*)(i) ou *d*)(v), selon le cas, si, dans le cadre d'une révision ou d'un réexamen visé au paragraphe (1), le sous-ministre est d'avis que :

a) les marchandises ont été revendues par la personne visée à l'alinéa 25(1)*c*) qui a acheté les marchandises de l'importateur ou par un acheteur subséquent à un prix inférieur à celui auquel le vendeur les a achetées, majoré des frais de vente et d'administration directement ou indirectement liés à la vente des marchandises;

b) le prix à l'exportation — déterminé en vertu de l'article 24 — des marchandises est sujet à caution pour une raison énoncée au sous-alinéa 25(1)*b*)(ii).

Sub-clause 177(3) adds a new subsection 55(2) to the *Act* denoting to what goods the determination in subsection 55(1) applies:

1. paragraph 55(2)(a) identifies those goods released on or after the day of the preliminary determination and on or before the day on which an undertaking is accepted;

2. paragraph (b) identifies goods released in the 90 day period preceding the preliminary determination, other than goods released before the initiation of the investigation;

3. paragraph (c) identifies goods released on or after the day on which an undertaking is terminated and on or before the day on which the Tribunal makes an injury finding with respect to the goods; and

4. paragraph (d) identifies goods released on or after the day on which the preliminary determination is made and ending on the day on which the Tribunal makes an order or finding or the day on which an undertaking is accepted.

The four points noted above are designed to capture all the time periods during which provisional duties are applicable and the time periods preceding the preliminary determination in cases of massive dumping or subsidization. This change has been made as a result of the requirement that undertakings be accepted only after a preliminary determination has been made in accordance with out WTO commitments under AD Article 8.2 and SCM Article 18.2.

Clause 178

Section 60 of the current *Special Import Measures Act* addresses the effect of a re-determination. If it is determined that additional duties are payable, the importer shall pay such additional duties. If it is determined that the whole or some part of the duties paid in respect of goods were not payable, then the whole or some part of the duties paid shall be returned to the importer.

Clause 178 re-numbers section 60 as subsection 60(1) and adds a new subsection 60(2) which complements the new subsection 25(2) added to the *Act* in accordance with sub-clause 159(3). The purpose of the new subsection 25(2) is to ensure that, where an exporter increases the export price of goods in order to eliminate the margin of dumping, anti-dumping duties assessed or owing under the Act are not included in all the costs which are "backed-out" of the resale price in Canada. If such anti-dumping duties were "backed-out", the result would be an artificial margin of dumping. Notwithstanding the fact in 25(2) that duties would not have to be included, the new subsection 60(2) allows the Deputy Minister to include duties paid under this Act in the costs referred to in

R.S., c. 1 (2nd Supp.), s. 207

179. Subsections 62.1(1) and (2) of the Act are replaced by the following:

Interest on amounts owing

62.1 (1) Any person who fails to pay any amount owing under paragraph 60(1)(*a*) shall pay, in addition to the amount owing, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month commencing thirty days after the amount became outstanding during which any amount remains outstanding, calculated on the amount outstanding.

Interest on refunds

(2) Any person who is given a refund under paragraph 60(1)(*b*) of an amount paid shall be given, in addition to the refund, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the amount was paid and the time the refund is given, calculated on the amount of the refund.

180. The Act is amended by adding the following after section 76:

Request by Minister of Finance for review

76.1 (1) Where at any time after the issuance, by the Dispute Settlement Body established pursuant to Article 2 of Annex 2 to the WTO Agreement, of a recommendation or ruling, the Minister of Finance considers it necessary to do so, having regard to the recommendation or ruling, the Minister of Finance may request that

(*a*) the Deputy Minister review any decision or determination or any portion of a decision or determination made under this Act; or

(*b*) the Tribunal review any order or finding described in any of sections 3 to 6, or any portion of such an order or finding and, in making the review, the Tribunal may re-hear any matter before deciding it.

179. Les paragraphes 62.1(1) et (2) de la même loi sont remplacés par ce qui suit :

L.R., ch. 1 (2e suppl.), art. 207

Intérêts sur montants dus

62.1 (1) Quiconque omet d'acquitter des montants dus en application de l'alinéa 60(1)*a*) verse, en plus des montants dus, des intérêts, au taux réglementaire ou déterminé de la manière réglementaire, sur les arriérés par mois ou fraction de mois s'écoulant entre la date survenant trente jours après l'échéance et le règlement des arriérés.

Intérêts sur restitutions

(2) Les bénéficiaires de restitutions, prévues à l'alinéa 60(1)*b*), de montants versés reçoivent, en plus des restitutions, des intérêts, au taux réglementaire ou déterminé de la manière réglementaire, sur les montants à restituer par mois ou fraction de mois s'écoulant entre le versement des montants et leur restitution.

180. La même loi est modifiée par adjonction, après l'article 76, de ce qui suit :

Intervention du ministre des Finances

76.1 (1) S'il l'estime nécessaire pour mettre en œuvre une recommandation ou une décision de l'Organe de règlement des différends constitué en vertu de l'article 2 de l'annexe 2 de l'Accord sur l'OMC, le ministre des Finances peut demander, compte tenu de la recommandation ou de la décision :

a) au sous-ministre de réexaminer, en totalité ou en partie, une décision rendue sous le régime de la présente loi;

b) au Tribunal de réexaminer, en totalité ou en partie, une ordonnance ou des conclusions rendues en vertu des articles 3 à 6; le Tribunal peut accorder une nouvelle audition sur cette question.

paragraphs 25(1)(c)(i) or (d)(v) in any re-determination referred to in subsection 60(1) where the Deputy Minister is of the opinion that:

1. the importer's resale price or any subsequent resale price for the goods is not sufficient to cover the seller's acquisition costs for the goods plus and amount for administrative, selling and all other costs directly or indirectly attributable to the goods; and

2. the export price as determined under section 24 is unreliable due to the presence of a compensatory arrangement as contemplated by subparagraph 25(1)(b)(ii).

This provision is designed to encourage importers and subsequent purchasers to pass-on to their customers all costs associated with dumped or subsidized goods. This change is in conformity with Canada's WTO obligations under AD Article 2.4.

Clause 179

Section 62.1 of the current *Special Import Measures Act* provides for the payment of interest on any amount of duty owing under paragraph 60(a) and any refund due to an importer under paragraph 60(b). The amount of interest owing or to be refunded is determined based on the prescribed rate of interest or in the prescribed manner.

Clause 179 replaces the existing references to subsections 60.1(1) and (2) with consequential amendments referring to the new paragraphs 60(1)(a) and 60(1)(b) required as a result of *Clause 178* which re-numbered section 60 as subsection 60(1).

Clause 180

As became apparent in the recent *Beer III* Case, the current *Special Import Measures Act* lacks an effective mechanism for the implementation of GATT panel decisions. New **section 76.1** provides such a mechanism. In this regard, section 76.1 provides the Minister of Finance with discretionary authority to request the Deputy Minister or the Tribunal to review all or any portion of a decision, determination, order or finding, in the light of a WTO Dispute Settlement Body recommendation or ruling, with a view to continuing the decision, determination, order or finding with or without amendment, or rescinding same and making such other decision, determination, order or finding as the Deputy Minister or Tribunal considers necessary.

Result of review

(2) On completion of a review under subsection (1), the Deputy Minister or the Tribunal, as the case may be, shall

(*a*) continue the decision, determination, order or finding without amendment;

(*b*) continue the decision, determination, order or finding with such amendments as the Deputy Minister or the Tribunal, as the case may be, considers necessary; or

(*c*) rescind the decision, determination, order or finding and make such other decision, determination, order or finding as the Deputy Minister or the Tribunal, as the case may be, considers necessary.

Reasons

(3) Where a decision, determination, order or finding is continued under paragraph (2)(*a*) or (*b*) or made under paragraph (2)(*c*), the Deputy Minister or the Tribunal, as the case may be, shall give reasons therefor and shall set out to what goods, including, where practicable, the name of the supplier and the country of export, the decision, determination, order or finding applies.

Notification of Minister of Finance

(4) The Deputy Minister or the Tribunal, as the case may be, shall notify the Minister of Finance of any decision, determination, order or finding continued under paragraph (2)(*a*) or (*b*) or made under paragraph (2)(*c*).

Deeming

(5) Any decision or determination continued by the Deputy Minister under paragraph (2)(*b*) or made by the Deputy Minister under paragraph (2)(*c*) is deemed to have been made under

(*a*) paragraph 41(1)(*a*), where the decision or determination was continued or made as a result of a review under this section of a final determination of the Deputy Minister under that paragraph;

(*b*) paragraph 41(1)(*b*), where the decision or determination was continued or made as a result of a review under this section of a decision of the Deputy Minister under that paragraph to cause an investigation to be terminated; or

(*c*) subsection 53(1), where the decision or determination was continued or made as a result of a review under this section of a decision of the Deputy Minister under that subsection to renew or not to renew an undertaking.

181. The definition "definitive decision" in subsection 77.01(1) of the Act is amended by adding the following after paragraph (*i*):

(*i*.1) an order or finding of the Tribunal under paragraph 76.1(2)(*b*) or (*c*);

Résultat du réexamen

(2) Une fois terminé le réexamen, le sous-ministre ou le Tribunal :

a) soit confirme la décision, l'ordonnance ou les conclusions;

b) soit confirme la décision, l'ordonnance ou les conclusions et les assortit des modifications qu'il estime indiquées;

c) soit annule la décision, l'ordonnance ou les conclusions et les remplace par celles qu'il estime indiquées.

Motifs

(3) Le sous-ministre et le Tribunal sont tenus de motiver les confirmations visées aux alinéas (2)*a*) ou *b*) ou les remplacements visés à l'alinéa (2)*c*) et d'indiquer quelles sont les marchandises visées et, si cela est possible, les fournisseurs et les pays d'exportation visés.

Notification du ministre des Finances

(4) Le sous-ministre et le Tribunal sont tenus de notifier le ministre des Finances des confirmations visées aux alinéas (2)*a*) ou *b*) ou des remplacements visés à l'alinéa (2)*c*).

Présomptions

(5) Les confirmations visées à l'alinéa (2)*b*) ou les remplacements visés à l'alinéa (2)*c*), effectués par le sous-ministre, sont considérés, selon le cas, comme :

a) la décision définitive prévue à l'alinéa 41(1)*a*);

b) la décision définitive de clôture de l'enquête prévue à l'alinéa 41(1)*b*);

c) la décision de renouveler ou non l'engagement prévue au paragraphe 53(1).

181. La définition de « décisions finales », au paragraphe 77.01(1) de la même loi, est modifiée par adjonction, après l'alinéa *i*), de ce qui suit :

i.1) l'ordonnance ou les conclusions du Tribunal rendues en vertu des alinéas 76.1(2)*b*) ou *c*);

Where the Deputy Minister continues a decision or determination with amendment or rescinds same and makes a new decision or determination, the amended or new decision or determination is deemed, by virtue of **subsection 76.1(5)**, to have been made under either paragraph 41(1)(a), 41(1)(b) or subsection 53(1), thus rendering the decision or determination subject to judicial review under subsection 96.1(1) or NAFTA/FTA panel review under subsection 77.011(1) or 77.11(1) of the *Special Import Measures Act*.

Clause 181

The proposed amendment of the definition of *"definitive decision"* in **subsection 77.01(1)** of the *Special Import Measures Act* renders the continuation of an order or finding with amendment by the Tribunal under paragraph 76.1(2)(b), or an order or finding made by the Tribunal under paragraph 76.1(2)(c), subject to NAFTA panel review.

182. The definition "definitive decision" in subsection 77.1(1) of the Act is amended by adding the following after paragraph (*i*):

(*i*.1) an order or finding of the Tribunal under paragraph 76.1(2)(*b*) or (*c*);

183. (1) Paragraph 85(1)(*b*) of the Act is replaced by the following:

(*b*) a non-confidential edited version or non-confidential summary of the information designated as confidential pursuant to paragraph (*a*) in sufficient detail to convey a reasonable understanding of the substance of the information or a statement

(i) that such a non-confidential edited version or non-confidential summary cannot be made, or

(ii) that such a non-confidential edited version or non-confidential summary would disclose facts that the person has a proper reason for wishing to keep confidential,

together with an explanation that justifies the making of any such statement.

(2) Paragraphs 85(2)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) the person does not provide a non-confidential edited version, a non-confidential summary or a statement referred to in paragraph (1)(*b*);

(*b*) the person provides a non-confidential edited version or a non-confidential summary of the information designated as confidential pursuant to paragraph (1)(*a*), but the Deputy Minister is satisfied that it does not comply with paragraph (1)(*b*);

1988, c. 65, s. 44

184. Subsection 96.1(5) of the Act is replaced by the following:

Hearing in summary way

(5) An application under this section shall be heard and determined without delay and in a summary way in accordance with the rules made in respect of applications for judicial review pursuant to sections 18.1 and 28 of the *Federal Court Act*.

182. La définition de « décisions finales », au paragraphe 77.1(1) de la même loi, est modifiée par adjonction, après l'alinéa *i*), de ce qui suit :

i.1) l'ordonnance ou les conclusions du Tribunal rendues en vertu des alinéas 76.1(2)*b*) ou *c*);

183. (1) L'alinéa 85(1)*b*) de la même loi est remplacé par ce qui suit :

b) d'autre part, soit une version ne comportant pas un résumé non confidentiel des renseignements désignés comme confidentiels ou un résumé ne comportant pas de tels renseignements en termes suffisamment précis pour permettre de les comprendre, soit une déclaration, accompagnée d'une explication destinée à la justifier, énonçant, selon le cas :

(i) qu'il est impossible de faire cette version ou ce résumé en question,

(ii) qu'une version ou un résumé communiquerait des faits qu'elle désire valablement garder confidentiels.

(2) Les alinéas 85(2)*a*) et *b*) de la même loi sont remplacés par ce qui suit :

a) elle ne fournit ni la version, ni le résumé ni la déclaration prévus à l'alinéa (1)*b*);

b) la version ou le résumé qu'elle fournit n'est pas, de l'avis du sous-ministre, conforme aux exigences de cet alinéa;

1988, ch. 65, art. 44

184. Le paragraphe 96.1(5) de la même loi est remplacé par ce qui suit :

Procédure sommaire d'audition

(5) Sont entendues immédiatement et selon une procédure sommaire les demandes faites en application du présent article conformément aux règles relatives au contrôle judiciaire prévues aux articles 18.1 et 28 de la *Loi sur la Cour fédérale*.

Clause 182

The proposed amendment of the definition of *"definitive decision"* in **subsection 77.1(1)** of the *Special Import Measures Act* renders the continuation of an order or finding with amendment by the Tribunal under paragraph 76.1(2)(b), or an order or finding by the Tribunal under paragraph 76.1(2)(c), subject to FTA panel review.

Clause 183

Whereas the current *Act* only allows for the submission of a non-confidential summary of information designated as confidential, new **paragraph 85(1)(b)** also allows for the submission of a non-confidential edited version of the information. An edited version of confidential information is generally easier to prepare and discloses more relevant information than a non-confidential summary, thereby minimizing the need for time-consuming follow-up on inadequate non-confidential summaries, by Department of National Revenue investigating officers. This time-saving is an important consideration, given the additional responsibilities which our investigating authorities will have to assume as a result of new WTO obligations.

Clause 184

An application for judicial review of certain orders, decisions or findings may be made to the Federal Court of Appeal under subsection 96.1(1). The amendment to subsection 96.1(5) requires that every hearing in respect of such an application be made in accordance with the Federal Court Rules made for judicial review applications pursuant to sections 18.1 and 28 of the Federal Court Act.

185. (1) Subsection 97(1) of the Act is amended by adding the following after paragraph (*a*):

(*a*.1) prescribing the factors that may be considered in determining whether the dumping or subsidizing of any goods has caused injury or retardation or is threatening to cause injury;

(2) Paragraph 97(1)(*c*) of the Act is repealed.

(3) Paragraph 97(1)(*e*) of the Act is replaced by the following:

(*e*) defining the expressions "cost of production", "a reasonable amount for administrative, selling and all other costs" and "a reasonable amount for profits" for the purpose of paragraph 19(*b*) or subparagraph 20(*c*)(ii);

(*e*.1) prescribing the manner of calculating the cost of production of goods and the administrative, selling and all other costs with respect to goods;

(4) Subsection 97(1) of the Act is amended by adding the following after paragraph (*f*):

(*f*.1) defining the expression "start-up period of production" for the purposes of section 23.1, including prescribing the factors to consider in determining the duration of such a period;

(*f*.2) prescribing, for the purposes of subsection 30.3(3), the manner for determining a margin of dumping, including prescribing the manner for determining the maximum margin of dumping that can be determined;

(5) Subsection 97(1) of the Act is amended by striking out the word "and" at the end of paragraph (*k*) and by adding the following after paragraph (*k*):

(*k*.1) providing for the method of determining the rate of exchange for the purpose of calculating the export price for export sales involving the sale of foreign currency on forward markets;

(*k*.2) providing for the manner of making adjustments to export prices in situations of sustained movement in the rate of exchange; and

185. (1) Le paragraphe 97(1) de la même loi est modifié par adjonction, après l'alinéa *a*), de ce qui suit :

a.1) prévoir les facteurs qui peuvent être pris en compte pour décider si le dumping ou le subventionnement de marchandises cause un dommage ou un retard ou menace de causer un dommage;

(2) L'alinéa 97(1)*c*) de la même loi est abrogé.

