Legislative Summary **LS-421E**

BILL C-50: AN ACT TO AMEND CERTAIN ACTS AS A RESULT OF THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

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LEGISLATIVE HISTORY OF BILL C-50

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

Legislative history by Peter Niemczak

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TABLE OF CONTENTS

Page

BACKGROUND 2

DESCRIPTION AND ANALYSIS 6

A. *Canadian International Trade Tribunal Act* (Clauses 1-6) 6
B. *Customs Tariff* (Clauses 7-11) 10
C. *Export and Import Permits Act* (Clauses 12-15) 12
D. *Special Import Measures Act* (Clause 16) 14
E. Transitional Provisions (Clauses 17-18) 15
F. Coordinating Amendments (Clauses 19-25) 15
G. Coming into Force (Clause 26) 16

COMMENTARY 16

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BILL C-50: AN ACT TO AMEND CERTAIN ACTS AS A RESULT OF THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION*

Bill C-50, An Act to amend certain Acts as a result of the accession of the People's Republic of China to the Agreement Establishing the World Trade Organization, received First Reading in the House of Commons on 5 February 2002, and began Second Reading debate on 27 February 2002.

The bill amends the *Canadian International Trade Tribunal Act*, the *Customs Tariff*, the *Export and Import Permits Act*, and the *Special Import Measures Act* to give effect to rights that Canada – and all other World Trade Organization (WTO) member countries – obtained in the negotiation of China's accession to the WTO. These rights, as manifested in the bill, enable Canada to take action in the following ways to protect Canadian markets against the potential harmful effects of possible surges in Chinese imports:

- Where such imports injure or threaten to injure Canadian industries, Canada may, under certain conditions, implement special trade measures(1) – commonly known as "safeguards" – following an inquiry by the Canadian International Trade Tribunal. Such actions will be available until 11 December 2013.
- In the course of anti-dumping investigations relating to Chinese goods – to determine whether imported Chinese goods are being sold at prices below the cost of production or below the market price in China – Canada may apply special China-specific cost and pricing rules where the costs and prices of the Chinese goods are not set by market conditions.

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* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) Such measures could take the form of import duties, quantitative restrictions on imports, or the imposition of tariff-rate quotas.

The purpose of this bill – implementing Canadian trade-related rights – is relatively straightforward. The much broader issue of China's accession to the WTO is significantly more complex. Some brief background information is set out below to provide the reader with a little context on the many issues surrounding China's accession to the WTO.

Although every effort has been made to summarize the bill accurately in this document, reference should be made to the bill itself.

BACKGROUND

On 11 December 2001, after almost 15 years of negotiations, China became a member of the WTO.

In the context of world trade, China is a behemoth. China is the seventh-largest economy in the world and had a GDP in 2000 of $1.5 trillion. In 1999, it represented 3.5% of total world exports, making it the ninth-largest exporter in the world. In 2000, China was Canada's fourth-largest export market and Canada's total bilateral trade in goods with China exceeded $15 billion. The Chinese population – approximately 1.3 billion persons (one-fifth of the world population) – represents a massive market and workforce. The size and complexity of China make its accession to the WTO a particularly unique event with huge implications worldwide.

China's accession to the WTO may help to clarify the uncertainty that has existed between China and much of the rest of the trading world over the past half-century. China's economy was essentially closed to free market foreign trade from 1949 until 1978, when the Chinese government introduced its Open Door Policy to establish and improve the socialist market economy. The Policy initiated economic reform by beginning to open the Chinese market to foreign trade and slowly commencing transitions in certain sectors from a completely centrally planned to a more market-based economy. Between 1978 and 1996, the proportion of China's gross domestic product resulting from trade rose from 10% to 36%.(2)

As a transition economy, China hopes that WTO membership will provide global market access for its exports while simultaneously increasing domestic economic reform. Pre-accession trade arrangements with China took the form of bilateral agreements and

(2) Mark A. Groombridge and Claude E. Barfield, *Tiger by the Tail: China and the World Trade Organization*, Washington, D.C.: The AEI Press, 1999, p. 8.

negotiations. China believes its exports have been discriminated against by many of its trading partners, who treat China as a non-market economy and impose anti-dumping and countervailing measures on its exports.(3) Having access to the WTO dispute settlement process enables China to challenge such policies. Most WTO members – including Canada – actively support China's accession largely because it would provide their exports much greater access to the vast, lucrative Chinese market.

