



Legislative Summary

***Bill S-5:
Ensuring Safe Vehicles Imported from Mexico
for Canadians Act***

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Legislative Summary of Bill S-5

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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.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL S-5: ENSURING SAFE VEHICLES IMPORTED FROM MEXICO FOR CANADIANS ACT

1 BACKGROUND

Bill S-5, An Act to amend the Motor Vehicle Safety Act and the Canadian Environmental Protection Act, 1999 (short title: Ensuring Safe Vehicles Imported from Mexico for Canadians Act) was introduced in the Senate by the Honourable Marjory LeBreton, Leader of the Government in the Senate, on 14 April 2010. The bill amends sections of the *Motor Vehicle Safety Act* and the *Canadian Environmental Protection Act, 1999* to bring Canada into compliance with its international trade obligations, mainly its obligations under the North American Free Trade Agreement (NAFTA).

Government bills may be introduced in either the House of Commons or the Senate provided they are not bills that require the appropriating of any part of the public revenue or impose “any Tax or Impost.”¹

1.1 CANADA’S TRADE OBLIGATIONS

NAFTA is a multilateral free trade agreement between Canada, the United States and Mexico. Its objectives are to eliminate trade barriers and facilitate the cross-border movement of goods and services between the territories of the parties. Furthermore, NAFTA aims, *inter alia*, to promote fair competition in the free trade area, increase investment opportunities in the territories of the parties, and create effective procedures for the agreement’s implementation, application and joint administration, and for the resolution of disputes.

NAFTA, like all free trade agreements, establishes reciprocal rights and obligations for all parties to the agreement. Thus any trade benefits or rights that are granted in the agreement apply to all parties. Chapter Three of NAFTA establishes the rules with respect to according national treatment to all goods of another party to the agreement, and the elimination of all tariff and non-tariff measures against goods of another party. Annex 300-A of Chapter Three applies to trade and investment in the automotive sector.

Annex 300-A states that each party shall accord most-favoured-nation treatment² to all parties of NAFTA with regard to trade and investment in the automotive sector. However, this general commitment is subject to a number of commitments that are country-specific. The country-specific provisions entered into by Canada include, *inter alia*, that the Canada–US Agreement Concerning Automotive Products between the Government of Canada and the Government of the United States of America is incorporated into NAFTA. Furthermore, Canada reserved the right to adopt or maintain prohibitions or restrictions on imports of used vehicles from Mexico until 1 January 2009, with a gradual phase-out of prohibitions ending in 2019. The phase-

out is related to the age of the vehicles; used vehicles that are at least 10 years old are the first to have restrictions lifted and younger vehicles follow.³

NAFTA also clarifies that these restrictions on imports of used vehicles from Mexico into Canada are not inconsistent with Canada's obligations to provide most-favoured-nation treatment.

2 DESCRIPTION AND ANALYSIS

The purpose of Bill S-5 is to amend the *Motor Vehicle Safety Act* (MVSA) and the *Canadian Environmental Protection Act, 1999* (CEPA) to allow for the importation of used vehicles from Mexico, subject to certain conditions. These amendments are required in order to bring Canada into compliance with its international trade obligations under NAFTA.

2.1 AMENDMENTS TO THE *MOTOR VEHICLE SAFETY ACT*

Clause 2 of the bill amends the definition of "vehicle" in the MVSA to include any vehicle that "belongs to a prescribed class of vehicles." A "prescribed class" of vehicle is defined in the *Motor Vehicle Safety Regulations* as a class of vehicle listed in Schedule III of the Regulations or the class of incomplete vehicles prescribed in section 4(1.1) of the Regulations.

Clause 3 amends section 7 of the MVSA. Section 5 of that Act currently requires that all vehicles sold in Canada and all vehicles of a prescribed class that are imported into Canada must conform with certain safety standards that are set out in the regulations to the Act.⁴ Section 7 of the MVSA permits an exception for used vehicles that are imported from the United States. The section currently provides that used vehicles (i.e., vehicles that have been previously sold at the retail level in the United States) that fail to meet the Canadian safety standards may nonetheless be imported into Canada on the condition that the importer makes a declaration that, before the vehicle is presented for registration, it will be made to conform with the safety requirements. This exception is to allow importers of used vehicles from the United States the time to bring the vehicles up to the levels required by the more stringent Canadian safety standards.

The amendment to section 7 of the MVSA will extend that exception to the importation of used vehicles from Mexico. The amendment specifies that a "prescribed vehicle from Mexico" (i.e., a vehicle that belongs to a prescribed class of vehicles – see clause 2 of the bill, discussed above) that fails to meet Canadian safety standards may be imported into Canada provided that the vehicle satisfies any conditions under the regulations, and the importer makes a declaration that the vehicle will be made to conform with the requirements within a prescribed period and will be inspected in accordance with the regulations. Furthermore, before the vehicle can be presented for licensing and used in Canada, it must be appropriately certified as complying with the safety requirements.

2.2 AMENDMENTS TO THE *CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999*

Clause 4 of Bill S-5 amends section 155(2) of CEPA to allow for the importation of used vehicles from Mexico subject to certain conditions. CEPA states that no vehicle shall be imported or sold in Canada unless it conforms to the environmental emissions standards and has a national emissions mark applied. CEPA currently makes an exception for used vehicles imported from the United States, allowing vehicles that do not comply with the requirements to be imported as long as the importer makes a declaration that the requirements will be satisfied and that the vehicle will be certified.

The proposed amendment to CEPA extends that exception to “prescribed” vehicles imported from Mexico. A vehicle is considered a “vehicle ... of a prescribed class” under CEPA if it falls within the enumerated list of vehicles set out in section 6 of the *On-Road Vehicle and Engine Emission Regulations*.⁵

In order to comply with the proposed amendment to CEPA, the importer must make a declaration within a prescribed period that the applicable requirements – the environmental and emissions standards – will be met and that, if required by the regulations, the vehicle will be inspected by Canadian authorities and certified as conforming to Canadian standards before it is presented for licensing. This amendment therefore allows an importer to bring used vehicles into Canada from Mexico as well as from the United States, even if they do not conform with Canadian environmental and emissions standards at the time they are imported, provided the importer will bring the vehicles into compliance and will have them properly certified before they are licensed and used in Canada.

Clause 5 of the bill amends section 160 of CEPA to allow for regulations to be drafted by the Governor in Council, on the recommendation of the Minister, respecting the inspection and certification of vehicles to ensure that they comply with the Canadian environmental and emissions standards set out in CEPA.

Clause 6 of Bill S-5 states that the provisions of the Act come into force on a day or days to be fixed by order of the Governor in Council.

NOTES

1. *Constitution Act, 1867*, s. 53. Furthermore, any bills that do appropriate part of the public revenue, i.e., that require government spending, can only be introduced in the House of Commons.
2. Most-favoured-nation treatment is a principle of the international trading system. Essentially it requires that countries cannot discriminate between their trading partners and cannot treat any trading partner differently from another.
3. See Appendix 300-A.1 of Chapter Three of NAFTA.
4. [Motor Vehicle Safety Regulations](#), C.R.C., c. 1038.
5. [On-Road Vehicle and Engine Emission Regulations](#), SOR/2003-2 (regulations under CEPA).