(3) L'alinéa 97(1)*e*) de la même loi est remplacé par ce qui suit :

e) définir, pour l'application de l'alinéa 19*b*) ou du sous-alinéa 20*c*)(ii), les termes « coût de production », « un montant raisonnable pour les frais, notamment les frais administratifs et les frais de vente » et « un montant raisonnable pour les bénéfices »;

e.1) prévoir le mode de calcul du coût de production de marchandises et des autres frais afférents, notamment les frais administratifs et de vente;

(4) Le paragraphe 97(1) de la même loi est modifié par adjonction, après l'alinéa *f*), de ce qui suit :

f.1) définir, pour l'application de l'article 23.1, « période de démarrage de la production », notamment prévoir les facteurs à prendre en compte pour fixer la durée de cette période;

f.2) prévoir, pour l'application du paragraphe 30.3(3), la manière d'établir la marge de dumping, notamment la manière d'établir la marge de dumping maximale;

(5) Le paragraphe 97(1) de la même loi est modifié par adjonction, après l'alinéa *k*), de ce qui suit :

k.1) prévoir le mode de détermination du taux de change applicable au calcul du prix à l'exportation lors d'une vente à l'exportation mettant en cause la vente de devises sur les marchés à terme;

k.2) prévoir la manière d'effectuer les ajustements des prix à l'exportation en cas de mouvements durables des taux de change;

Clause 185

Subsection 97(1) of the *Act* has been amended to provide authority for the making of regulations elaborating concepts, factors, and methodologies directly associated with new substantive provisions in the *Special Import Measures Act*, which implement our rights/obligations under the WTO Anti-dumping Agreement and the SCM Agreement.

186. (1) The Act is amended by replacing the expression "amount of the subsidy" with the expression "amount of subsidy" in the following provisions:

(*a*) the definition "undertaking" or "undertakings" in subsection 2(1);

(*b*) subsection 2(6);

(*c*) section 7;

(*d*) subparagraph 38(1)(*b*)(i);

(*e*) clause 41(1)(*a*)(iv)(B);

(*f*) paragraph 55(1)(*d*);

(*g*) subsection 60(1); and

(*h*) section 96.

(2) The English version of the Act is amended by replacing the expression "amount of the subsidy" with the expression "amount of subsidy" in the following provisions:

(*a*) paragraph 3(*b*);

(*b*) paragraphs 8(1)(*c*) and (*d*);

(*c*) paragraphs 8(1.1)(*a*) and (*b*); and

(*d*) paragraph 49(2)(*a*).

187. The Act is amended by replacing the expression "paragraph 34(*a*)" with the expression "paragraph 34(1)(*a*)" in the following provisions:

(*a*) subsection 39(1);

(*b*) paragraph 41(3)(*a*);

(*c*) paragraph 41(4)(*a*);

(*d*) subsections 41.1(1) and (2);

(*e*) subsection 51(2);

(*f*) subsection 53(4); and

(*g*) section 53.1.

186. (1) Dans les passages suivants de la même loi, « montant de la subvention » est remplacé par « montant de subvention » :

a) la division *b*)(ii)(B) de la définition de « engagement » ou « engagements » au paragraphe 2(1);

b) le paragraphe 2(6);

c) l'article 7;

d) le sous-alinéa 38(1)*b*)(i);

e) la division 41(1)*a*)(iv)(B);

f) l'alinéa 55(1)*d*);

g) le paragraphe 60(1);

h) l'article 96.

(2) Dans les passages suivants de la version anglaise de la même loi, « amount of the subsidy » est remplacé par « amount of subsidy » :

a) l'alinéa 3*b*);

b) les alinéas 8(1)*c*) et *d*);

c) les alinéas 8(1.1)*a*) et *b*);

d) l'alinéa 49(2)*a*).

187. Dans les passages suivants de la même loi, « alinéa 34*a*) » est remplacé par « alinéa 34(1)*a*) » :

a) le paragraphe 39(1);

b) l'alinéa 41(3)*a*);

c) l'alinéa 41(4)*a*);

d) les paragraphes 41.1(1) et (2);

e) le paragraphe 51(2);

f) le paragraphe 53(4);

g) l'article 53.1.

Transitional Provisions

188. In this section and section 189,

"commencement day" means the day on which this section comes into force;

"new Act" means the *Special Import Measures Act* as it read on the commencement day;

"new rules and regulations" means rules made under section 39, and regulations made under section 40, of the *Canadian International Trade Tribunal Act* as those sections read on the commencement day;

"old Act" means the *Special Import Measures Act* as it read on the day immediately before the commencement day;

"old rules and regulations" means rules made under section 39, and regulations made under section 40, of the *Canadian International Trade Tribunal Act* as those sections read on the day immediately before the commencement day;

"order or finding" has the same meaning as in subsection 2(1) of the *Special Import Measures Act*;

"Tribunal" means the Canadian International Trade Tribunal established by subsection 3(1) of the *Canadian International Trade Tribunal Act*.

"commencement day" / « *date de référence* »

"new Act" / « *nouvelle loi* »

"new rules and regulations" / « *nouveaux textes d'application* »

"old Act" / « *ancienne loi* »

"old rules and regulations" / « *anciens textes d'application* »

"order or finding" / « *ordonnance ou conclusions* »

"Tribunal" / « *Tribunal* »

Disposition of notified complaints

189. (1) Subject to this section, where, before the commencement day, notice of a complaint respecting the dumping or subsidizing of goods that is properly documented, within the meaning assigned to that expression by subsection 2(1) of the old Act, has been given pursuant to paragraph 32(1)(*a*) of the old Act, any proceeding, process or action in respect of the goods shall be continued and disposed of in accordance with the old Act and the old rules and regulations.

Dispositions transitoires

Définitions

188. Les définitions qui suivent s'appliquent au présent article et à l'article 189.

« ancienne loi » La *Loi sur les mesures spéciales d'importation*, dans sa version antérieure à la date de référence.

« anciens textes d'application » Les règles établies en vertu de l'article 39, et les règlements pris en vertu de l'article 40, de la *Loi sur le Tribunal canadien du commerce extérieur*, dans la version de ces articles antérieure à la date de référence.

« date de référence » La date d'entrée en vigueur du présent article.

« nouveaux textes d'application » Les règles établies en vertu de l'article 39, et les règlements pris en vertu de l'article 40, de la *Loi sur le Tribunal canadien du commerce extérieur*, dans la version de ces articles applicable à la date de référence.

« nouvelle loi » La *Loi sur les mesures spéciales d'importation*, dans sa version applicable à la date de référence.

« ordonnance ou conclusions » S'entend au sens du paragraphe 2(1) de la *Loi sur les mesures spéciales d'importation*.

« Tribunal » Le Tribunal canadien du commerce extérieur constitué par le paragraphe 3(1) de la *Loi sur le Tribunal canadien du commerce extérieur*.

« ancienne loi » / "old Act"

« anciens textes d'application » / "old rules and regulations"

« date de référence » / "commencement day"

« nouveaux textes d'application » / "new rules and regulations"

« nouvelle loi » / "new Act"

« ordonnance ou conclusions » / "order or finding"

« Tribunal » / "Tribunal"

Décisions relatives aux plaintes ayant fait l'objet d'un avis

189. (1) Sous réserve des autres dispositions du présent article, dans les cas où avis qu'un dossier d'une plainte concernant le dumping ou le subventionnement de marchandises est complet — au sens du paragraphe 2(1) de l'ancienne loi — a été donné en vertu de l'alinéa 32(1)*a*) de l'ancienne loi avant la date de référence, les mesures — procédures, décisions et autres — relatives aux marchandises se poursuivent et sont prises sous le régime de l'ancienne loi et des anciens textes d'application.

TRANSITIONAL PROVISIONS

Clause 188 - Definitions

Clause 188 defines, solely for the purpose of clause 189, various terms used throughout Clause 189.

Clause 189

Disposition of notified complaints

Sub-clause 189(1) provides that where a notice of complaint, properly documented, respecting dumping or subsidizing of goods, has been given before the commencement of this new Act the old Act and the old rules and regulations apply to any proceeding, process or action in respect of those goods.

Proceedings re goods subject to order made after commencement day

(2) Where the Tribunal makes an order or finding pursuant to subsection 43(1) of the *Special Import Measures Act* on or after the commencement day with respect to goods that are the subject of a complaint referred to in subsection (1), any subsequent proceeding, process or action in relation to any of those goods other than

(*a*) a judicial review or dispute settlement under Part I.1 or II of the *Special Import Measures Act* in relation to that order or finding and any proceeding, process or action in relation to the judicial review or dispute settlement,

(*b*) a proceeding, process or action in relation to any of those goods that were released before the commencement day, or

(*c*) a proceeding, process or action in relation to any of those goods that were released on or after the commencement day but on or before the day on which the Tribunal made the order or finding

shall be disposed of in accordance with the new Act and the new rules or regulations.

Mesures concernant les marchandises assujetties à l'ordonnance postérieure à la date de référence

(2) Dans les cas où le Tribunal rend une ordonnance ou des conclusions à la date de référence ou après cette date relativement aux marchandises ayant fait l'objet de la plainte visée au paragraphe (1), les mesures postérieures se prennent sous le régime de la nouvelle loi et des nouveaux textes d'application, à l'exception des mesures suivantes :

a) le contrôle judiciaire ou le règlement des différends prévu aux parties I.1 et II de la *Loi sur les mesures spéciales d'importation* relatif à cette ordonnance ou à ces conclusions ainsi que les mesures afférentes;

b) les mesures relatives aux marchandises qui ont été dédouanées avant la date de référence;

c) les mesures relatives aux marchandises qui ont été dédouanées à la date de référence ou après cette date, mais à la date ou avant la date à laquelle le Tribunal a rendu l'ordonnance ou les conclusions.

Effect of order or finding

(3) For greater certainty, any order or finding that is in effect on the commencement day shall, for the purposes of sections 3 to 6 of the new Act, have the same force and effect as if it were made under the new Act.

Effet de l'ordonnance et des conclusions

(3) Il est entendu que les ordonnances et les conclusions en vigueur à la date de référence ont, pour l'application des articles 3 à 6 de la nouvelle loi, la même valeur que si elles avaient été rendues en vertu de la nouvelle loi.

Review by the Tribunal

(4) A review by the Tribunal under subsection 76(2) of the *Special Import Measures Act* of an order or finding in effect on the commencement day shall be disposed of in accordance with

(*a*) the old Act and the old rules and regulations, where notice of the initiation of the review has been given before the commencement day; and

(*b*) the new Act and the new rules and regulations, where notice of the initiation of the review is given on or after the commencement day.

Réexamen par le Tribunal

(4) Le réexamen par le Tribunal, en vertu du paragraphe 76(2) de la *Loi sur les mesures spéciales d'importation*, des ordonnances ou des conclusions applicables à la date de référence est continué conformément :

a) à l'ancienne loi et aux anciens textes d'application, dans les cas où avis de l'ouverture du réexamen a été donné avant la date de référence;

b) à la nouvelle loi et aux nouveaux textes d'application, dans les cas où avis de l'ouverture du réexamen l'examen a été donné à la date de référence ou après cette date.

New Act does not justify review

(5) For the purposes of subsection 76(3) of the *Special Import Measures Act*, the Tribunal may not be satisfied that a review of an order or finding is warranted by reason only of the coming into force of the new Act and the new rules and regulations.

Réexamen non justifié par la nouvelle loi

(5) Pour l'application du paragraphe 76(3) de la *Loi sur les mesures spéciales d'importation*, le Tribunal ne peut être convaincu qu'une demande de réexamen d'une ordonnance ou de conclusions puisse être fondée uniquement sur le fait de l'entrée en vigueur de la nouvelle loi et des nouveaux textes d'application.

Proceedings re goods subject to order made after commencement day

Sub-clause 189(2) provides that, where a proceeding was commenced under the old Act, rules and regulations, but any order or finding made by the Tribunal, as to whether or not material injury, or the threat of material injury has been found, under subsection 43(1), was made on or after the commencement day, any subsequent proceedings in relation to those goods other than three exceptions, shall be under the new Act, rules and regulations. The three exceptions, dealing with subsequent proceedings, shall continue to be under the old Act, rules and regulations.

The three exceptions are: (a) any judicial review or dispute settlement, and any related proceedings; (b) proceedings in relation to goods, which refer to re-determinations and appeals under sections 56 to 61, which goods were released before the commencement day, and (c) such goods that may have been released on or after the commencement day, but still released on or before the order of the Tribunal under subsection 43(1), making a final determination of injury. This avoids the need to determine two values, under both old and new Acts, and allows the old Act to continue to apply to any proceeding, process or action that arises in respect of the goods.

Effect of order or finding

Sub-clause 189(3) provides greater certainty that, although an order or finding may have been made under the old Act, and in effect upon the new Act commencing, it is deemed to be an order or finding under the new Act, for the purposes of sections 3 to 6 of the new Act, which sections deal with liability for the payment of anti-dumping or countervailing duties. This further ensures that valid orders are in place for purposes of sections 3 to 6 of the new Act.

Review by Tribunal

Sub-clause 187(4) provides that, where the Tribunal initiates a review of an order under sections 3 to 6, on its own initiative, at the request of the Deputy Minister, or any other person or country, if the notice of the initiation is given before commencement day such a review is conducted under the old Act, rules and regulations, but if on or after commencement day, it is under the new Act, rules and regulations.

New Act does not justify review

Sub-clause 189(5) indicates that, where under subsection 76(3), the Tribunal must be satisfied that a review is warranted, the coming into force of the new Act, rules and regulations is not, by itself, a valid reason warranting a review.

Determination of normal value, etc, where undertaking.

(6) Any determination, on or after the commencement day, of a normal value, export price, amount of subsidy or margin of dumping in relation to any goods that are subject to an undertaking accepted before the commencement day shall be made in accordance with the new Act.

(6) Les déterminations, à la date de référence ou après cette date, de la valeur normale, du prix à l'exportation, du montant de subvention ou de la marge de dumping relative à des marchandises visées par un engagement accepté avant la date de référence sont effectuées conformément à la nouvelle loi.

Détermination de la valeur normale, etc., dans le cadre d'un engagement

Determination of normal value, etc

(7) A normal value, export price, amount of subsidy or margin of dumping determined in relation to goods under the old Act shall, for the purposes of goods released on or after the commencement day, other than goods to which paragraph (2)(*c*) applies, be deemed to have been made under the new Act.

(7) Toute détermination de la valeur normale, du prix à l'exportation, du montant de subvention ou de la marge de dumping relative à des marchandises effectuée conformément à l'ancienne loi est réputée, en ce qui concerne les marchandises dédouanées à la date de référence ou après cette date — sauf les marchandises visées par l'alinéa (2)*c*) —, avoir été effectuée conformément à la nouvelle loi.

Présomption

Redetermination of normal value, etc

(8) A redetermination of a normal value, export price, amount of subsidy or margin of dumping referred to in subsection (7) shall be made in accordance with the new Act.

(8) Les nouvelles déterminations de la valeur normale, du prix à l'exportation, du montant de subvention ou de la marge de dumping visées au paragraphe (7) sont effectuées conformément à la nouvelle loi.

Nouvelle détermination de la valeur normale, etc.

Application

Application

Application to goods from a NAFTA country

190. Sections 145 to 189, any provision of the *Special Import Measures Act* as enacted by any of those sections, or any rule or regulation made under the *Special Import Measures Act* as amended as a result of the Agreement and any regulations under subsection 13(2) of the *Customs Tariff*, to the extent that they apply for the purposes of the *Special Import Measures Act*, apply to goods from a NAFTA country, within the meaning assigned to that expression by subsection 2(1) of the *Special Import Measures Act*.

190. Les articles 145 à 189, toute disposition de la *Loi sur les mesures spéciales d'importation* édictée par ces articles, toute règle ou tout règlement d'application de cette loi modifiés pour l'application de l'Accord, ainsi que les règlements d'application du paragraphe 13(2) du *Tarif des douanes* dans la mesure où ils s'appliquent dans le cadre de la *Loi sur les mesures spéciales d'importation*, s'appliquent aux marchandises d'un pays ALÉNA, au sens du paragraphe 2(1) de cette loi.