China's poor human rights record(4) remains a concern for many, including Canada.(5) Some argue that by welcoming China into the WTO, the international community is condoning blatant human rights abuses by China. They fear that Chinese authorities may use increased foreign investment following accession to consolidate control over disputed territories, such as Tibet. Others, like Canada, argue that China's WTO accession is part of a process of engaging China in a more open dialogue about its actions. They hope the increased dialogue and international exposure will lead to an improved Chinese human rights record.

Negotiating China's conditions of entry to the WTO was a long and complex process as both China and its WTO trading partners sought to maximize their benefits without providing too great a shock to China, the WTO or global trade in general. The importance of China's accession to the WTO is significant because of China's size and potential impact on world markets and because the conditions under which China enters will set a precedent for the other transition economies with pending WTO applications.

Although China was a founding member of the General Agreement on Tariffs and Trade (GATT) in 1948, the results of the Chinese civil war the following year changed the country's political and economic landscape considerably. With the founding of the People's Republic of China (PRC) by the Chinese Communist Party in 1949, the defeated Nationalist Party fled to Taiwan and established the Republic of China (ROC). The PRC did not become a

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(3) Yongzheng Yang, "Completing the WTO Accession Negotiations: Issues and Challenges," *World Economy*, vol. 22, June 1999, p. 527.

(4) Details on China's human rights record may be obtained from such sources as: Amnesty International (http://www.amnesty.org), Human Rights Watch (http://www.hrw.org/), the Montreal-based International Centre for Human Rights and Democratic Development, (http://www.ichrdd.ca/), and the United States Department of State Country Reports on Human Rights Practices (http://www.state.gov/g/drl/rls/hrrpt/2001/).

(5) Canada's major human rights concerns in China include: inadequate respect for freedom of expression and association, such as with regard to the Falun Gong movement; restraints on the activities of labour unions; violations of freedom of religion, particularly in Tibet and Xinjiang (East Turkestan) regions; the continued and widespread application of the death penalty; and the harsh sentencing of dissidents.

member of the GATT, and the ROC in Taiwan withdrew its GATT membership in 1950. In 1965, the ROC obtained GATT observer status, but lost this in 1971 when the PRC joined the United Nations; the UN General Assembly decided to recognize the PRC as the only legitimate government of China.

To this day, relations between the PRC and Taiwan remain tense and riddled with uncertainty. The tension is heightened by the fact that the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu – known as "Chinese Taipei" – became a distinct member of the WTO on 2 January 2002.

In 1986, China submitted a formal request to join the GATT, and a working party was established the following year to determine the terms and conditions of China's entry. Eight years of negotiations failed to produce a consensus that would enable China to join the GATT, and thus automatically accede to the successor organization – the WTO – on 1 January 1995 as a founding WTO member. Hong Kong, on the other hand, was a British Crown Colony at this time and did become an original member of the WTO. On 1 July 1997, when China resumed the exercise of sovereignty over Hong Kong as a Special Administrative Territory, Hong Kong retained its WTO status as a Separate Customs Territory of China.

Since 1995, China has been engaged in the formal WTO accession process. Becoming a member of the WTO is both straightforward and complex. Article XII of the *Agreement Establishing the World Trade Organization*(6) (WTO Agreement) simply says that any sovereign "[s]tate or separate customs territory possessing full autonomy in the conduct of its external commercial relations may accede to [the WTO] Agreement, on terms to be agreed between it and the WTO."