Application aux marchandises d'un pays ALÉNA

Determination of normal value, etc, where undertaking

Sub-clause 189(6) provides that, in respect of undertakings accepted before the commencement day of the new Act, any subsequent determination on or after the commencement day, of normal value, export price, amount of subsidy or margin of dumping, which is done as often as annually, shall be done in accordance with the new Act.

Determination of normal value, etc.

Sub-clause 189(7) provides greater certainty that the determinations of normal value, export price, amount of subsidy or margin of dumping, made under the old Act, is still valid for the purposes of the new Act, with the exception of paragraph (2)(c) , which deals with proceedings in relation to goods released on or after the commencement day, but before a final order of the Tribunal, which goods become subject to an order made after the commencement day and therefore are under the new Act. Paragraph (2)(c) is exempted because proceedings, processes or actions in respect of goods subject to this paragraph are to remain subject to the old Act.

Redetermination of normal value

Sub-clause 189(8) provides that, unlike determinations referred to in Sub-clause 189(7), re-determinations of normal value, export price, amount of subsidy or margin of dumping under sections 56 to 61 of the Act will be made under the new Act.

Application to goods from a NAFTA country

Clause 190

Under Article 1902 of the *North American Free Trade Agreement* (NAFTA), an amendment by a NAFTA country to its anti-dumping or countervailing duty laws only applies to goods from another NAFTA country if the amending anti-dumping or countervailing duty statute so specifies. In this regard, Annex 1911 of NAFTA defines anti-dumping and countervailing duty statute, in the case of Canada, to mean the relevant provisions of the *Special Import Measures Act*, as amended, and any successor statutes. Clause 190 ensures that the amendments to the *Special Import Measures Act* and related regulations and rules, also apply to goods from our NAFTA partners.

TRADE-MARKS ACT

CLAUSES 191 - 202

TRADE-MARKS ACT

CLAUSES 191 - 202

Overview

The *Trade-marks Act* was adopted in 1954 and has been the subject of minor changes since then, including various procedural matters contained in the *Intellectual Property Law Improvement Act*.

Prior to the enactment of the *North American Free Trade Agreement Implementation Act*, the Act provided for a registered user system, under which all licensed users of a trade-mark had to be registered as a user to prevent the trade-mark's registration from being expunged. Under the NAFTA, however, the use of a trade-mark by a third party under the control of the owner must be considered as the use of the trade-mark for the purpose of maintaining the registration of the mark. Thus the registered user provisions were abolished.

Although it is possible to use an unregistered trade-mark, only registering the trade-mark under the Act gives the owner the exclusive right to use it, in Canada, in relation to the wares and services for which the registration was obtained.

TRIPS Commitments

There is a considerable overlap in this area between the NAFTA obligations and the obligations flowing from the Agreement on Trade-Related Aspects of Intellectual Property Rights (commonly referred to as "TRIPS"). Therefore, the amendments proposed to trade-mark provisions as such are relatively few. The amendments also include provisions regarding a new registration system, within the *Trade-marks Act*, for the protection of geographical indications of wines and spirits.

The main obligations that require amendments to Canada's trade-mark provisions are:

- The TRIPS Agreement requires national treatment protection for nationals of all WTO Members in respect of all intellectual property rights covered by the Agreement (Article 3).

- The TRIPS Agreement also requires the protection of flags, official emblems etc. of WTO countries and international intergovernmental organizations pursuant to a communication by the TRIPS Council (Article 63(2)).

- TRIPS provides that a trade-mark may only be cancelled for non-use after

an uninterrupted period of three years of non-use (Article 19).

TRIPS requires protection for geographical indications for wines and spirits (Article 23(1)), which are defined as indications which identify a good as originating in the territory of a WTO Member, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin (Article 22(1)). Excepted from this obligation are:

- continued and similar use of an indication for at least ten years prior to April 15, 1994 or any time in good faith before that date (Article 24(4));
- previous registration or good faith use of a trade-mark before the protection is granted in the country of origin or before the coming into force of the protection in Canada (Article 24(5));
- indications which are identical with terms customary in common language as the common name for goods or services (Article 24(6));
- use of a personal or business name, unless it is misleading to the public (Article 24(8));
- indications which have ceased to be protected or have fallen into disuse in the country of origin (Article 24(9)).

191. (1) The definition "country of the Union" in section 2 of the *Trade-marks Act* is replaced by the following:

"country of the Union" *« pays de l'Union »*

"country of the Union" means

(*a*) any country that is a member of the Union for the Protection of Industrial Property constituted under the Convention, or

(*b*) any WTO Member;

191. (1) La définition de « pays de l'Union », à l'article 2 de la *Loi sur les marques de commerce*, est remplacée par ce qui suit :

« pays de l'Union » Tout pays qui est membre de l'Union pour la protection de la propriété industrielle, constituée en vertu de la Convention, ou tout membre de l'OMC. *« pays de l'Union » "country of the Union"*

(2) Section 2 of the Act is amended by adding the following in alphabetical order:

(2) L'article 2 de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

"geographical indication" *« indication géographique »*

"geographical indication" means, in respect of a wine or spirit, an indication that

(*a*) identifies the wine or spirit as originating in the territory of a WTO Member, or a region or locality of that territory, where a quality, reputation or other characteristic of the wine or spirit is essentially attributable to its geographical origin, and

(*b*) except in the case of an indication identifying a wine or spirit originating in Canada, is protected by the laws applicable to that WTO Member;

"protected geographical indication" *« indication géographique protégée »*

"protected geographical indication" means a geographical indication that is on the list kept pursuant to subsection 11.3(1);

"WTO Agreement" *« Accord sur l'OMC »*

"WTO Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*;

"WTO Member" *« membre de l'OMC »*

"WTO Member" means a Member of the World Trade Organization established by Article I of the WTO Agreement.

« Accord sur l'OMC » S'entend de l'Accord au sens du paragraphe 2(1) de la *Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce*. *« Accord sur l'OMC » "WTO Agreement"*

« indication géographique » Désignation d'un vin ou spiritueux par la dénomination de son lieu d'origine — territoire d'un membre de l'OMC, ou région ou localité de ce territoire — dans les cas où sa réputation ou une autre de ses qualités ou caractéristiques peuvent être essentiellement attribuées à cette origine géographique; cette désignation doit être protégée par le droit applicable à ce membre, sauf si le lieu d'origine est le Canada. *« indication géographique » "geographical indication"*

« indication géographique protégée » Indication géographique figurant sur la liste prévue au paragraphe 11.3(1). *« indication géographique protégée » "protected geographical indication"*

« membre de l'OMC » Membre de l'Organisation mondiale du commerce instituée par l'article I de l'Accord sur l'OMC. *« membre de l'OMC » "WTO Member"*

Clause 191 - definitions

Section 2 broadens the definition of "country of the Union" to include Members of the World Trade Organization, so that Paris Convention countries and WTO members are given the same treatment under the Act. In addition, new definitions have been included for "geographical indication", "protected geographical indication", "WTO Agreement" and "WTO Member".

1993, c.15, s. 58(2)

192. (1) Paragraphs 9(1)(*i*) and (*i*.1) of the Act are replaced by the following:

(*i*) any territorial or civic flag, or any national, territorial or civic arms, crest or emblem, of a country of the Union, if the flag, arms, crest or emblem is on a list communicated under article 6ter of the Convention and publicly given by the Registrar and, in respect of a WTO Member, any requirements respecting notification imposed under paragraph 2 of Article 63 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement are met;

(*i*.1) any official sign or hallmark indicating control or warranty adopted by a country of the Union, if the sign or hallmark is on a list communicated under article 6ter of the Convention and publicly given by the Registrar and, in respect of a WTO Member, any requirements respecting notification imposed under paragraph 2 of Article 63 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement are met;

1993, ch. 15, par. 58(2)

192. (1) Les alinéas 9(1)*i*) et *i*.1) de la même loi sont remplacés par ce qui suit :

i) les drapeaux territoriaux ou civiques ou les armoiries, écussons ou emblèmes nationaux, territoriaux ou civiques, d'un pays de l'Union, qui figurent sur une liste communiquée conformément à l'article 6ter de la Convention et ont fait l'objet d'un avis public du registraire et pour lesquels, dans le cas d'un membre de l'OMC, ont été remplies les exigences en matière de notification prévues au paragraphe 2 de l'article 63 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord sur l'OMC;

i.1) tout signe ou poinçon officiel de contrôle et garantie qui a été adopté par un pays de l'Union, qui figure sur une liste communiquée conformément à l'article 6ter de la Convention et a fait l'objet d'un avis public du registraire et pour lequel, dans le cas d'un membre de l'OMC, ont été remplies les exigences en matière de notification prévues au paragraphe 2 de l'article 63 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord sur l'OMC;

1993, c. 15, s. 58(2)

(2) Paragraph 9(1)(*i*.3) of the Act is replaced by the following:

(*i*.3) any armorial bearing, flag or other emblem, or any abbreviation of the name, of an international intergovernmental organization, if the armorial bearing, flag, emblem or abbreviation is on a list communicated under article 6ter of the Convention and publicly given by the Registrar and, in respect of a WTO Member, any requirements respecting notification imposed under paragraph 2 of Article 63 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement are met;

1993, ch. 15, par. 58(2)

(2) L'alinéa 9(1)*i*.3) de la même loi est remplacé par ce qui suit :

i.3) les armoiries, les drapeaux ou autres emblèmes d'une organisation intergouvernementale internationale, ainsi que son sigle, qui figurent sur une liste communiquée conformément à l'article 6ter de la Convention et ont fait l'objet d'un avis public du registraire et pour lesquels, dans le cas d'un membre de l'OMC, ont été remplies les autres exigences en matière de notification prévues au paragraphe 2 de l'article 63 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord sur l'OMC;

Clause 192 - protection of flags, official emblems etc.

Paragraphs 9(1)(*i*) and (*i*.1) extend the protection enjoyed by flags, official emblems etc. of Paris Convention countries that are on a list communicated under Article 6 *ter* of the Paris Convention (1967), to those contained in similar communications under TRIPS Article 63(2).

Paragraph 9(1)(*i*.3) extends the protection currently enjoyed by flags, official emblems etc. of international intergovernmental organizations that are on a list communicated under Article 6 *ter* of the Paris Convention (1967), to those contained in similar communications under TRIPS Article 63(2).

193. The Act is amended by adding the following after section 11.1:

193. La même loi est modifiée par adjonction, après l'article 11.1, de ce qui suit :

Definitions

11.11 In sections 11.12 to 11.2,

11.11 Les définitions qui suivent s'appliquent aux articles 11.12 à 11.2.

Définitions

"Minister" « *ministre* »

"Minister" means the member of the Queen's Privy Council for Canada designated as the Minister for the purposes of sections 11.12 to 11.2;

« ministre » Le membre du Conseil privé de la Reine pour le Canada chargé par le gouverneur en conseil de l'application des articles 11.12 à 11.2.

« ministre » "Minister"

"responsible authority" « *autorité compétente* »

"responsible authority" means, in relation to a wine or spirit, the person, firm or other entity that, in the opinion of the Minister, is, by reason of state or commercial interest, sufficiently connected with and knowledgeable of that wine or spirit to be a party to any proceedings in respect of an objection filed under subsection 11.13(1).

« autorité compétente » Dans le cas d'un vin ou spiritueux, la personne, firme ou autre entité qui, de l'avis du ministre, a, du fait d'intérêts commerciaux ou de son statut étatique, des connaissances et des liens suffisants à leur égard pour être partie à la procédure d'opposition visée au paragraphe 11.13(1).

« autorité compétente » "responsible authority"

List

11.12 (1) There shall be kept under the supervision of the Registrar a list of geographical indications.

11.12 (1) La liste des indications géographiques est tenue sous la surveillance du registraire.

Liste

Statement of Minister

(2) Where a statement by the Minister, setting out in respect of an indication the information mentioned in subsection (3), is published in the *Canada Gazette* and

(*a*) a statement of objection has not been filed and served on the responsible authority in accordance with subsection 11.13(1) and the time for the filing of the statement of objection has expired, or

(*b*) a statement of objection has been so filed and served, but it has been withdrawn or deemed under subsection 11.13(6) to have been withdrawn or it has been rejected pursuant to subsection 11.13(7) or, if an appeal is taken, it is rejected pursuant to the final judgment given in the appeal,

the Registrar shall enter the indication on the list of geographical indications kept pursuant to subsection (1).

(2) Le registraire inscrit sur la liste les indications à l'égard desquelles, le ministre ayant fait publier dans la *Gazette du Canada* un énoncé d'intention donnant les renseignements visés au paragraphe (3) :

a) aucune déclaration d'opposition n'a été déposée ni signifiée à l'autorité compétente dans le délai imparti par le paragraphe 11.13(1);

b) la déclaration d'opposition, bien que présentée et signifiée, a été retirée — ou réputée l'avoir été en vertu du paragraphe 11.13(6) — , rejetée dans le cadre du paragraphe 11.13(7) ou, en cas d'appel, a été rejetée par un jugement définitif sur la question.

Énoncé d'intention du ministre

Information

(3) For the purposes of subsection (2), the statement by the Minister must set out the following information in respect of an indication:

(*a*) that the Minister proposes that the indication be entered on the list of geographical indications kept pursuant to subsection (1);

(*b*) that the indication identifies a wine or that the indication identifies a spirit;

(3) Les renseignements suivants concernant l'indication doivent figurer dans l'énoncé d'intention visé au paragraphe (2) :

a) l'intention du ministre de faire inscrire l'indication sur la liste des indications géographiques;

b) la nature — vin ou spiritueux — du produit visé par l'indication;

Renseignements

Clause 193 - new registration system of geographical indications of wines and spirits

Section 11.11 provides definitions for the terms "Minister" and "responsible authority".

Subsection 11.12(1) establishes a list of protected geographical indications under the supervision of the Registrar of Trade-marks.

Subsection 11.12(2) provides for the registration of geographical indications by the Registrar, following publication of a statement of intent by the Minister in the *Canada Gazette* and the disposition of any statements of objection.

Subsection 11.12(3) sets out the information that must be contained in the Minister's statement of intent.

(*c*) the territory, or the region or locality of a territory, in which the wine or spirit is identified as originating;

(*d*) the name of the responsible authority in relation to the wine or spirit and the address of the responsible authority's principal office or place of business in Canada, if any, and if the responsible authority has no office or place of business in Canada, the name and address in Canada of a person or firm on whom service of any document or proceedings in respect of an objection may be given or served with the same effect as if they had been given to or served on the responsible authority itself; and

(*e*) the quality, reputation or other characteristic of the wine or spirit that, in the opinion of the Minister, qualifies that wine or spirit as a geographical indication.

Removal from list

(4) The Registrar shall remove an indication from the list of geographical indications kept pursuant to subsection (1) on the publication in the *Canada Gazette* of a statement by the Minister that the indication is to be removed.

Statement of objection

11.13 (1) Within three months after the publication in the *Canada Gazette* of a statement referred to in subsection 11.12(2), any person interested may, on payment of the prescribed fee, file with the Registrar, and serve on the responsible authority in the prescribed manner, a statement of objection.

Ground

(2) A statement of objection may be based only on the ground that the indication is not a geographical indication.

Content

(3) A statement of objection shall set out

(*a*) the ground of objection in sufficient detail to enable the responsible authority to reply thereto; and

(*b*) the address of the objector's principal office or place of business in Canada, if any, and if the objector has no office or place of business in Canada, the address of the principal office or place of business abroad and the name and address in

c) le lieu d'origine — territoire, ou région ou localité de celui-ci — du vin ou spiritueux;

d) le nom de l'autorité compétente à l'égard du vin ou spiritueux et l'adresse de son siège ou de son établissement au Canada le cas échéant ou, à défaut, les nom et adresse au Canada d'une personne ou firme à qui des documents peuvent être remis ou des actes de procédure signifiés pour valoir remise ou signification à l'autorité compétente elle-même;

e) la réputation ou l'autre qualité ou caractéristique du vin ou spiritueux qui justifie d'en faire une indication géographique.

Suppression d'indications

(4) Le registraire supprime de la liste toute inscription relative à une indication sur publication par le ministre, dans la *Gazette du Canada*, d'un énoncé d'intention à cette fin.

Déclaration d'opposition

11.13 (1) Toute personne intéressée peut, dans les trois mois suivant la publication dans la *Gazette du Canada* de l'énoncé prévu au paragraphe 11.12(2), et sur paiement du droit prescrit, produire au bureau du registraire et signifier à l'autorité compétente, de la manière prescrite, une déclaration d'opposition.

Motif

(2) Le seul motif qui peut être invoqué à l'appui de l'opposition est le fait que l'indication n'est pas une indication géographique.

Teneur

(3) La déclaration d'opposition indique :

a) le motif de l'opposition, avec détails suffisants pour permettre à l'autorité compétente d'y répondre;

b) l'adresse du siège ou de l'établissement de l'opposant au Canada, le cas échéant, ou, à défaut, l'adresse de son siège ou de son établissement à l'étranger et les nom et adresse, au Canada, d'une personne ou firme à qui tout document concernant l'op-

Subsection 11.12(4) provides for the removal of geographical indications from the list of geographical indications, following the publication of a statement of intent by the Minister in the *Canada Gazette*.

Section 11.13 sets out the objection procedure in respect of the Minister's statement of intent regarding geographical indications.

Canada of a person or firm on whom service of any document in respect of the objection may be made with the same effect as if it had been served on the objector.

position peut être signifié pour valoir signification à l'opposant lui-même.

Counter statement

(4) Within three months after a statement of objection has been served on the responsible authority, the responsible authority may file a counter statement with the Registrar and serve a copy on the objector in the prescribed manner, and if the responsible authority does not so file and serve a counter statement, the indication shall not be entered on the list of geographical indications.

(4) L'autorité compétente peut, dans les trois mois suivant la date à laquelle la déclaration d'opposition lui a été signifiée, produire auprès du registraire et signifier à l'opposant, de la manière prescrite, une contre-déclaration; à défaut par elle de ce faire, l'indication n'est pas inscrite sur la liste.

Contre-déclaration

Evidence and hearing

(5) Both the objector and the responsible authority shall be given an opportunity, in the manner prescribed, to submit evidence and to make representations to the Registrar unless

(5) Il est fourni, de la manière prescrite, à l'opposant et à l'autorité compétente l'occasion de présenter la preuve sur laquelle ils s'appuient et de se faire entendre par le registraire, sauf dans les cas suivants :

Preuve et audition

(*a*) the responsible authority does not file and serve a counter statement in accordance with subsection (4) or if, in the prescribed circumstances, the responsible authority does not submit evidence or a statement that the responsible authority does not wish to submit evidence; or

a) l'autorité compétente ne produit ni ne signifie la contre-déclaration visée au paragraphe (4) ou, dans les circonstances prescrites, elle omet de présenter des éléments de preuve ou une déclaration énonçant son désir de ne pas le faire;

(*b*) the objection is withdrawn or deemed under subsection (6) to have been withdrawn.

b) l'opposition est retirée, ou réputée retirée, au titre du paragraphe (6).

Withdrawal of objection

(6) The objection shall be deemed to have been withdrawn if, in the prescribed circumstances, the objector does not submit evidence or a statement that the objector does not wish to submit evidence.

(6) Si, dans les circonstances prescrites, l'opposant omet de présenter des éléments de preuve ou une déclaration énonçant son désir de ne pas le faire, l'opposition est réputée retirée.

Retrait de l'opposition

Decision

(7) After considering the evidence and representations of the objector and the responsible authority, the Registrar shall decide that the indication is not a geographical indication or reject the objection, and notify the parties of the decision and the reasons for the decision.

(7) Après avoir examiné la preuve et les observations des parties, le registraire décide que l'indication n'est pas une indication géographique ou rejette l'opposition et notifie aux parties sa décision motivée.

Décision

Prohibited adoption of indication for wines

11.14 (1) No person shall adopt in connection with a business, as a trade-mark or otherwise,

11.14 (1) Nul ne peut adopter à l'égard d'une entreprise, comme marque de commerce ou autrement :

Interdiction d'adoption : vins

(*a*) a protected geographical indication identifying a wine in respect of a wine not originating in the territory indicated by the protected geographical indication; or

a) une indication géographique protégée désignant un vin pour un vin dont le lieu d'origine ne se trouve pas sur le territoire visé par l'indication géographique protégée;

(*b*) a translation in any language of the geographical indication in respect of that wine.

b) la traduction, en quelque langue que ce soit, de l'indication géographique relative à ce vin.

Prohibited use

(2) No person shall use in connection with a business, as a trade-mark or otherwise,

(2) Nul ne peut utiliser à l'égard d'une entreprise, comme marque de commerce ou autrement :

Interdiction d'usage

(*a*) a protected geographical indication identifying a wine in respect of a wine not originating in the territory indicated by the protected geographical indication or adopted contrary to subsection (1); or

a) une indication géographique protégée désignant un vin pour un vin dont le lieu d'origine ne se trouve pas sur le territoire visé par l'indication géographique protégée ou adoptée en contravention avec le paragraphe (1);

(*b*) a translation in any language of the geographical indication in respect of that wine.

b) la traduction, en quelque langue que ce soit, de l'indication géographique relative à ce vin.

Section 11.14 sets out the scope of protection for registered geographical indications in respect of wines.

Prohibited adoption of indication for spirits

11.15 (1) No person shall adopt in connection with a business, as a trade-mark or otherwise,

(*a*) a protected geographical indication identifying a spirit in respect of a spirit not originating in the territory indicated by the protected geographical indication; or

(*b*) a translation in any language of the geographical indication in respect of that spirit.

Prohibited use

(2) No person shall use in connection with a business, as a trade-mark or otherwise,

(*a*) a protected geographical indication identifying a spirit in respect of a spirit not originating in the territory indicated by the protected geographical indication or adopted contrary to subsection (1); or

(*b*) a translation in any language of the geographical indication in respect of that spirit.

Exception for personal names

11.16 (1) Sections 11.14 and 11.15 do not prevent a person from using, in the course of trade, that person's name or the name of the person's predecessor-in-title, except where the name is used in such a manner as to mislead the public.

Exception for comparative advertising

(2) Subject to subsection (3), sections 11.14 and 11.15 do not prevent a person from using a protected geographical indication in comparative advertising in respect of a wine or spirit.

Exception not applicable to packaging

(3) Subsection (2) does not apply to comparative advertising on labels or packaging associated with a wine or spirit.

Interdiction d'adoption : spiritueux

11.15 (1) Nul ne peut adopter à l'égard d'une entreprise, comme marque de commerce ou autrement :

a) une indication géographique protégée désignant un spiritueux pour un spiritueux dont le lieu d'origine ne se trouve pas sur le territoire visé par l'indication géographique protégée;

b) la traduction, en quelque langue que ce soit, de l'indication géographique relative à ce spiritueux.

Interdiction d'usage

(2) Nul ne peut utiliser à l'égard d'une entreprise, comme marque de commerce ou autrement :

a) une indication géographique protégée désignant un spiritueux pour un spiritueux dont le lieu d'origine ne se trouve pas sur le territoire visé par l'indication géographique protégée ou adoptée en contravention avec le paragraphe (1);

b) la traduction, en quelque langue que ce soit, de l'indication géographique relative à ce spiritueux.

Exception — usage de son propre nom

11.16 (1) Les articles 11.14 et 11.15 n'ont pas pour effet d'empêcher quiconque d'utiliser, dans la pratique du commerce, son nom ou celui de son prédécesseur en titre, sauf si cette utilisation est faite de façon à induire le public en erreur.

Exception — publicité comparative

(2) Sous réserve du paragraphe (3), les articles 11.14 et 11.15 n'ont pas pour effet d'empêcher quiconque d'utiliser une indication géographique protégée pour la publicité comparative relative à un vin ou à un spiritueux.

Non-application de l'exception à l'emballage

(3) Le paragraphe (2) ne s'applique pas à la publicité comparative figurant sur les étiquettes ou l'emballage relatifs à un vin ou spiritueux.

Section 11.15 sets out the scope of protection for registered geographical indications in respect of spirits.

Subsection 11.16(1) safeguards the use of a person's name or of that person's predecessor in business, in accordance with TRIPS Article 24(8).

Subsections 11.16(2) and 11.16(3) permit comparative advertising in respect of wines or spirits but not on labels or packaging associated with a wine or spirit.

Continued use

11.17 (1) Where a Canadian has used a protected geographical indication in a continuous manner in relation to any business or commercial activity in respect of a wine or spirit

(*a*) in good faith before April 15, 1994, or

(*b*) for at least ten years before that date,

section 11.14 or 11.15, as the case may be, does not apply to any continued or similar use by that Canadian.

Definition of "Canadian"

(2) For the purposes of this section, "Canadian" includes

(*a*) a Canadian citizen;

(*b*) a permanent resident within the meaning of the *Immigration Act* who has been ordinarily resident in Canada for not more than one year after the time at which the permanent resident first became eligible to apply for Canadian citizenship; and

(*c*) an entity that carries on business in Canada.

Exception for disuse

11.18 (1) Notwithstanding sections 11.14 and 11.15 and paragraphs 12(1)(*g*) and (*h*), nothing in any of those provisions prevents the adoption, use or registration as a trade-mark or otherwise, in connection with a business, of a protected geographical indication identifying a wine or spirit if the indication has ceased to be protected by the laws applicable to the WTO Member for which the indication is protected, or has fallen into disuse in that Member.

Exceptions for customary names

(2) Notwithstanding sections 11.14 and 11.15 and paragraphs 12(1)(*g*) and (*h*), nothing in any of those provisions prevents the adoption, use or registration as a trade-mark or otherwise, in connection with a business, of an indication in respect of a wine or spirit

(*a*) that is identical with a term customary in common language in Canada as the common name for the wine or spirit, as the case may be; or

(*b*) that is identical with a customary name of a grape variety existing in Canada on or before the day on which the Agreement comes into force.

Usage continu

11.17 (1) Les articles 11.14 et 11.15 ne s'appliquent pas à l'usage continu et similaire, par un Canadien, d'une indication géographique protégée qu'il a utilisée à l'égard d'une entreprise ou activité commerciale pour un vin ou spiritueux et de manière continue :

a) soit de bonne foi avant le 15 avril 1994;

b) soit pendant au moins dix ans avant cette date.

Définition de « Canadiens »

(2) Sont considérés comme des Canadiens, pour l'application du présent article :

a) les citoyens canadiens;

b) les résidents permanents, au sens de la *Loi sur l'immigration*, qui n'ont pas résidé habituellement au Canada pour plus d'un an après la date à laquelle ils sont devenus admissibles à la demande de citoyenneté canadienne;

c) les entités qui exploitent une entreprise au Canada.

Exception — non-usage

11.18 (1) Les articles 11.14 et 11.15 et les alinéas 12(1)*g*) et *h*) n'ont pas pour effet d'empêcher l'adoption, l'utilisation ou l'enregistrement à l'égard d'une entreprise, comme marque de commerce ou autrement, d'une indication géographique désignant un vin ou spiritueux et qui a cessé d'être protégée par le droit applicable au membre de l'OMC en faveur duquel l'indication est protégée, ou est tombée en désuétude chez ce membre.

Exception — nom usuel

(2) Les articles 11.14 et 11.15 et les alinéas 12(1)*g*) et *h*) n'ont pas pour effet d'empêcher l'adoption, l'utilisation ou l'enregistrement à l'égard d'une entreprise, comme marque de commerce ou autrement, d'une indication géographique désignant un vin ou spiritueux et qui est identique :

a) soit au terme usuel employé dans le langage courant au Canada comme nom commun du vin ou spiritueux;

b) soit au nom usuel d'une variété de cépage existant au Canada à la date d'entrée en vigueur de l'Accord.

Section 11.17 protects the continued use of geographical indications based on business activity before April 15, 1994 (the date of the signing of the Final Act of the Uruguay Round in Marrakesh), under specified conditions, in accordance with TRIPS Article 24(4).

Subsection 11.18(1) permits the use of geographical indications that are no longer protected or have fallen into disuse in the country of origin, in accordance with TRIPS Article 24(9).

Subsection 11.18(2) permits the use of geographical indications that is identical with a term customary in common language in Canada or with a customary name of a grape variety existing in Canada, in accordance with TRIPS Article 24(6).

Exception for generic names for wines

(3) Notwithstanding sections 11.14 and 11.15 and paragraphs 12(1)(*g*) and (*h*), nothing in any of those provisions prevents the adoption, use or registration as a trade-mark or otherwise, in connection with a business, of the following indications in respect of wines:

(*a*) Champagne;

(*b*) Port;

(*c*) Porto;

(*d*) Sherry;

(*e*) Chablis;

(*f*) Burgundy;

(*g*) Bourgogne;

(*h*) Rhine;

(*i*) Rhin;

(*j*) Sauterne;

(*k*) Sauternes;

(*l*) Claret;

(*m*) Bordeaux;

(*n*) Chianti;

(*o*) Madeira;

(*p*) Malaga;

(*q*) Marsala;

(*r*) Medoc;

(*s*) Médoc;

(*t*) Moselle;

(*u*) Mosel; and

(*v*) Tokay.

(3) Les articles 11.14 et 11.15 et les alinéas 12(1)*g*) et *h*) n'ont pas pour effet d'empêcher l'adoption, l'utilisation ou l'enregistrement à l'égard d'une entreprise, comme marque de commerce ou autrement, des indications suivantes, pour ce qui est des vins :

a) Champagne;

b) Port;

c) Porto;

d) Sherry;

e) Chablis;

f) Burgundy;

g) Bourgogne;

h) Rhine;

i) Rhin;

j) Sauterne;

k) Sauternes;

l) Claret;

m) Bordeaux;

n)Chianti;

o) Madeira;

p) Malaga;

q) Marsala;

r) Medoc;

s) Médoc;

t) Moselle;

u) Mosel;

v) Tokay.

Exception — noms génériques de vins

Subsection 11.18(3) provides a list of indications in respect of wines that are terms customary in common language in Canada and permits the use of such indications, in accordance with TRIPS Article 24(6).

Exception for generic names for spirits

(4) Notwithstanding sections 11.14 and 11.15 and paragraphs 12(1)(*g*) and (*h*), nothing in any of those provisions prevents the adoption, use or registration as a trade-mark or otherwise, in connection with a business, of the following indications in respect of spirits:

(*a*) Grappa;

(*b*) Marc;

(*c*) Ouzo;

(*d*) Sambuca;

(*e*) Geneva Gin;

(*f*) Genièvre;

(*g*) Hollands Gin;

(*h*) London Gin;

(*i*) Schnapps;

(*j*) Malt Whiskey;

(*k*) Eau-de-vie;

(*l*) Bitters;

(*m*) Anisette;

(*n*) Curacao; and

(*o*) Curaçao.

Governor in Council amendment

(5) The Governor in Council may, by order, amend subsection (3) or (4) by adding thereto or deleting therefrom an indication in respect of a wine or spirit, as the case may be.

Exception for failure to take proceedings

11.19 (1) Sections 11.14 and 11.15 do not apply to the adoption or use of a trade-mark by a person if no proceedings are taken to enforce those sections in respect of that person's use or adoption of the trade-mark within five years after use of the trade-mark by that person has become generally known or the trade-mark has been registered by that person in Canada, unless it is established that the person first used or adopted the trade-mark with knowledge that such use or adoption was contrary to section 11.14 or 11.15, as the case may be.

Idem

(2) In proceedings commenced after the expiration of five years from the date of registration of a trade-mark, no registration shall be expunged or amended or held invalid on the basis of paragraph 12(1)(*g*) or (*h*) unless it is established that the person who filed the application for registration of the trade-mark did so with knowledge that the trade-mark was not registrable under that paragraph.

Exception — noms génériques de spiritueux

(4) Les articles 11.14 et 11.15 et les alinéas 12(1)*g*) et *h*) n'ont pas pour effet d'empêcher l'adoption, l'utilisation ou l'enregistrement à l'égard d'une entreprise, comme marque de commerce ou autrement, des indications suivantes, pour ce qui est des spiritueux :

a) Grappa;

b) Marc;

c) Ouzo;

d) Sambuca;

e) Geneva Gin;

f) Genièvre;

g) Hollands Gin;

h) London Gin;

i) Schnapps;

j) Malt Whiskey;

k) Eau-de-vie;

l) Bitters;

m) Anisette;

n) Curacao;

o) Curaçao.

Pouvoirs du gouverneur en conseil

(5) Le gouverneur en conseil peut, par décret, modifier les paragraphes (3) ou (4) par l'adjonction ou la suppression d'indications désignant un vin ou un spiritueux, selon le cas.

Défaut d'agir

11.19 (1) Les articles 11.14 et 11.15 ne s'appliquent pas à l'adoption ou à l'utilisation par une personne d'une marque de commerce si aucune procédure n'est engagée pour faire respecter ces dispositions à l'égard de cette adoption ou de cet usage dans les cinq ans suivant la date à laquelle l'usage de la marque par cette personne a été généralement connu ou la marque de commerce a été enregistrée par cette personne au Canada, sauf s'il est établi que cette personne a adopté ou commencé à utiliser la marque tout en sachant que l'adoption ou l'usage étaient contraires à ces articles.

Idem

(2) Dans le cas de procédures engagées après l'expiration des cinq ans suivant l'enregistrement d'une marque de commerce, celui-ci ne peut être radié, modifié ou tenu pour invalide du fait des alinéas 12(1)*g*) ou *h*) que s'il est établi que la personne qui a demandé l'enregistrement l'a fait tout en sachant que la marque n'était pas enregistrable en raison de ces alinéas.