Although accession decisions are made by a two-thirds majority of WTO members, certain large and powerful trading entities – such as the United States and the European Union (EU) – can effectively exercise a veto on their own. For this reason, it is generally crucial to reach a consensus, often through bilateral negotiations between the applicant and interested member states, before the vote is taken. China concluded bilateral market access accords with all interested members. The United States, Canada and the EU completed accords with China on 15 November 1999, 26 November 1999, and 19 May 2000, respectively.(7)

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(6) Done at Marrakesh, 15 April 1994. The Agreement and the other agreements from the Uruguay Round of trade negotiations are available from the WTO website at the following address: http://www.wto.org/english/docs_e/legal_e/final_e.htm.

(7) Details of the Canada-China agreement – as well as the full texts of other China WTO accession documents – are available online at the Department of Foreign Affairs and International Trade website: http://www.dfait-maeci.gc.ca/tna-nac/WTO-CC-e.asp.

The complexity of the accession process arises from the collection and compilation of information about the potential member to support the application, and from the negotiations that accompany the preparation of the three key accession documents:

- the *protocol* of accession – a draft membership treaty setting out the terms and conditions of accession;
- the *report* of the working party – the result of the working party's observations and comments throughout the negotiations; and
- the *schedules* – the potential member's concessions and commitments in relation to tariffs and market access.

The process begins with the applicant submitting a memorandum describing all aspects of its trade and economic laws and policies with a bearing on WTO agreements. The WTO General Council appoints a working party of all interested member states to negotiate compliance of the applicant's trade infrastructure with WTO agreements; the results of these negotiations form the working party report and the backbone of the protocol. The negotiation of the bilateral accords between the applicant and individual member states occurs simultaneously. Once the accession documents are finalized, the full package is presented to the WTO General Council for the vote; a two-thirds majority of WTO members must vote in favour for a country to be free to sign the protocol and accede.

Following a positive vote – which occurred on 10 November 2001 in Doha, Qatar, during the WTO Ministerial Conference – China became a WTO member 30 days later, after it had accepted the Protocol by ratifying it in the Chinese parliament (the National People's Congress). Upon accession, all the bilateral accords concluded between China and individual member states were "multilateralized," i.e., their terms and conditions were extended to all WTO members on a most-favoured nation basis.

As a WTO member, China has agreed to numerous commitments and obligations – as set out in the accession documents – including:

- reductions in domestic trade barriers;
- improvements in the Chinese legal and administrative structure, including increased transparency;
- reform of various trade-related legislation;

- bringing product standards in line with international practice;
- increased protection of intellectual property rights; and
- compliance with the WTO dispute settlement procedures.

DESCRIPTION AND ANALYSIS

The amendments proposed by Bill C-50 are based on provisions negotiated between China and the WTO and set out in the *Protocol on the Accession of the People's Republic of China to the World Trade Organization* (the "Accession Protocol").(8) The Protocol was approved by the WTO Ministerial Conference at Doha, Qatar, on 10 November 2001, and came into force on 11 December 2001, the day China's WTO membership commenced. The provisions in the Protocol manifest the rights that Canada – and all other WTO members – obtained through the accession negotiations. Bill C-50 directly implements these rights in Canada by amending existing federal legislation, as described below.

A. *Canadian International Trade Tribunal Act* (Clauses 1-6)

The *Canadian International Trade Tribunal Act* established the Canadian International Trade Tribunal (CITT), which is an independent, quasi-judicial entity responsible for trade remedy inquiries as well as customs duty and excise tax appeals. Article 16 of the Accession Protocol describes transitional product-specific emergency (or "safeguard") mechanisms enabling WTO member countries to impose trade restrictions on imported Chinese products that cause or threaten to cause market disruption to domestic producers of similar or directly competitive products. In such situations arising in Canada, the CITT will be responsible for conducting an inquiry into any matters relating to complaints about Chinese products.

Clause 1 of Bill C-50 amends paragraph 26(1)(c) of the CITT Act to ensure that the CITT will not be precluded, under any circumstances, from commencing a safeguard inquiry under new sections 30.21 to 30.25 in respect of Chinese products. The CITT may commence a global safeguard inquiry – under subsections 23(1) to 23(1.1) – relating to a complaint about Chinese imports even if an inquiry relating to similar products was completed during the 24-month period preceding the date of receipt of the new complaint.