Subsection 11.18(4) provides a list of indications in respect of spirits that are terms customary in common language in Canada and permits the use of such indications, in accordance with TRIPS Article 24(6).

Subsection 11.18(5) authorizes the Governor in Council to add names to or delete names from the lists of subsections 11.18(3) and 11.18(4).

Subsection 11.19 provides that the registration of a geographical indication does not prevent the use of the same indication as a trade-mark (or part of a trade-mark) unless proceedings were initiated within five years after the use of the trade-mark became generally known or the trade-mark was registered (except in instances in which the adverse use as a trade-mark was shown to have taken place2 in bad faith). This provision is based on TRIPS Article 24(7).

Transitional

11.2 Notwithstanding sections 11.14 and 11.15 and paragraphs 12(1)(*g*) and (*h*), where a person has in good faith

(*a*) filed an application in accordance with section 30 for, or secured the registration of, a trade-mark that is identical with or similar to the geographical indication in respect of a wine or spirit protected by the laws applicable to a WTO Member, or

(*b*) acquired rights to a trade-mark in respect of such a wine or spirit through use,

before the later of the date on which this section comes into force and the date on which protection in respect of the wine or spirit by the laws applicable to that Member commences, nothing in any of those provisions prevents the adoption, use or registration of that trade-mark by that person.

Disposition transitoire

11.2 Les articles 11:14 et 11.15 et les alinéas 12(1)*g*) et *h*) n'ont pas pour effet d'empêcher l'adoption, l'utilisation ou l'enregistrement, comme marque de commerce ou autrement, d'une indication géographique protégée par une personne qui, de bonne foi, avant la date d'entrée en vigueur du présent article :

a) soit a produit une demande conformément à l'article 30 en vue de l'enregistrement d'une marque de commerce qui est identique ou semblable à l'indication géographique relative à un vin ou spiritueux protégé par le droit applicable à un membre de l'OMC, ou a obtenu cet enregistrement;

b) soit a acquis le droit à une marque de commerce par l'usage.

Dans les cas où la protection est postérieure à cette date, c'est la date à laquelle commence la protection relative au vin ou spiritueux selon le droit applicable au membre qui est prise en compte.

194. Subsection 12(1) of the Act is amended by striking out the word "or" at the end of paragraph (*e*) and by adding the following after paragraph (*f*):

(*g*) in whole or in part a protected geographical indication that is to be registered in association with a wine not originating in a territory indicated by the geographical indication; and

(*h*) in whole or in part a protected geographical indication that is to be registered in association with a spirit not originating in a territory indicated by the geographical indication.

194. Le paragraphe 12(1) de la même loi est modifié par adjonction, après l'alinéa *f*), de ce qui suit :

g) elle doit être enregistrée en liaison avec un vin et elle est constituée, en tout ou en partie, d'une indication géographique protégée désignant un vin dont le lieu d'origine ne se trouve pas sur le territoire visé par l'indication;

h) elle doit être enregistrée en liaison avec un spiritueux et elle est constituée, en tout ou en partie, d'une indication géographique protégée désignant un spiritueux dont le lieu d'origine ne se trouve pas sur le territoire visé par l'indication.

195. The portion of subsection 14(1) of the Act before paragraph (*a*) is replaced by the following:

Registration of marks registered abroad

14. (1) Notwithstanding section 12, a trade-mark that the applicant or the applicant's predecessor in title has caused to be duly registered in or for the country of origin of the applicant is registrable if, in Canada,

195. Le passage du paragraphe 14(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Enregistrement de marques déposées à l'étranger

14. (1) Nonobstant l'article 12, une marque de commerce que le requérant ou son prédécesseur en titre a fait dûment déposer dans son pays d'origine, ou pour son pays d'origine, est enregistrable si, au Canada, selon le cas :

Subsection 11.2 is transitional in nature. It safeguards existing rights to a trade-mark despite it being identical or similar to a protected geographical indication if certain conditions are met, *i.e.* where a trade-mark has been registered in good faith, or rights to a trade-mark have been acquired through use in good faith, either before the date of entry into force of the section or before the geographical indication is protected in the country of origin. This provision is based on TRIPS Article 24(5).

Clause 194 - prohibition of inclusion of protected geographical indication as a trade-mark or part of a trade-mark associated with a wine or spirit

This clause ensures that the protection of geographical indications to be established by these amendments cannot be circumvented through the registration of trade-marks that include geographical indications.

Clause 195

This amendment is intended to accommodate the anticipated membership of the European Union in the World Trade Organization. It is expected that the European Union will establish a Community trade-mark (with a central registry) that will have legal effect throughout the Union.

196. The portion of subsection 16(2) of the Act before paragraph (*a*) is replaced by the following:

Marks registered and used abroad

(2) Any applicant who has filed an application in accordance with section 30 for registration of a trade-mark that is registrable and that the applicant or the applicant's predecessor in title has duly registered in or for the country of origin of the applicant and has used in association with wares or services is entitled, subject to section 38, to secure its registration in respect of the wares or services in association with which it is registered in that country and has been used, unless at the date of filing of the application in accordance with section 30 it was confusing with

196. Le passage du paragraphe 16(2) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Marques déposées et employées dans un autre pays

(2) Tout requérant qui a produit une demande selon l'article 30 en vue de l'enregistrement d'une marque de commerce qui est enregistrable et que le requérant ou son prédécesseur en titre a dûment déposée dans son pays d'origine, ou pour son pays d'origine, et qu'il a employée en liaison avec des marchandises ou services, a droit, sous réserve de l'article 38, d'en obtenir l'enregistrement à l'égard des marchandises ou services en liaison avec lesquels elle est déposée dans ce pays et a été employée, à moins que, à la date de la production de la demande, en conformité avec l'article 30, elle n'ait créé de la confusion :

197. Section 20 of the Act is renumbered as subsection 20(1) and is amended by adding the following:

Exception

(2) No registration of a trade-mark prevents a person from making any use of any of the indications mentioned in subsection 11.18(3) in association with a wine or any of the indications mentioned in subsection 11.18(4) in association with a spirit.

197. L'article 20 de la même loi devient le paragraphe 20(1) et est modifié par adjonction de ce qui suit :

Exception

(2) L'enregistrement d'une marque de commerce n'a pas pour effet d'empêcher une personne d'utiliser les indications mentionnées au paragraphe 11.18(3) en liaison avec un vin ou les indications mentionnées au paragraphe 11.18(4) en liaison avec un spiritueux.

1993, c. 15, s. 63

198. Subsection 29(1) of the Act is replaced by the following:

Inspection

29. (1) Subject to subsection (2), the registers, the documents on which the entries therein are based, all applications, including those abandoned, the indexes, the list of trade-mark agents and the list of geographical indications kept pursuant to subsection 11.13(1) shall be open to public inspection during business hours, and the Registrar shall, on request and on payment of the prescribed fee, furnish a copy certified by the registrar of any entry in the registers, indexes or lists, or of any of those documents or applications.

198. Le paragraphe 29(1) de la même loi est remplacé par ce qui suit :

1993, ch. 15, art. 63

Inspection

29. (1) Sous réserve du paragraphe (2), les registres, les documents sur lesquels s'appuient les inscriptions y figurant, les demandes, y compris celles qui sont abandonnées, les index, la liste des agents de marques de commerce et la liste des indications géographiques tenue aux termes du paragraphe 11.13(1) sont accessibles à l'inspection publique durant les heures de bureau. Le registraire fournit, sur demande et sur paiement du droit prescrit à cet égard, une copie, certifiée par lui, de toute inscription faite dans les registres, les index ou les listes, ou de l'un de ces documents ou demandes.

Clause 196

This amendment is intended to accommodate the anticipated membership of the European Union in the World Trade Organization. It is expected that the European Union will establish a Community trade-mark (with a central registry) that will have legal effect throughout the Union.

Clause 197

This provision permits any use of the indications on the lists established by subsections 11.18(3) and 11.18(4) in association with a wine or a spirit despite any trade-mark registration.

Clause 198

This amendment ensures public access to the list of protected geographical indications.

199. Paragraph 30(*d*) of the Act is replaced by the following:

(*d*) in the case of a trade-mark that is the subject in or for another country of the Union of a registration or an application for registration by the applicant or the applicant's named predecessor in title on which the applicant bases the applicant's right to registration, particulars of the application or registration and, if the trade-mark has neither been used in Canada nor made known in Canada, the name of a country in which the trade-mark has been used by the applicant or the applicant's named predecessor in title, if any, in association with each of the general classes of wares or services described in the application;

199. L'alinéa 30*d*) de la même loi est remplacé par ce qui suit :

d) dans le cas d'une marque de commerce qui est, dans un autre pays de l'Union, ou pour un autre pays de l'Union, l'objet, de la part du requérant ou de son prédécesseur en titre désigné, d'un enregistrement ou d'une demande d'enregistrement sur quoi le requérant fonde son droit à l'enregistrement, les détails de cette demande ou de cet enregistrement et, si la marque n'a été ni employée ni révélée au Canada, le nom d'un pays où le requérant ou son prédécesseur en titre désigné, le cas échéant, l'a employée en liaison avec chacune des catégories générales de marchandises ou services décrites dans la demande;

1993, c. 15, s. 65(1)

200. Subsection 34(1) of the Act is replaced by the following:

Date of application abroad deemed date of application in Canada

34. (1) When an application for the registration of a trade-mark has been made in or for any country of the Union other than Canada and an application is subsequently made in Canada for the registration for use in association with the same kind of wares or services of the same or substantially the same trade-mark by the same applicant or the applicant's successor in title, the date of filing of the application in or for the other country is deemed to be the date of filing of the application in Canada, and the applicant is entitled to priority in Canada accordingly notwithstanding any intervening use in Canada or making known in Canada or any intervening application or registration if

(*a*) the application in Canada, including or accompanied by a declaration setting out the date on which and the country of the Union in or for which the earliest application was filed for the registration of the same or substantially the same trade-mark for use in association with the same kind of wares or services, is filed within a period of six months after that date, which period shall not be extended;

(*b*) the applicant or, if the applicant is a transferee, the applicant's predecessor in title by whom any earlier application was filed in or for any country of the Union was at the date of the application a citizen or national of or domiciled in that country or had therein a real and effective industrial or commercial establishment; and

(*c*) the applicant furnishes, in accordance with any request under subsections (2) and (3), evidence necessary to establish fully the applicant's right to priority.

200. Le paragraphe 34(1) de la même loi est remplacé par ce qui suit :

1993, ch. 15, par. 65(1)

La date de demande à l'étranger est réputée être la date de demande au Canada

34. (1) Lorsqu'une demande d'enregistrement d'une marque de commerce a été faite dans un pays de l'Union, ou pour un pays de l'Union, autre que le Canada, et qu'une demande est subséquemment présentée au Canada pour l'enregistrement, aux fins de son emploi en liaison avec le même genre de marchandises ou services, de la même marque de commerce, ou sensiblement la même, par le même requérant ou son successeur en titre, la date de production de la demande dans l'autre pays, ou pour l'autre pays, est réputée être la date de production de la demande au Canada, et le requérant a droit, au Canada, à une priorité correspondante nonobstant tout emploi ou toute révélation faite au Canada, ou toute demande ou tout enregistrement survenu, dans l'intervalle, si les conditions suivantes sont réunies :

a) la demande au Canada, comprenant une déclaration de la date et du pays de l'Union où a été produite, ou pour lequel a été produite, la plus ancienne demande d'enregistrement de la même marque de commerce, ou sensiblement la même, en vue de son emploi en liaison avec le même genre de marchandises ou services, ou accompagnée d'une telle déclaration, est produite dans les six mois à compter de cette date, cette période ne pouvant être prolongée;

b) le requérant ou, lorsque le requérant est un cessionnaire, son prédécesseur en titre par qui une demande antérieure a été produite dans un pays de l'Union, ou pour un pays de l'Union, était à la date de cette demande un citoyen ou ressortissant de ce pays, ou y était domicilié, ou y avait un établissement industriel ou commercial réel et effectif;

Clause 199

This amendment is intended to accommodate the anticipated membership of the European Union in the World Trade Organization. It is expected that the European Union will establish a Community trade-mark (with a central registry) that will have legal effect throughout the Union.

Clause 200

This amendment is intended to accommodate the anticipated membership of the European Union in the World Trade Organization. It is expected that the European Union will establish a Community trade-mark (with a central registry) that will have legal effect throughout the Union.

(c) the requérant, sur demande faite en application des paragraphes (2) ou (3), fournit toute preuve nécessaire pour établir pleinement son droit à la priorité.

1993, c. 44, s. 232(1)

201. (1) Subsection 45(1) of the Act is replaced by the following:

Registrar may request evidence of user

45. (1) The Registrar may at any time and, at the written request made after three years from the date of the registration of a trade-mark by any person who pays the prescribed fee shall, unless the Registrar sees good reason to the contrary, give notice to the registered owner of the trade-mark requiring the registered owner to furnish within three months an affidavit or a statutory declaration showing, with respect to each of the wares or services specified in the registration, whether the trade-mark was in use in Canada at any time during the three year period immediately preceding the date of the notice and, if not, the date when it was last so in use and the reason for the absence of such use since that date.

201. (1) Le paragraphe 45(1) de la même loi est remplacé par ce qui suit :

1993, ch. 44, par. 232(1)

Le registraire peut exiger une preuve d'emploi

45. (1) Le registraire peut, et doit sur demande écrite présentée après trois années à compter de la date de l'enregistrement d'une marque de commerce, par une personne qui verse les droits prescrits, à moins qu'il ne voie une raison valable à l'effet contraire, donner au propriétaire inscrit un avis lui enjoignant de fournir, dans les trois mois, un affidavit ou une déclaration solennelle indiquant, à l'égard de chacune des marchandises ou de chacun des services que spécifie l'enregistrement, si la marque de commerce a été employée au Canada à un moment quelconque au cours des trois ans précédant la date de l'avis et, dans la négative, la date où elle a été ainsi employée en dernier lieu et la raison de son défaut d'emploi depuis cette date.

1993, c. 44, s. 232(2)

(2) Subsection 45(3) of the Act is replaced by the following:

Effect of non-use

(3) Where, by reason of the evidence furnished to the Registrar or the failure to furnish any evidence, it appears to the Registrar that a trade-mark, either with respect to all of the wares or services specified in the registration or with respect to any of those wares or services, was not used in Canada at any time during the three year period immediately preceding the date of the notice and that the absence of use has not been due to special circumstances that excuse the absence of use, the registration of the trade-mark is liable to be expunged or amended accordingly.

(2) Le paragraphe 45(3) de la même loi est remplacé par ce qui suit :

1993, ch. 44, par. 232(2)

Effet du non-usage

(3) Lorsqu'il apparaît au registraire, en raison de la preuve qui lui est fournie ou du défaut de fournir une telle preuve, que la marque de commerce, soit à l'égard de la totalité des marchandises ou services spécifiés dans l'enregistrement, soit à l'égard de l'une de ces marchandises ou de l'un de ces services, n'a été employée au Canada à aucun moment au cours des trois ans précédant la date de l'avis et que le défaut d'emploi n'a pas été attribuable à des circonstances spéciales qui le justifient, l'enregistrement de cette marque de commerce est susceptible de radiation ou de modification en conséquence.

202. Section 65 of the Act is amended by striking out the word "and" at the end of paragraph (*d*) and by adding the following after paragraph (*d*):

(*d*.1) the procedure by and form in which an application may be made to the Minister, as defined in section 11.2, requesting the Minister to publish a statement referred to in subsection 11.3(2); and

202. L'article 65 de la même loi est modifié par adjonction, après l'alinéa *d*), de ce qui suit :

d.1) sur les modalités de forme et de procédure applicables aux demandes à adresser au ministre — au sens de l'article 11.2 — pour la publication de l'énoncé d'intention visé au paragraphe 11.3(2);

Clause 201

Subsections 45(1) and 45(3) ensure that a trade-mark registration can only be cancelled after an uninterrupted period of three years of non-use. The amendments are based on TRIPS Article 19(1).

Clause 202

Paragraph 65(d) provides authority for the Governor in Council to make regulations regarding applications to the Minister for the registration of geographical indications.

TRUST AND LOAN COMPANIES ACT

CLAUSES 203 - 212

TRUST AND LOAN COMPANIES ACT

CLAUSES 203 - 212

Overview

The *Trust and Loan Companies Act* regulates trust and loan companies that are incorporated under the Act. The Act contains comprehensive rules regarding the incorporation, ownership, powers and regulatory supervision of federally incorporated trust and loan companies. Of particular importance to the *World Trade Organization Agreement Implementation Act* is the fact that the *Trust and Loan Companies Act* contains limitations on the ability of non-residents to own trust and loan companies.