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(8) The Protocol is available from the WTO website at the following address: http://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm.

Clauses 2 and 3 simply maintain consistency throughout the French version of the Act – with respect to subsections 29(4) and 30(4), respectively – by ensuring uniform utilization of the term “autres intéressés” in both the Act and the Regulations.

Clause 4 of the bill implements much of the substance of Canada’s rights under Article 16 of the Accession Protocol. Clause 4 adds to the CITT Act new sections 30.2 to 30.26 setting out the procedures by which the CITT may undertake a safeguard inquiry – and impose safeguard measures – in relation to Chinese products that cause or threaten to cause market disruption to Canadian producers of like or directly competitive products.

The new section 30.2 defines the terms “action,” “market disruption,” “significant cause” and “WTO Member” as they apply in new sections 30.21 to 30.25. Section 30.21 requires the CITT, upon referral by the Governor in Council, to inquire into and report to the Governor in Council on any matters relating to the importation of Chinese goods that cause or threaten to cause market disruption to domestic producers, or on actions leading to a significant diversion of trade into the Canadian domestic market. Section 30.22 describes the process by which domestic producers, or an association acting on their behalf, may file a market disruption complaint. Similarly, section 30.23 describes how such producers or their representative association may file a trade diversion complaint.

For both types of complaints, subsections 30.22(2) and 30.23(2) require the complainant to provide the CITT with the following information:

- a reasonably detailed explanation of the facts on which the allegations are based;
- an estimate of the total percentage of Canadian production of the goods produced by the domestic producers by whom or on whose behalf the complaint is filed;
- any information available to the complainant to support the above facts and estimate;
- any other information required by the CITT rules; and
- any other representations the complainant finds relevant.

In the case of a market disruption complaint, subsection 30.22(3) states that the CITT will commence an inquiry if it is satisfied that:

- there is a reasonable indication that Chinese goods are being imported in such increased quantities or under conditions that cause or threaten to cause market disruption to domestic producers;
- the complaint is made by or on behalf of domestic producers of a major portion of the domestic production of the similar or directly competitive goods; and

- where a similar inquiry was completed in the 12 months before receipt of the complaint, the circumstances of the new complaint are sufficiently different to warrant a new inquiry.

In the case of a trade diversion complaint, subsection 30.23(3) requires the CITT to commence an inquiry where it is satisfied that there is reasonable indication that an action causes or threatens to cause a significant diversion of trade into the domestic market in Canada, and that the complaint is made by or on behalf of domestic producers of a major portion of the domestic production of the similar or directly competitive goods.

With both types of complaints, once the CITT has made a determination, it must report on the inquiry and submit a copy of the report to the Governor in Council, the Minister of Finance, the complainant, and any other person who made a representation to the Tribunal during the inquiry.

- For a market disruption complaint, the report must be prepared within 90 days of the commencement of the inquiry (subsection 30.22(8)).
- For a trade diversion complaint, the time limit for the report is 70 days from the commencement of the inquiry (subsection 30.23(8)).
- In the case of both a market disruption and trade diversion complaint, notice of the report must be given to each party and published in the *Canada Gazette* (subsections 30.22(9) and 30.23(9), respectively), and the Minister of Finance must table the report in each House of Parliament within the first 15 days on which that House is sitting following the submission of the report to the Governor in Council (subsections 30.22(10) and 30.23(10), respectively).

Section 30.24 enables the Governor in Council to require the CITT to further inquire into matters addressed in inquiries already conducted under sections 30.22 or 30.23. Following a further inquiry, a report is prepared and distributed to the Governor in Council, the Minister of Finance, the complainant, and any other person to whom a report of the original inquiry was submitted (subsections 30.24(1-3)). The report must be tabled in each House of Parliament within the first 15 days on which that House is sitting following the submission of the report to the Governor in Council.

Section 30.25(1) requires the CITT to ensure publication in the *Canada Gazette* of a notice that a safeguard order on Chinese goods will expire, as well as the final date for filing an extension request in respect of the order (30.25(2)). Subsection 30.25(3) enables domestic

goods producers, or an association acting on their behalf, to file a written request with the CITT requesting the continuation of an order so as to prevent or remedy domestic market disruption.

The details and procedures surrounding the filing of, and inquiry into, an extension request – including the preparation and notice of a CITT report as set out in subsections 30.25(6-13) – are very similar to those laid out above for market disruption and trade diversion initial complaints. If the requirements are met, the CITT must commence an extension request inquiry within 30 days of the request being filed (subsection 30.25(7)). Subsection 30.25(11) authorizes the Governor in Council to direct the CITT to examine any other matters in relation to the extension request. Subsection 30.25(12) requires the CITT report to be prepared at least 45 days before the safeguard order expires. Where other matters relating to the extension request have been referred to the CITT, the Minister must table the CITT report before each House of Parliament within the first 15 days on which that House is sitting following the submission of the report to the Governor in Council (subsection 30.25(14)).

Section 30.26 states that sections 30.2 to 30.25 cease to have effect on 11 December 2013. This ensures the termination of the safeguard measures 12 years after the date of China's accession to the WTO, as required by Article 16.9 of the Accession Protocol.

Clause 5 of Bill C-50 amends paragraph 39(1)(c) of the CITT Act to enable the CITT to make rules further specifying the information that must be included in a market disruption or trade diversion complaint or in an extension request, in concordance with paragraphs 30.22(2)(d), 30.23(2)(d) or 30.25(6)(d), respectively.

Subclause 6(1) of the bill amends subparagraph 40(a.1)(ii) of the CITT Act to authorize the Governor in Council to make regulations respecting the number of CITT members that constitute a quorum for the purposes of conducting inquiries and reporting on matters referred to the CITT under section 30.21. Subclause 6(2) adds a new paragraph (k.1) to section 40 of the CITT Act to ensure the Governor in Council has the authority to make regulations that set out factors for determining whether Chinese goods are imported in such increased quantities to cause or threaten to cause domestic market disruption, or whether an action – as defined in new section 30.2 – causes or threatens to cause a significant diversion of trade into the domestic market in Canada.

B. *Customs Tariff* (Clauses 7-11)

The *Customs Tariff* is a fiscal statute that essentially sets out customs duties on imported goods and provides for the tariff treatment of goods, depending on their country of origin. It allows Canada to take a broad range of measures against foreign goods and services to enforce Canada's rights under a trade agreement or to counter discriminatory foreign practices with an adverse effect on Canadian trade. Schedule I of the *Customs Tariff* lists the rates of duty applicable to all imported goods. Additional duties – surtaxes or temporary duties – may be applied to specific imported goods as emergency safeguard measures to protect domestic producers, or in response to trade discriminatory acts of other countries.

The amendments Bill C-50 makes to the *Customs Tariff* will enable Canada to further implement the safeguard provisions of section 16 of the Accession Protocol, in particular through the imposition of surtaxes in instances of market disruption or trade diversion.

Clause 7 adds to the *Customs Tariff* a new set of provisions entitled "Safeguard Measures in Respect of China" (new sections 77.1-77.9). The imposition of market disruption safeguards is governed by subsection 77.1(2), while trade diversion safeguards are governed by subsection 77.6(2). Subsection 77.1(1) defines the terms "market disruption" and "significant cause," as they apply in sections 77.2 to 77.8.

Subsection 77.1(2) authorizes the Governor in Council, on the recommendation of the Minister of Finance, to order imposition of a surtax on goods originating in China if the Minister has reported, or the CITT has found through an inquiry, that the goods are being imported in such increased quantities or under such conditions to cause or threaten to cause market disruption to domestic Canadian producers. Such a surtax may apply at the same rate to all the goods in question or it may apply at a variable rate if the goods equal or exceed quantities specified in the order. The surtax must be limited to the rate necessary to prevent domestic market disruption (subsection 77.1(3)). The Minister may prepare a report only if of the opinion there are critical circumstances, and if an order is made based on such a report, the matter must immediately be referred to the CITT for an inquiry under new subsection 30.21(1).