WTO Commitments

Pursuant to the General Agreement on Trade in Services, which is one of the agreements that made up the WTO Agreements, Canada made a number of commitments in the area of financial services. Chief among these were the commitments to provide WTO members with national treatment and most-favoured-nation treatment. National treatment means providing to financial institutions owned by non-Canadians and to non-Canadian investors in financial institutions the same treatment as provided to Canadian owned institutions or to Canadian investors in financial institutions. Most-favoured -nation treatment means providing to financial institutions owned by WTO members and to WTO investors the same treatment as provided to institutions owned by residents of any other country or provided to investors from any other country.

Summary of the Amendments

These amendments implement national treatment and most-favoured-nation treatment by the removal of the 10/25 ownership constraints on life insurance companies on non-residents and consequential amendments which remove ancillary rules designed to prevent avoidance of the 10/25 rules. There are also consequential amendments to other provisions that are needed because of the deletion of these rules.

203. (1) Paragraph 37(1)(*c*) of the *Trust and Loan Companies Act* is repealed.

(2) Paragraph 37(2)(*c*) of the English version of the Act is replaced by the following:

(*c*) with respect to any matter described in any of paragraphs (1)(*d*) to (*f*), two years.

204. Paragraphs 164(*e*) and (*f*) of the Act are replaced by the following:

(*e*) a person who holds shares of the company where, by section 386 or 399, the person is prohibited from exercising the voting rights attached thereto;

(*f*) a person who is an officer, director or full time employee of an entity that holds shares of the company where, by section 386 or 399, the entity is prohibited from exercising the voting rights attached thereto;

205. (1) Paragraph 236(1)(*c*) of the Act is repealed.

(2) Paragraph 236(2)(*c*) of the English version of the Act is replaced by the following:

(*c*) with respect to any matter described in any of paragraphs (1)(*d*) to (*f*), two years.

203. (1) L'alinéa 37(1)*c*) de la *Loi sur les sociétés de fiducie et de prêt* est abrogé.

(2) L'alinéa 37(2)*c*) de la version anglaise de la même loi est remplacé par ce qui suit :

(*c*) with respect to any matter described in any of paragraphs (1)(*d*) to (*f*), two years.

204. Les alinéas 164*e*) et *f*) de la même loi sont remplacés par ce qui suit :

e) qui détiennent des actions de la société et à qui les articles 386 ou 399 interdisent d'exercer les droits de vote qui y sont attachés;

f) qui sont des administrateurs, dirigeants ou employés à temps plein d'une entité qui détient des actions de la société si les articles 386 ou 399 interdisent à cette entité d'exercer les droits de vote qui y sont attachés;

205. (1) L'alinéa 236(1)*c*) de la même loi est abrogé.

(2) L'alinéa 236(2)*c*) de la version anglaise de la même loi est remplacé par ce qui suit :

(*c*) with respect to any matter described in any of paragraphs (1)(*d*) to (*f*), two years.

Clause 203 - Repeal of paragraph 37(1)(c) and amendment of paragraph 37(2)(c)

Repeal of 37(1)(c)

Paragraph 37(1)(c) grants the Governor in Council authority to allow trust companies to issue shares in respect of convertible securities that were outstanding on the day that the company's letters patent were issued despite the fact that the issuance of such voting shares might otherwise violate subsection 397(1). Subsection 397(1) is being repealed and thus there is no need for the Governor in Council to allow this as there is no impediment to such an issue of shares.

Amendment of 37(2)(c)

This amendment is consequential upon the amendment of paragraph 37(1)(c) as it is the deletion of the reference to that paragraph.

Clause 204 - Repeal of paragraphs 164(e) and (f)

Paragraphs 164(e) and (f) disqualify persons from being a director of a trust company if such persons or the entity of which the person is a director, officer or full-time employee holds shares of a company but is prohibited from voting them pursuant to sections 400. Section 400 is being repealed and thus these paragraphs are being repealed.

Clause 205 - Repeal of paragraph 236(1)(c) and amendment of paragraph 236(2)(c)

Repeal of paragraph(1)(c)

Paragraph 236(1)(c) grants the Governor in Council authority to allow trust companies to issue shares in respect of convertible securities that were outstanding on the day that company's letters patent of amalgamation were issued despite the fact that the issuance of such voting shares might otherwise violate subsection 397(1). Subsection 397(1) is being repealed and thus there is no need for the Governor in Council to allow this as there is no impediment to such an issue of shares.

Amendment of paragraph 236(2)(c)

This amendment is consequential upon the amendment of paragraph 236(1)(c) as it is the deletion of the reference to that paragraph.

206. The Act is amended by adding the following before the heading "CONSTRAINTS ON OWNERSHIP" before section 375:

INTERPRETATION

Definition of "agent"

374.1 In this Part, "agent" means

(*a*) in relation to Her Majesty in right of Canada or of a province, any agent of Her Majesty in either of those rights, and includes a municipal or public body empowered to perform a function of government in Canada or any entity empowered to perform a function or duty on behalf of Her Majesty in either of those rights, but does not include

(i) an official or entity performing a function or duty in connection with the administration or management of the estate or property of a natural person,

(ii) an official or entity performing a function or duty in connection with the administration, management or investment of a fund established to provide compensation, hospitalization, medical care, annuities, pensions or similar benefits to natural persons, or moneys derived from such a fund, or

(iii) the trustee of any trust for the administration of a fund to which Her Majesty in either of those rights contributes and of which an official or entity that is an agent of Her Majesty in either of those rights is a trustee; and

(*b*) in relation to the government of a foreign country or any political subdivision thereof, a person empowered to perform a function or duty on behalf of the government of the foreign country or political subdivision, other than a function or duty in connection with the administration or management of the estate or property of a natural person.

206. La même loi est modifiée par adjonction, après l'intertitre « SECTION I » précédant l'article 375, de ce qui suit :

DÉFINITION

Définition

374.1 La définition qui suit s'applique à la présente partie.

« mandataire »

« mandataire » "agent"

a) À l'égard de Sa Majesté du chef du Canada ou d'une province, tout mandataire de Sa Majesté de l'un ou l'autre chef, et notamment les corps municipaux ou publics habilités à exercer une fonction exécutive au Canada, ainsi que les entités habilitées à exercer des attributions pour le compte de Sa Majesté du chef du Canada ou d'une province, à l'exclusion :

(i) des dirigeants ou entités exerçant des fonctions touchant à l'administration ou à la gestion de la succession ou des biens d'une personne physique,

(ii) des dirigeants ou entités exerçant des fonctions touchant à l'administration, à la gestion ou au placement soit d'un fonds établi pour procurer l'indemnisation, l'hospitalisation, les soins médicaux, la retraite, la pension ou des prestations analogues à des personnes physiques, soit de sommes provenant d'un tel fonds,

(iii) des fiduciaires d'une fiducie créée pour gérer un fonds alimenté par Sa Majesté du chef du Canada ou d'une province au cas où l'un des fiduciaires — dirigeant ou entité — est le mandataire de Sa Majesté de l'un ou l'autre chef;

b) à l'égard du gouvernement d'un pays étranger ou d'une de ses subdivisions politiques, la personne habilitée, pour le compte de ce gouvernement, à exercer des attributions non reliées à l'administration ou à la gestion de la succession ou des biens d'une personne physique.

Clause 206 - Definition of "agent" and adding of title "Division II"

The definition of "agent" is currently found in section 395 and is defined for the purposes of Division II of Part VII of the Act. "Agent" is the only definition in section 395 that will continue to be needed. It is being moved to the beginning of the Part to conform to normal drafting standards.

The insertion of the heading "Division II" before the heading "Constraints On Ownership" is to preserve the same number of Divisions within the Part so that no further consequential amendments will be needed.

DIVISION II

207. The Act is amended by adding the following after section 376:

Exception for small holdings

376.1 Notwithstanding section 376, where, as a result of a transfer or issue of shares of a class of shares of a company to a person, the total number of shares of that class registered in the securities register of the company in the name of that person

(*a*) would not exceed five thousand, and

(*b*) would not exceed 0.1 per cent of the outstanding shares of that class,

the company is entitled to assume that no person is acquiring or increasing a significant interest in that class of shares of the company as a result of that issue or transfer of shares.

1991, c. 47, s. 754; 1993, c. 44, s. 239

208. The headings before section 394.1 and sections 394.1 and 395 of the Act are repealed.

1993, c. 44, s. 240

209. Sections 397 and 398 of the Act are repealed.

SECTION II

207. La même loi est modifiée par adjonction, après l'article 376, de ce qui suit :

Exception

376.1 Par dérogation à l'article 376, si, après transfert ou émission d'actions d'une catégorie donnée à une personne, le nombre total d'actions de cette catégorie inscrites à son registre des valeurs mobilières au nom de cette personne n'excède pas cinq mille ni un dixième de un pour cent des actions en circulation de cette catégorie, la banque est en droit de présumer qu'il n'y a ni acquisition ni augmentation d'intérêt substantiel dans cette catégorie d'actions du fait du transfert ou de l'émission.

208. Les intertitres précédant l'article 394.1 et les articles 394.1 et 395 de la même loi sont abrogés.

1991, ch. 47, art. 754; 1993, ch. 44, art. 239

209. Les articles 397 et 398 de la même loi sont abrogés.

1993, ch. 44, art. 240

Clause 207 - Exception for small holdings

The substance of this provision is currently found in section 406. Section 406 says that notwithstanding section 376 (a trust company cannot record a transfer of its shares that has not been approved by the Minister if the result is that the transferee has thereby acquired or increased a significant interest in a class of shares of the company) and paragraphs 397(1)(a) and (b) (a trust company cannot record a transfer of its shares if the result is that non-residents as a group would thereby acquire or increase their interest in voting shares of the company to a percentage exceeding 25% or if the particular non-resident to whom the shares are being transferred would thereby acquire an interest in the voting shares in excess of 10% or would increase the persons pre-existing greater than 10% interest) a company can assume that certain small transactions do not cause these rules to be violated. Thus, this is a *de minimis* rule.

As section 397 is being repealed it is necessary to remove the references to that provision. Given that the rule now only applies to section 376, this section is being moved as a convenience to the user of the statute so that it will appear immediately after the operative rule to which it applies.

Clause 208 - Repeal of headings preceding section 394.1 and sections 394.1 and 395

This clause deletes the heading before these sections which are the definitions needed to make the non-resident rules work. As we are removing the non-resident constraints, the definitions are no longer needed.

Section 394.1 established definitions in order to make the non-resident rules work in conjunction with the NAFTA. Section 395 was suspended on the coming into force of the *North American Free Trade Implementation Act* as it contained the definitions that were used in the context of the Canada-United States Free Trade Agreement.

Clause 209 - Repeal of sections 397 and 398

Sections 397 and 398 are the sections which generally prohibits a non-residents from having more than a 10% interest in any class of voting shares of a trust company and prohibits non-residents as a group from having more than a 25% interest in any class of voting shares of such a company (i.e. the "10/25" rules). The repeal of these section accords national treatment to non-residents.

210. (1) Subsection 399(1) of the Act is repealed.

(2) Subsections 399(3) and (4) of the Act are replaced by the following:

Transitional

(3) Subsection (2) does not apply in respect of a government or agency referred to in that subsection that, on September 27, 1990, beneficially owned shares of a former-Act company where the exercise of the voting rights attached to those shares was not prohibited under subsection 41(2) of the *Trust Companies Act* or subsection 48(2) of the *Loan Companies Act*, as those subsections read immediately prior to June 1, 1992.

Transitional

(4) Subsection (3) ceases to apply where a government or agency referred to in that subsection acquires beneficial ownership of any additional voting shares of the former-Act company in such number that the percentage of the voting rights attached to all of the voting shares of the former-Act company beneficially owned by the government or agency is greater than the percentage of the voting rights attached to all of the voting shares of the former-Act company that were beneficially owned by the government or agency on September 27, 1990.

1993, c. 44, s. 241

211. Sections 400 and 400.1 of the Act are repealed.

210. (1) Le paragraphe 399(1) de la même loi est abrogé.

(2) Les paragraphes 399(3) et (4) de la même loi sont remplacés par ce qui suit :

Disposition transitoire

(3) Le paragraphe (2) ne s'applique pas dans le cas où, le 27 septembre 1990, le gouvernement ou l'organisme mentionné à ce paragraphe détenait la propriété effective d'actions d'une société antérieure et que le paragraphe 36(2) de la *Loi sur les compagnies d'assurance canadiennes et britanniques*, en son état au 31 mai 1992, n'interdisait pas l'exercice des droits de vote attachés à ces actions.

Disposition transitoire

(4) Le paragraphe (3) cesse de s'appliquer dans le cas où le gouvernement ou l'organisme qui y est mentionné acquiert la propriété effective d'un nombre d'actions avec droit de vote de la société antérieure qui augmente le pourcentage des droits de vote attachés à l'ensemble des actions de la société antérieure qu'elle détenait à titre de véritable propriétaire le 27 septembre 1990.

1993, ch. 44, art. 241

211. Les articles 400 et 400.1 de la même loi sont abrogés.

Clause 210 - Repeal of subsection 399(1) and amendment of subsections 399(3) and (4)

Repeal of subsection 399(1)

Subsection 399(1) prohibits the voting of shares of a trust company held by a non-resident in violation of the rule prohibiting the non-resident from owning more than 10% of any class of voting shares. As the repeal of section 397 has removed this rule, the prohibition is no longer relevant.

Amendment of subsections 399(3) and (4)

These subsections currently provide exceptions from the voting prohibitions set out in subsections 399(1) and (2). Due to the repeal of the 10/25 rules, these subsections are being amended so that exceptions only apply with respect to certain circumstances where persons are holding shares of trust companies in violation of the rule that such shares cannot be held by or on behalf of the Crown in right of Canada or of a province or a foreign government. Basically the exception is that where, on the date of introduction of the rule, a person held shares in violation of the rule domestic and foreign governments couldn't hold such shares, that government or agency can continue to hold those shares and exercise the voting rights pertaining thereto but the exception ceases to apply if subsequent to that date the government or agency acquires shares that would entitle it to exercise voting rights in excess of the percentage it held on the date of introduction of the rule.

Clause 211 - Repeal of sections 400 and 400.1

Repeal of section 400

This section prohibited resident nominees who held shares of trust companies on behalf of non-residents from voting those shares. The purpose of the rule was to stop non-residents from avoiding the 10/25 rules through the means of finding local nominees who would vote their shares. The section makes the actions of the resident nominee illegal. With the repeal of the 10/25 rules there is no longer any need for this subsection.

Repeal of section 400.1

This section stated that the non-resident rules did not apply to certain trust companies that had always been controlled by non-residents or that were controlled by persons covered by either the Canada-United States Free Trade Agreement or the North American Free Trade Agreement as of the date the particular free trade agreement applied to those particular persons. With the repeal of the non-resident rules, these provisions are no longer necessary.

WESTERN GRAIN TRANSPORTATION ACT

CLAUSES 213 - 220

SCHEDULES II AND III

WESTERN GRAIN TRANSPORTATION ACT

CLAUSES 213 - 220

SCHEDULES II AND III

Overview

The Western Grain Transportation Act ("WGTA") enacted by Parliament in 1983 provides that the government is required to pay a portion of the total freight costs of moving grains off the Prairies. The WGTA, through increased federal government subsidy payments and increased shipper freight rates, was designed to compensate the railways for the costs incurred in handling grain traffic and thus ensure the long-term viability of the transportaion system. Shippers benefit from lower freight rates under the WGTA. The Government makes an annual commitment to the WGTA and over time shippers have assumed an increasing proportion of the grain transportation costs under the statute.

The WGTA subsidy is available to shippers transporting grain grown in the Prairies and shipped east to Thunder Bay and Armstrong, Ontario or to a port in British Columbia or Churchill, Manitoba. Grain shipped through Thunder Bay or Armstrong may be exported or sold in eastern Canada. However, all grain shipped to a port in British Columbia or to Churchill must be exported: this portion of the WGTA subsidy is an "export subsidy".

WTO Agreement Commitments

Article 9(1) of the Agriculture Agreement provides that certain export subsidies such "internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments" are subject to "reduction commitments".

The Agriculture Agreement requires WTO members to reduce their export subsidies commitments during the implementation period from 1995/1996 to 2000/2001. A Member is permitted to use an export subsidy so long as it does not exceed the level of the annual commitment for that subsidy.

Article 9(2)(a) states that the export subsidy commitment levels for each year of the implementation period represent:

(a) in the case of budgetary outlay reduction commitments (maximum annual expenditure levels), the maximum amount that can be expended on the subsidy during that year for a particular agricultural product; and

(b) in the case of export quantity reduction commitments (maximum annual volume levels), the maximum quantity of an agricultural product in respect of which the subsidy may be granted in that year.

Once either the maximum annual expenditure or volume level is reached for a commodity category, a Member cannot provide any additional export subsidy for any product in that category for the remainder of that year.