Subsection 77.2(1) states that, subject to the extension provisions of section 77.3, a surtax stays in effect for the period specified in the order and may be amended or repealed at any time by the Governor in Council on the recommendation of the Minister of Finance, unless the order has already ceased to have effect due to a resolution by both Houses of Parliament

under section 77.4. A surtax imposed on the basis of a report of the Minister will apply for a maximum of 200 days, unless a CITT inquiry finds that the Chinese goods are being imported in increased quantities or under conditions causing or threatening to cause domestic market disruption (subsection 77.2(2)).

Under section 77.3, the Governor in Council may extend a surtax order if a CITT inquiry determines an extension necessary to prevent or remedy the domestic market disruption. Such an extension order may be amended or repealed at any time by the Governor in Council on the recommendation of the Minister of Finance (subsection 77.3(4)).

As noted above, section 77.4 provides that a surtax order may cease to have effect if both Houses of Parliament adopt a resolution directing such cessation. Section 77.5 requires notice of the cessation to be published in the *Canada Gazette*. The section further provides that notice of continuation of a surtax order must be published in the *Canada Gazette* where the continuation is the result of an inquiry by the CITT into a Minister's report, in accordance with section 77.2(2).

Subsection 77.6(1) defines the terms "action" and "WTO Member" as they apply in section 77.6. Subsection 77.6(2) authorizes the Governor in Council, on the recommendation of the Minister of Finance, to order imposition of a surtax on goods originating in China if the CITT has found through an inquiry that an "action" causes or threatens to cause a significant diversion of trade into the domestic market in Canada. Such a surtax may apply at the same rate to all the goods in question or it may apply at a variable rate if the goods equal or exceed quantities specified in the order. Subsection 77.6(4) provides that such a trade diversion surtax order may be amended or repealed at any time by the Governor in Council on the recommendation of the Minister of Finance, unless the order has already ceased to have effect due to a resolution by both Houses of Parliament under section 77.4.

Section 77.7 authorizes the Governor in Council to make regulations to implement sections 77.1 to 77.6, and may order suspension of a surtax or rate in whole or in part from application to any goods or class of goods. Furthermore, section 77.8 states that the decision of the Governor in Council is final on any question regarding the application of a surtax or rate imposed under sections 77.1 to 77.6.

Section 77.9 states that sections 77.1 to 77.8 cease to have effect on 11 December 2013. This ensures the termination of the safeguard measures 12 years after the date of China's accession to the WTO, as required by Article 16.9 of the Accession Protocol.

Clauses 8 to 10 of Bill C-50 are simply consequential to the *Customs Tariff* amendments proposed by clause 7. Clauses 8 and 9 expand the definition of "customs duties" to include the proposed surtaxes, and clause 10 includes consideration of the proposed surtaxes in the making of regulations for duty relief.

C. *Export and Import Permits Act* (Clauses 12-15)

The *Export Import Permits Act* (EIP Act) authorizes controls on the export or import of specified goods for particular purposes, including "safeguard action." This right to impose such controls on foreign goods flows from Article XIX of the *General Agreement on Tariffs and Trade* – a key WTO document to which Canada is a signatory – under which Canada may impose restrictions on imports of a good that is causing or threatening serious injury to domestic producers of like or directly competitive goods.

The controls established by the EIP Act take the form of control lists to which particular goods – or countries, depending on the list – may be added by Order in Council. Goods on the Export Control List or the Import Control List may only be exported or imported, respectively, if they are covered by an export or import permit. The Minister of Foreign Affairs has discretion over issuance of the permits, unless goods are placed on the Export Control List or Import Control List for monitoring purposes only, in which case the Minister must issue permits on request. As well, the government may designate particular countries to or from which it wishes to control the export or import of specific goods, as the case may be, by including them on the Area Control List or the Automatic Firearms Country Control List.