Article 10 prohibits the circumvention of the export subsidy commitments in Article 9. Article 10(1) provides that export subsidies not specifically listed in Article 9 are not to be used in a manner that results in the evasion of the export subsidy commitments nor are "non-commercial transactions" be used to circumvent sauch commitments. Further, Article 10(3) states that the onus lies on a Member to establish that a quantity of an agricultural product exported in excess of a Member's reduction commitment level has not been subsidized and that no export subsidy, whether or not listed in Article 9, has been granted with respect to that amount of product.

Summary of the Amendments

Under the amendments to the WGTA, once the maximum annual volume level or maximum annual expenditure level is reached for a category, a shipper will be required to pay the full WGTA rate to ship any grain within that category unless a railway company has established a lower rate for the transportation of that grain. This new regime will be applicable for the 1995/1996 crop year and subsequent crop years.

213. (1) The definition "movement" in subsection 2(1) of the *Western Grain Transportation Act* is replaced by the following:

213. (1) La définition de « mouvement du grain », au paragraphe 2(1) de la *Loi sur le transport du grain de l'Ouest*, est remplacée par ce qui suit :

"movement" « *mouvement du grain* »

"movement", in respect of grain, means the carriage of grain by any railway company over any line of railway now or hereafter constructed

(*a*) from any point on any line of railway west of Thunder Bay or Armstrong to Thunder Bay or Armstrong, or

(*b*) from any point on any line of railway west of Thunder Bay or Armstrong to a port in British Columbia, or to Churchill, where the grain is for export and in respect of which the Government of Canada bears a percentage of the rate under section 37;

« mouvement du grain » Transport du grain par une compagnie de chemin de fer sur toute ligne existante ou future : « mouvement du grain » "movement"

a) soit dans le sens ouest-est à destination de Thunder Bay ou d'Armstrong;

b) soit, pour le grain destiné à l'exportation et pour lequel l'État supporte une partie du taux établi conformément à l'article 37, au départ de tout point situé à l'ouest de Thunder Bay ou d'Armstrong et à destination d'un port de la Colombie-Britannique ou de Churchill.

(2) Section 2 of the Act is amended by adding the following after subsection (4):

(2) L'article 2 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :

Categories in Schedule III

(5) A reference to a category in Schedule III shall be deemed to include every grain, crop and product set out under that category in Schedule I.

Interprétation

(5) La mention d'une catégorie de l'annexe III vaut mention de l'ensemble des grains, plantes et produits inscrits dans cette catégorie à l'annexe I.

214. The Act is amended by adding the following after section 37:

214. La même loi est modifiée par adjonction, après l'article 37, de ce qui suit :

Shipper to bear 100 per cent of rate

37.1 (1) Notwithstanding that the annual rate scale provides that a percentage of the rate is to be borne by the Government of Canada, after the date fixed in an order made under subsection (2) in respect of a category mentioned in Schedule III, any shipper moving any grain within that category for export from any point on any line of railway west of Thunder Bay or Armstrong to a port in British Columbia or to Churchill shall bear one hundred per cent of the rate in the tariff.

Expéditeur supporte cent pour cent

37.1 (1) Malgré les pourcentages imputés à l'État par le barème annuel, l'expéditeur du grain transporté, pour exportation, au départ de tout point situé à l'ouest de Thunder Bay ou d'Armstrong et à destination d'un port de la Colombie-Britannique ou de Churchill supporte cent pour cent du taux applicable prévu au tarif après la date fixée par la Commission en vertu du paragraphe (2) pour la catégorie de grain concernée.

Commission to fix date level reached

(2) Subject to subsection (3), where the Commission is of the opinion that the maximum expenditure level or the maximum volume level set out in Schedule III in respect of any category mentioned in that Schedule will be reached prior to the end of the current crop year, the Commission shall, by order, fix the date on which the maximum expenditure level or the maximum volume level will, for all purposes, be deemed to have been reached.

Date fixée par arrêté de la Commission

(2) Sous réserve du paragraphe (3), la Commission doit, si elle est d'avis qu'un des plafonds, de quantité ou de dépenses, prévus à l'annexe III pour chaque catégorie de grain sera atteint avant la fin de la campagne agricole en cours, fixer, par arrêté, la date à laquelle ce plafond est, à toutes fins utiles, considéré comme atteint.

Clause 213

Clause 213 amends subsection 2(1) and subsection 2(5). The definition of "movement" in subsection 2(1) is amended to only apply to grain in respect of which the government is required to pay a portion of the WGTA subsidy. The purpose of amendment is to exclude the transportation of grains through ports in British Columbia and Churchill in excess of Canada's maximum annual expenditure or volume limitations for the WGTA. Subsection 2(5) links Schedule III, which contains the expenditure and volume limits by category of grain for the implementation period, to the Schedule I which is amended to list the WGTA grains, crops and products into six categories in accordance with Canada's Schedule of Commitments for Export Subsidies, appended to the WTO Agreement.

Clause 214

Clause 214 adds a section 37.1. Subsection 37.1(1) specifies that after the maximum annual expenditure or volume limits are deemed to have been reached for a category the shippers of any additional volumes of grain in that category to ports in British Columbia and Churchill for the remainder of the crop year will be required to pay one hundred percent of the full WGTA rate.

Subsection 37.1(2) gives the National Transportation Agency ("Commission") the authority to fix the date as of which the maximum annual expenditure level or maximum annual volume level will be deemed to have been reached for a category if it is of the opinion that the expenditure or volume level for that category will be reached before the end of the crop year.

Duty of Commission

(3) In fixing a date under subsection (2), the Commission shall

(*a*) make every effort to ensure that the maximum amount of grain within the applicable category is moved without exceeding the maximum expenditure level or the maximum volume level set out in Schedule III for that category; and

(*b*) consider the need to give reasonable notice of the date to railway companies and shippers.

(3) La Commission fixe la date de façon que le transport du maximum de grain puisse s'effectuer sans dépassement des plafonds de quantité ou de dépenses qui s'y rattachent. Il tient compte de l'opportunité pour les compagnies de chemins de fer et les expéditeurs d'être avisés en temps utile.

Date la plus opportune

215. Subsection 44(1) of the Act is replaced by the following:

How rates are to be derived and apportioned

44. (1) Each rate set out in a tariff shall be derived from the rate applicable to the appropriate range of distance in the annual rate scale determined in accordance with section 36 and shall be either

(*a*) apportioned between the Government of Canada and the shippers of grain on the basis of the percentages determined by the Commission pursuant to subsections 37(2) and (3), or

(*b*) borne entirely by the shippers in accordance with section 37.1.

215. Le paragraphe 44(1) de la même loi est remplacé par ce qui suit :

44. (1) Chaque taux prévu à un tarif est calculé d'après le taux applicable à la série de distances correspondante du barème annuel fixé conformément à l'article 36 et est soit réparti entre l'État et les expéditeurs de grain d'après les pourcentages déterminés par la Commission conformément aux paragraphes 37(2) et (3), soit supporté entièrement par l'expéditeur conformément à l'article 37.1.

Méthode de calcul et de répartition des taux

216. The Act is amended by adding the following after section 46:

Lower rate

46.1 (1) Where an order is made under subsection 37.1(2) fixing a date in respect of a category mentioned in Schedule III, a railway company may, at any time after the date fixed in that order, establish and apply in respect of all or any grain within that category a rate that is lower than that provided by section 44.

216. La même loi est modifiée par adjonction, après l'article 46, de ce qui suit :

46.1 (1) Une compagnie de chemin de fer peut, en tout temps après la date fixée par arrêté conformément au paragraphe 37.1(2), pratiquer un taux inférieur à celui établi conformément à l'article 44 pour tout ou partie du grain de la catégorie visée par l'arrêté.

Taux réduits

Application of rate

(2) A rate established pursuant to subsection (1) shall apply for such time and to such shippers as is specified by the railway company.

(2) Ce taux s'applique pour la durée spécifiée par la compagnie et aux expéditeurs qu'elle désigne.

Modalités

Subsection 37.1(3) outlines the two factors which must be borne in mind by the Commission in fixing a date, namely to ensure that the maximum amount of grain possible within the limits of the Agreement is shipped by the date fixed and to provide reasonable notice of the date to the grain industry and railway companies.

Clause 215

Clause 215 amends subsection 44(1) to include provision for the shipper to bear the full rate after a fixed date whereas previously the proportion of the WGTA subsidy to be borne by shippers and the Government were applicable for the entire crop year.

Clause 216

Clause 216 adds a new subsection. After the date fixed by the Commission for a category of grain, a railway company to establish a lower rate to ship any grain within that category. Subsection 46.1(1) allows the railways to set a lower rate to ship any grain within that category while subsection 46.1(2) allows this lower rate for a specific time period and specific shippers.

SCHEDULE II
(*Section 218*)

SCHEDULE I
(*Section 2*)

Category	Grain, Crop or Product
Wheat and Wheat Flour	Wheat
	Flour, wheat or semolina
Coarse Grains	Alfalfa meal, Pellets or Cubes, dehydrated
	Barley
	Barley, Crushed
	Barley, Pearl
	Barley, Pot
	Barley Sprouts
	Bran
	Breakfast Foods or Cereals (uncooked) in bags, barrels or cases. Manufactured from commodities only as listed in this Schedule.
	Buckwheat
	Canary Seed
	Corn, Cracked
	Corn (not popcorn)
	Feed, Animal or Poultry (not medicated or condimental), containing not more than thirty-five per cent (35%) of ingredients other than commodities as specified in this Schedule, in bags or barrels or in bulk.
	Flour, other than wheat, semolina or pea
	Grain, Feed, in sacks
	Groats
	Hulls, Oat
	Malt (made from grain only)
	Meal, Barley
	Meal, Corn
	Meal, Oat
	Meal, Rye
	Meal, Wheat
	Middlings
	Millfeed
	Oats
	Oats, Crushed
	Oats, Rolled
	Rye
	Screenings or Screenings pellets (applicable only on Screenings from grains specified herein)
	Seed Grain in Sacks
	Shorts
	Triticale
	Wheat Germ
	Wheat, Rolled
Oilseeds	Flax Seed
	Flax Fibre
	Mustard Seed
	Rapeseed or Canola

ANNEXE II
(*article 218*)

ANNEXE I
(*article 2*)

Catégorie	Grains, plantes ou produits
Blé et farine de blé	Blé
	Farine, blé ou semoule
Céréales secondaires	Aliments ou céréales pour le petit déjeuner (non cuits), fabriqués uniquement à partir des produits mentionnés à la présente annexe — en sacs, en barils ou en caisses
	Aliments pour les bestiaux ou la volaille (non médicamentés ou condimentaires) dont la teneur en ingrédients autres que les produits figurant à la présente annexe ne dépasse pas trente-cinq pour cent (35%) — en sacs, en barils ou en vrac
	Avoine
	Avoine aplatie
	Avoine broyée
	Blé aplati
	Criblures ou criblures granulées (ne s'applique qu'aux criblures des produits mentionnés à la présente annexe)
	Enveloppes d'avoine
	Farine, à l'exception du blé, semoule ou pois
	Farine d'avoine
	Farine de blé fourragère
	Farine de seigle
	Farine, granulé ou cubes de luzerne déshydratés
	Graines à canaris
	Germes de blé
	Germes d'orge
	Grain de provende — en sacs
	Gruaux d'avoine
	Grus blancs
	Issues de mouture
	Maïs (à l'exclusion du maïs soufflé)
	Maïs concassé
	Malt (fait de grain seulement)
	Menues pailles
	Moulée d'orge
	Orge
	Orge broyée
	Orge mondé
	Orge perlé
	Sarrasin
	Seigle
	Semoule de maïs
	Semences en sacs
	Son
	Triticale
Oléagineux	Colza ou colza canola
	Fibre de lin
	Graines de lin

SCHEDULE II — *Concluded*

Category	Grain, Crop or Product
	Sunflower Seed
Vegetable Oils	Oil, Linseed
	Oil, Rapeseed or Canola
	Oil, Sunflower Seed
Oilcakes	Meal, Linseed
	Meal, Rapeseed or Canola
	Meal, Oil Cake, Linseed
	Meal, Oil Cake, Rapeseed or Canola
	Meal, Oil Cake, Sunflower Seed
	Oil Cake, Linseed
	Oil Cake, Rapeseed or Canola
	Oil Cake, Sunflower Seed
Vegetables	Beans (except soybeans) including faba beans, splits and screenings
	Bean (except soybean) derivatives (flour, protein, isolates, fibre)
	Lentils, including splits and screenings
	Peas, including splits and screenings
	Pea derivatives (flour, protein, isolates, fibre)

ANNEXE II *(suite et fin)*

Catégorie	Grains, plantes ou produits
	Graines de moutarde
	Graines de tournesol
Huiles végétales	Huile de colza ou de colza canola
	Huile de lin
	Huile de tournesol
Tourteaux	Farine de colza ou de colza canola
	Farine de lin
	Farine de tourteau de colza ou de colza canola
	Farine de tourteau de lin
	Farine de tourteau de tournesol
	Tourteau de colza ou de colza canola
	Tourteau de lin
	Tourteau de tournesol
Légumes	Dérivés de la fève (à l'exclusion de soja) (farine, protéines, isolats, fibres)
	Dérivés du pois (farine, protéines, isolats, fibres)
	Fèves (à l'exclusion du soja), marais, les fèves cassées et les criblures
	Lentilles, y compris les lentilles cassées et les criblures
	Pois, y compris les pois cassés et les criblures

SCHEDULE III
(Section 219)

SCHEDULE III
(Sections 2, 37.1 and 46.1)

MAXIMUM EXPENDITURE LEVEL AND MAXIMUM VOLUME LEVEL OF EXPORT SUBSIDIES AS SET OUT IN SECTION II, PART IV OF CANADA'S SCHEDULE OF COMMITMENTS UNDER THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

Categories	Crop year	Maximum Expenditure Level (Thousands of Dollars)	Maximum Volume Level (Tonnes)
Wheat and Wheat flour	1995/96	326,861	13,590,251
	1996/97	301,301	12,642,559
	1997/98	275,741	11,694,866
	1998/99	250,181	10,747,173
	1999/2000	224,621	9,799,481
	2000/01	199,061	8,851,788
Coarse grains	1995/96	109,437	4,418,943
	1996/97	102,452	4,258,671
	1997/98	95,466	4,098,398
	1998/99	88,481	3,938,126
	1999/2000	81,496	3,777,853
	2000/01	74,510	3,617,581
Oilseeds	1995/96	56,119	2,136,653
	1996/97	52,537	2,059,158
	1997/98	48,955	1,981,663
	1998/99	45,373	1,904,167
	1999/2000	41,790	1,826,672
	2000/01	38,208	1,749,177
Vegetable Oils	1995/96	3,263	113,337
	1996/97	3,055	109,226
	1997/98	2,847	105,115
	1998/99	2,638	101,005
	1999/2000	2,430	96,894
	2000/01	2,222	92,783
Oilcakes	1995/96	7,018	264,789
	1996/97	6,570	255,185
	1997/98	6,122	245,581
	1998/99	5,674	235,977
	1999/2000	5,225	226,374
	2000/01	4,778	216,770

ANNEXE III
(article 219)

ANNEXE III
[article 2 et paragraphe 37.1(2)]

PLAFONDS DE DÉPENSES ET DE QUANTITÉ ÉTABLIS À LA SECTION II DE LA PARTIE IV DE LA LISTE DES ENGAGEMENTS DU CANADA AUX TERMES DE L'ACCORD INSTITUANT L'ORGANISATION MONDIALE DU COMMERCE

Catégorie	Campagne agricole	Plafond de dépenses (milliers de dollars)	Plafond de quantité (tonnes)
Blé et farine de blé	1995/96	326,861	13,590,251
	1996/97	301,301	12,642,559
	1997/98	275,741	11,694,866
	1998/99	250,181	10,747,173
	1999/2000	224,621	9,799,481
	2000/01	199,061	8,851,788
Céréales secondaires	1995/96	109,437	4,418,943
	1996/97	102,452	4,258,671
	1997/98	95,466	4,098,398
	1998/99	88,481	3,938,126
	1999/2000	81,496	3,777,853
	2000/01	74,510	3,617,581
Oléagineux	1995/96	56,119	2,136,653
	1996/97	52,537	2,059,158
	1997/98	48,955	1,981,663
	1998/99	45,373	1,904,167
	1999/2000	41,790	1,826,672
	2000/01	38,208	1,749,177
Huiles végétales	1995/96	3,263	113,337
	1996/97	3,055	109,226
	1997/98	2,847	105,115
	1998/99	2,638	101,005
	1999/2000	2,430	96,894
	2000/01	2,222	92,783
Tourteaux	1995/96	7,018	264,789
	1996/97	6,570	255,185
	1997/98	6,122	245,581
	1998/99	5,674	235,977
	1999/2000	5,225	226,374
	2000/01	4,778	216,770

SCHEDULE III — *Concluded*

Categories	Crop year	Maximum Expenditure Level (Thousands of Dollars)	Maximum Volume Level (Tonnes)
Vegetables	1995/96	5,477	224,527
	1996/97	4,779	195,642
	1997/98	4,080	166,757
	1998/99	3,382	137,871
	1999/2000	2,683	108,986
	2000/01	1,985	80,101

ANNEXE III *(suite et fin)*

Catégorie	Campagne agricole	Plafond de dépenses (milliers de dollars)	Plafond de quantité (tonnes)
Légumes	1995/96	5,477	224,527
	1996/97	4,779	195,642
	1997/98	4,080	166,757
	1998/99	3,382	137,871
	1999/2000	2,683	108,986
	2000/01	1,985	80,101

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PART III: COMING INTO FORCE

CLAUSE 222

COMING INTO FORCE

Coming into force

222. (1) This Act or any provision thereof, or any provision of any Act, including any portion of any schedule, as enacted by this Act, shall come into force on a day or days to be fixed by order of the Governor in Council.

Condition

(2) No order shall be made under subsection (1) unless the Governor in Council is satisfied that the Agreement is in force.

ENTRÉE EN VIGUEUR

Entrée en vigueur

222. (1) La présente loi ou telle de ses dispositions, ou des dispositions de toute loi — y compris tout ou partie d'une annexe — édictées par elle, entre en vigueur à la date ou aux dates fixées par décret.

Réserve

(2) Un tel décret ne peut toutefois être pris que si le gouverneur en conseil est convaincu que l'Accord est en vigueur.

PART III: COMING INTO FORCE

CLAUSE 222

Clause 222

It was determined at the Marrakesh Ministerial Conference that the World Trade Organization Agreement will come into force on January 1, 1995 or as early as possible thereafter. It will enter into force after Parties have deposited instruments of ratification, certifying that they have completed their necessary domestic legal procedures.

Sub-clause 222(1) provides for the bill or any provision thereof to come into force on a day fixed by order in council.

Sub-clause 222(2) requires the Governor in Council to be satisfied, before making an order bringing the WTO Agreement legislation into force, that the Agreement is in force.

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SCHEDULE IV: MISCELLANEOUS CONSEQUENTIAL AMENDMENTS

CLAUSES 1 - 6

CLAUSE 221

Consequential Amendments in Schedule IV

221. The Acts referred to in Schedule IV are amended as indicated in that Schedule.

Modifications corrélatives — Annexe IV

221. Les lois visées à l'annexe IV sont modifiées conformément aux indications de celle-ci.

R.S., c. 35 (4th Supp.) [c. A-10.1]

Air Canada Public Participation Act

Loi sur la participation publique au capital d'Air Canada

L.R., ch. 35 (4e suppl.) [ch. A-10.1]

1993, c. 34, s. 3

1. The portion of the definition "non-resident" in subsection 6(7) after paragraph (*f*) is replaced by the following:

but does not include

(*g*) a mutual company within the meaning of the *Insurance Companies Act*, if its head office and chief place of business are situated in Canada and at least three quarters of its board of directors and each committee of its directors are Canadian citizens who are ordinarily resident in Canada, or

(*h*) a company within the meaning of that Act that is a subsidiary of a foreign institution within the meaning of that Act or a foreign company within the meaning of that Act, where the company or the foreign company is acquiring shares to form part of the assets of a segregated fund maintained pursuant to section 451 or 593 of that Act that has been established with respect to one or more policies or amounts for the administration of a pension fund for the benefit of individuals a majority of whom are residents;

1. Le passage de la définition de « non-résident », au paragraphe 6(7), suivant l'alinéa *f*), est remplacé par ce qui suit :

1993, ch. 34, art. 3

La présente définition exclut la société mutuelle, au sens de la *Loi sur les sociétés d'assurances*, si son siège et son bureau principal sont situés au Canada et si au moins les trois quarts tant des membres de son conseil d'administration que des membres de chacun des comités de ce conseil sont des citoyens canadiens résidant habituellement au Canada. Elle exclut également la société qui est une filiale d'une institution étrangère ou d'une société étrangère — les termes « société », « institution étrangère » et « société étrangère » s'entendant au sens de la *Loi sur les sociétés d'assurances* — qui acquiert des actions destinées à faire partie de l'actif d'une caisse séparée tenue aux termes des articles 451 ou 593 de cette loi et constituée à l'égard d'une ou plusieurs polices ou sommes pour la gestion d'un régime de pension bénéficiant à des personnes physiques qui sont en majorité des résidents.

SCHEDULE IV: MISCELLANEOUS CONSEQUENTIAL AMENDMENTS

CLAUSES 1 - 6

CLAUSE 221

Overview

The amendments in Schedule IV are required as a result of WTO-related amendments to the *Insurance Companies Act*, the *Integrated Circuit Topography Act*, the *Meat Import Act* and the *Western Grain Transportation Act*. They are made pursuant to Clause 221 of the *World Trade Organization Agreement Implementation Act*.

Clauses 1 and 2: Amendments to the Air Canada Public Participation Act and the Petro-Canada Public Participation Act Consequential on the Repeal of Section 427 of the Insurance Companies Act

Both the *Air Canada Public Participation Act* and the *Petro-Canada Public Participation Act* exclude a mutual company to which subsection 427(5) of the *Insurance Companies* applies or a company or foreign company to which subsection 426(5) of that Act applies from the definition of "non-resident". The amendments delete the reference to the *Insurance Companies Act* and substitutes the words currently used in those subsections.

Clause 1 - Amendment of Subsection 6(7) of the Air Canada Public Participation Act

This clause deletes the reference to subsections 427(5) and (6) of the *Insurance Companies Act* in the definition of "non-resident" in subsection 6(7) of the *Air Canada Public Participation Act*. The reference is replaced by importing into the Act the words now used in those subsections of the *Insurance Companies Act*.

1993, c. 34, s. 101

2. The portion of the definition "non-resident" in subsection 9(8) after paragraph (*f*) is replaced by the following:

but does not include

(*g*) a mutual company within the meaning of the *Insurance Companies Act*, if its head office and chief place of business are situated in Canada and at least three quarters of its board of directors and each committee of its directors are Canadian citizens who are ordinarily resident in Canada, or

(*h*) a company within the meaning of that Act that is a subsidiary of a foreign institution within the meaning of that Act or a foreign company within the meaning of that Act, where the company or the foreign company is acquiring shares to form part of the assets of a segregated fund maintained pursuant to section 451 or 593 of that Act that has been established with respect to one or more policies or amounts for the administration of a pension fund for the benefit of individuals a majority of whom are residents;

1993, ch. 34, art. 101

2. Le passage de la définition de « non-résident », au paragraphe 9(8), suivant l'alinéa *f*), est remplacé par ce qui suit :

La présente définition exclut la société mutuelle, au sens de la *Loi sur les sociétés d'assurances*, si son siège et son bureau principal sont situés au Canada et si au moins les trois quarts tant des membres de son conseil d'administration que des membres de chacun des comités de ce conseil sont des citoyens canadiens résidant habituellement au Canada. Elle exclut également la société qui est une filiale d'une institution étrangère ou d'une société étrangère — les termes « société », « institution étrangère » et « société étrangère » s'entendant au sens de la *Loi sur les sociétés d'assurances* — qui acquiert des actions destinées à faire partie de l'actif d'une caisse séparée tenue aux termes des articles 451 ou 593 de cette loi et constituée à l'égard d'une ou plusieurs polices ou sommes pour la gestion d'un régime de pension bénéficiant à des personnes physiques qui sont en majorité des résidents.

Amendments Consequential on the New Section 7.1 of the Integrated Circuit Topography Act

Modifications découlant du nouvel article 7.1 de la Loi sur les topographies de circuits intégrés

R.S., c. D-1 Defence Production Act | Loi sur la production de défense L.R., ch. D-1

3. Paragraph (*b*) of the definition "royalties" in section 2 is replaced by the following:

(*b*) claims for damages for the infringement or use of any registered topography within the meaning of the *Integrated Circuit Topography Act* or of any patent or registered industrial design;

3. La définition de « redevances », à l'article 2, est remplacée par ce qui suit :

« redevances » Droits de licence et autres paiements analogues à des redevances, exigibles ou non en vertu d'un contrat, qui sont soit calculés en pourcentage du coût ou du prix de vente du matériel de défense ou établis à un montant fixe par article produit, soit fondés sur la quantité ou le nombre d'articles produits ou vendus ou sur le volume d'affaires réalisé. La présente définition s'applique également aux demandes en dommages-intérêts pour violation ou usage de toute topographie enregistrée au sens du paragraphe 2(1) de la *Loi sur les topographies de circuits intégrés* ou de tout brevet ou dessin industriel enregistré.

« redevances » "*royalties*"

Clause 2 - Amendment of Subsection 9(8) of the Petro-Canada Public Participation Act

This clause deletes the reference to subsections 427(5) and (6) of the *Insurance Companies Act* in the definition of "non-resident" in subsection 9(8) of the *Petro-Canada Public Participation Act.* The reference is replaced by importing into the Act the words now used in those subsections of the *Insurance Companies Act.*

Clauses 3 and 4: Amendments to the Defence Production Act Consequential on the New Section 7.1 of the Integrated Circuit Topography Act

The *Defence Production Act* was enacted in order to facilitate government contracting for the acquisition of defence supplies and services. There have been few amendments.

The current section 22 of the Act allows the Minister to relieve defence supply contractors from claims for infringement and from the obligation to pay royalties in connection with any patent or registered industrial design involved in the furnishing of engineering or technical assistance or services for the performance of a defence supply contract. It also allows the owner of the patent or registered industrial design to apply to the Commissioner of Patents to fix the amount of compensation to be paid in lieu of the royalties that would otherwise be collected. The decision of the Commissioner of Patents can be appealed to the Federal Court. The current section 22 does not, however, provide for compensation for infringement or use of rights to the layout design for integrated circuit semi-conductor chips. These layout designs are protected as "registered topographies" under the *Integrated Circuit Topography Act.*

TRIPS Commitment: The TRIPS Agreement limits government use of integrated circuit layout designs to public non-commercial use (TRIPS Art. 37(2) and 31(a) to (k)).

Clause 3 - Definitions

This clause amends the definition of "royalty" in section 2 to add claims for damages for the infringement or use of "any registered topography within the meaning of the *Integrated Circuit Topography Act*" to the definition of "royalty" in section 2.

4. Section 22 is replaced by the following:

4. L'article 22 est remplacé par ce qui suit :

Relief from claims and proceedings for royalties

22. (1) The Minister may, on behalf of Her Majesty, contract with any person that Her Majesty will relieve that person from any claims, actions or proceedings for the payment of royalties for the use or infringement of any patent, registered industrial design or registered topography by that person in, or for the furnishing of any engineering or technical assistance or services to that person for, the performance of a defence contract.

Immunité de poursuite — redevances

22. (1) Le ministre peut, au nom de Sa Majesté, prendre envers une personne un engagement portant que Sa Majesté la libérera de toute réclamation, action ou poursuite en paiement de redevances pour l'emploi ou la violation par cette personne, dans le cadre de l'exécution d'un contrat de défense, d'un brevet, d'un dessin industriel enregistré ou d'une topographie enregistrée, ou à l'égard d'une aide apportée ou de services techniques rendus à cette personne dans les mêmes circonstances.

Relief from royalty payments

(2) A person with whom the Minister has contracted under subsection (1) is not liable to pay royalties under any contract, statute or otherwise by reason of the use or infringement of a patent, registered industrial design or registered topography in, or in respect of engineering or technical assistance or services furnished for, the performance of a defence contract and to which the contract under subsection (1) applies.

Exemption

(2) Une personne avec qui le ministre a conclu un engagement conformément au paragraphe (1) n'est pas tenue de verser des redevances au titre d'un contrat, d'une loi ou d'une autre autorité en raison de la violation ou de l'emploi, dans le cadre de l'exécution d'un contrat de défense auquel s'applique l'engagement visé au paragraphe (1), d'un brevet, d'un dessin industriel enregistré ou d'une topographie enregistrée, ou à l'égard d'une aide apportée ou de services techniques fournis pour l'exécution d'un tel contrat.

Compensation for use

(3) A person who, but for subsection (2), would be entitled to a royalty from another person for the infringement or use of a patent, registered industrial design or registered topography or in respect of engineering or technical assistance or services is entitled to reasonable compensation from Her Majesty for the infringement, use or services and, if the Minister and that person cannot agree as to the amount of the compensation, it shall be fixed by the Commissioner of Patents.

Indemnisation

(3) Quiconque, sans l'exemption prévue au paragraphe (2), aurait droit au paiement d'une redevance visée au paragraphe (1) a le droit de recevoir de Sa Majesté une indemnité raisonnable pour l'emploi, la violation, l'aide ou les services en cause et, à défaut d'entente entre le ministre et l'intéressé sur le montant de l'indemnité, celui-ci est fixé par le commissaire aux brevets.

Appeal

(4) Any decision of the Commissioner of Patents under subsection (3) is subject to appeal to the Federal Court under the *Patent Act*.

Appel à la Cour fédérale

(4) La décision du commissaire aux brevets peut faire l'objet d'un appel à la Cour fédérale aux termes de la *Loi sur les brevets*.

Definition of "registered topography"

(5) In this section, "registered topography" has the same meaning as in the *Integrated Circuit Topography Act*.

Définition de « topographie enregistrée »

(5) Dans le présent article, « topographie enregistrée » s'entend au sens du paragraphe 2(1) de la *Loi sur les topographies de circuits intégrés*.

Clause 4 - Relief from Claims and Proceedings for Royalties

This clause amends section 22 to allow the Minister of Supply and Services to relieve defence contractors from claims for infringement and from the obligation to pay royalties in connection with a registered topography under the *Integrated Circuit Topography Act* and to allow the Commissioner of Patents to fix compensation regarding the use of such registered topographies, as well as to allow for an appeal to the Federal Court from decisions of the Commissioner.

Amendment Consequential on the Repeal of the Meat Import Act

R.S., c. E-19

Export and Import Permits Act

5. Paragraph 5(1)(*c*) is repealed.

Modifications découlant de l'abrogation de la Loi sur l'importation de la viande

Loi sur les licences d'exportation et d'importation

L.R., ch. E-19

5. L'alinéa 5(1)*c*) est abrogé.

Amendment Consequential on the New Section 37.1 of the Western Grain Transportation Act

R.S., c. 28 (3rd Supp.) [c. N-20.01]

National Transportation Act, 1987

6. (1) Subsection 27(2) is replaced by the following:

Approval of certain rules, etc.

(2) Subject to subsections (3) and (4), but notwithstanding anything in any other Act of Parliament, a rule, order or regulation that is authorized to be made by the Agency under this Act or any other Act of Parliament shall, where the rule, order or regulation is directed to more than one person or body and is made in the exercise of a legislative power and not in the exercise of a judicial or quasi-judicial power of the Agency, be made only with the approval of the Governor in Council.

(2) Section 27 is amended by adding the following after subsection (3):

Idem

(4) The Agency may make an order under subsection 37.1(2) of the *Western Grain Transportation Act* without the approval of the Governor in Council.

Modification découlant du nouvel article 37.1 de la Loi sur le transport du grain de l'Ouest

Loi de 1987 sur les transports nationaux

L.R., ch. 28, (3e suppl.) [ch. N-20.01]

6. (1) Le paragraphe 27(2) est remplacé par ce qui suit :

Approbation du gouverneur en conseil

(2) Sous réserve des paragraphes (3) et (4) et malgré toute autre loi fédérale, la prise par l'Office de règles, d'arrêtés ou de règlements d'application de la présente loi ou d'une autre loi fédérale concernant plus d'une personne ou plus d'un organisme et de nature législative et non judiciaire ou quasi judiciaire est subordonnée à l'approbation du gouverneur en conseil.

(2) L'article 27 est modifié par adjonction, après le paragraphe (3), de ce qui suit :

Idem

(4) L'Office peut, sans l'approbation du gouverneur en conseil, prendre un arrêté aux termes du paragraphe 37.1(2) de la *Loi sur le transport du grain de l'Ouest*.

Clause 5: ***Amendment to the Export and Import Permits Act Consequential on the Repeal of the Meat Import Act***

This clause provides that paragraph 5(1)(c) of the EIPA is repealed. This clause is consequential to clause 140 which repeals the *Meat Import Act*.

Clause 6: ***Amendment to the National Transportation Act, 1987 Consequential on the New Section 37.1 of the Western Grain Transportation Act***

Pursuant to clause 221, a consequential amendment is made to section 27 of the National Transportation Act, 1987 ("NTA") in Schedule IV. The amendment provides that, for the purposes of making an order under section 37.1 of the WGTA, the Commission will not be required to seek Governor in Council approval.