The amendments proposed by Bill C-50 enable Canada to implement two new safeguards set out in Article 16 of the Accession Protocol: a product-specific safeguard and a diversionary safeguard. The product-specific safeguard could be applied to any Chinese good that was causing or threatening to cause injury to Canadian domestic producers due to an increase in imports. The diversionary safeguard would prevent Chinese goods, kept out of one market by a product-specific safeguard, from overflowing into Canada and injuring domestic producers. The particular amendments to the EIP Act authorize the addition of goods to the Import Control List for the purpose of implementing the Accession Protocol safeguards.

Clause 12 replaces subsection 4.2(2) of the EIP Act to extend application of the definition of "like or directly competitive goods," made under the regulations to the CITT Act, to

the proposed provisions of the EIP Act relating to the addition of goods to the Import Control List for safeguard purposes.

Clause 13 adds a new section 5.4 to the EIP Act to describe the process for implementation of a safeguard action against Chinese goods. Subsection 5.4(1) defines the terms "action," "market disruption," "significant cause" and "WTO Member" as they apply throughout section 5.4.

Subsection 5.4(2) authorizes the Governor in Council – on a report of the Minister of Foreign Affairs made pursuant to a CITT finding of a market disruption – to order that certain Chinese goods be placed on the Import Control List to prevent or remedy the market disruption. Similarly, subsection 5.4(3) authorizes the Governor in Council – on a report of the Minister made pursuant to a CITT finding of a trade diversion – to order that certain Chinese goods be placed on the Import Control List to prevent or remedy the trade diversion. Subsection 5.4(4) enables the Governor in Council, on the recommendation of the Minister, to extend the order including the goods on the Import Control List if a CITT inquiry has found an extension is necessary to prevent or remedy market disruption to domestic producers. Under subsection 5.4(5), the Governor in Council may, on the recommendation of the Minister, repeal or amend the inclusion order.

Subsection 5.4(6) gives the Governor in Council the ability to – on a report of the Minister made pursuant to a CITT finding of a market disruption – include certain Chinese goods on the Import Control List for the purpose of collecting information on the importation of those goods to assist in determining the need for measures to prevent or remedy the market disruption. Similarly, subsection 5.4(7) authorizes the Governor in Council to – on a report of the Minister made pursuant to a CITT finding of a trade diversion – include certain Chinese goods on the Import Control List for the purpose of collecting information on the importation of those goods to assist in determining the need for measures to prevent or remedy the trade diversion.

Furthermore, subsection 5.4(8) enables the Governor in Council to include Chinese goods on the Import Control List for the purposes of controlling imports or collecting information pursuant to a market disruption order or trade diversion order made under the proposed *Customs Tariff* safeguard provisions. Under subsection 5.4(9), the Governor in Council must remove these goods from the Import Control List upon the expiration of the order under section 5.4(8) or the corresponding order under the *Customs Tariff*, whichever is earlier.

Subsection 5.4(10) states that subsections 5.4(1) to 5.4(9) cease to have effect on 11 December 2013. This ensures the termination of the safeguard measures 12 years after the date of China's accession to the WTO, as required by Article 16.9 of the Accession Protocol.

Clause 14 of Bill C-50 replaces subsection 8(2) of the EIP Act to give the Minister of Foreign Affairs the authority to issue permits for Chinese goods that have been included on the Import Control List solely for the purpose of collecting information.

Clause 15 amends subsection 10(2) of the EIP Act to allow for the amendment, suspension or cancellation of permits issued under new subsections 5.4(6) to 5.4(8).

D. *Special Import Measures Act* (Clause 16)

The *Special Import Measures Act* (SIM Act) deals with the imposition of anti-dumping and countervailing duties.[9] For the purposes of Bill C-50, the concern is anti-dumping. The SIM Act enables Canada to impose anti-dumping duties on foreign goods when domestic producers are materially injured by such goods being exported at prices below the normal cost of the goods. This "normal" cost is generally the price for which the goods are sold in the home country. Investigations into dumping are carried out by the Canada Customs and Revenue Agency (CCRA), and the CITT conducts inquiries into whether injury was caused to Canadian producers. For an anti-dumping duty to be imposed, the CITT must find a direct link between the dumped goods and the injury to the domestic producers.

Article 15 of the Accession Protocol, entitled "Price Comparability in Determining Subsidies and Dumping," states that the WTO Anti-Dumping Agreement[10] applies to imports of Chinese goods to WTO member countries. The Agreement specifies that when determining price comparability in an anti-dumping investigation, WTO members must use either Chinese prices or costs for the industry under investigation. There is one exception to this rule: if the Chinese producers under investigation cannot clearly show that market economy conditions prevail in their domestic industry with respect to the product in question, then the WTO member alleging dumping may use a methodology that is not based on a strict comparison with Chinese domestic prices or costs. Thus, the amendments Bill C-50 proposes to the SIM Act

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(9) *Anti-dumping duties* are imposed by an importing country in instances where imports are priced at less than the price charged in the exporter's domestic market and are causing material injury to the domestic industry in the importing country. *Countervailing duties* are imposed by an importing country to offset government subsidies of the products in the exporting country, where the subsidized imports are causing material injury to domestic producers in the importing country.

(10) The full legal name of the agreement is: *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

effectively implement this exception in Canada and enable the CCRA to use different methodologies in calculating the normal value of Chinese goods found to derive from non-market economy conditions.

Clause 16 of the bill amends subsection 20(1) of the SIM Act to implement Article 15 of the Accession Protocol. New paragraph 20(1)(a) enables the CCRA to use the price comparability methodology set out in paragraphs 20(1)(c) and 20(1)(d) to determine the normal value of goods from a prescribed country where, in the opinion of the Commissioner of Customs and Revenue, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe the prices would be different if determined in a competitive market. Use of the term "prescribed country" leaves open the possibility that future WTO accession protocols may include such rules. The Department of Foreign Affairs and International Trade has indicated that the regulations of the SIM Act will be amended to include China as a prescribed country.

Paragraph 20(1)(b) sets out the normal value price comparability methodology for non-prescribed countries where the government of the country has a monopoly or substantial monopoly of its export trade. This paragraph is identical to the existing provisions in the SIM Act.

E. Transitional Provisions (Clauses 17-18)

Clauses 17 and 18 of the bill set out transitional provisions designed to assist the CCRA in applying the proposed provision in clause 16 – new section 20(1)(a) of the SIM Act – with respect to anti-dumping orders already in effect and anti-dumping investigations already underway involving imports of Chinese goods.

F. Coordinating Amendments (Clauses 19-25)

Clauses 19 to 25 coordinate Bill C-50 amendments to the *Customs Tariff* with provisions of the *Canada-Costa Rica Free Trade Agreement Implementation Act*[11] and Bill C-47, entitled the Excise Tax Act.[12]

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(11) The Act (Bill C-32, 37th Parliament) received Royal Assent on 18 December 2001, but is not yet in force and will not come into force until the Governor in Council is satisfied that Costa Rica has taken satisfactory steps to implement the Agreement.

(12) The full title of Bill C-47 is An Act respecting the taxation of spirits, wine and tobacco and the treatment of ships' stores. It received First Reading in the House of Commons on 6 December 2001.

G. Coming into Force (Clause 26)

Under clause 26, the provisions of Bill C-50, apart from clauses 19 to 25, will come into force on a day or days to be fixed by order of the Governor in Council.

COMMENTARY

In contrast to the broad issue of China's accession to the WTO, the narrow subject matter addressed in Bill C-50 has generated very little media attention. In a 5 February 2001 Departmental press release, Minister for International Trade, Pierre Pettigrew, simply announced: "These measures will allow Canada to take full advantage of the new opportunities that will arise from China's accession to the WTO while ensuring that trade with the new member remains fair and equitable."

The bill is relatively straightforward and uncontroversial, but its obvious attachment to the larger issue of China's accession to the WTO may cause it to stimulate new commentary on various corollary issues such as the effect of China on globalization and the effect of WTO accession on China's human rights record.