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## LEGISLATIVE SUMMARY



### **Bill C-101: An Act to amend the Customs Tariff and the Canadian International Trade Tribunal Act**

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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 C-101*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-101: AN ACT TO AMEND THE CUSTOMS TARIFF AND THE CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

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## 1 BACKGROUND

Bill C-101, An Act to amend the Customs Tariff and the Canadian International Trade Tribunal Act, was introduced in the House of Commons on 5 June 2019 by the Minister of Finance; it also received first reading on that day.<sup>1</sup> The bill was read a second time and referred to the House of Commons Standing Committee on Finance for study on 10 June 2019. It was reported to the House of Commons on 14 June 2019 and received third reading in the House of Commons on 19 June 2019.

On 18 June 2019, the Senate referred the subject matter of Bill C-101 to the Standing Senate Committee on National Finance for pre-study; a report on the subject matter was tabled in the Senate on 19 June 2019.<sup>2</sup> The bill received first, second and third readings on 20 June 2019, and it was passed by the Senate on that day.

Bill C-101 received Royal Assent on 21 June 2019. No amendments were proposed to the bill at any stage of the legislative process.

Bill C-101 repeals sections 55(5) and 55(6) of the *Customs Tariff* for a period of two years; after this time, the sections will be re-enacted in the same form as prior to the date of the bill's Royal Assent. The bill also makes consequential amendments to the *Canadian International Trade Tribunal Act*.

In Canada, when there is evidence that an increase in imports has caused or is threatening to cause injury to domestic producers, the Governor in Council may impose safeguard measures in one of two forms: an import surtax; or a restriction on the volume of goods imported into Canada. Pursuant to section 56(2) of the *Customs Tariff*, an import surtax can be imposed on a provisional basis for a period of up to 200 days, based on a report by the Minister of Finance. Under section 55(4) of the *Customs Tariff*, the Governor in Council must refer such an imposition to the Canadian International Trade Tribunal (CITT) for an inquiry.<sup>3</sup> In particular, the CITT is required to inquire into, and to report to the Governor in Council on, any matter relating to the importation of goods into Canada in increased quantities and under conditions that may constitute a "cause of serious injury or threat thereof to domestic producers of like or directly competitive goods."<sup>4</sup>

This requirement for an inquiry is consistent with Canada's obligations under the World Trade Organization's *Agreement on Safeguards*. These obligations permit provisional safeguard measures to be imposed for up to 200 days "[i]n critical circumstances where delay would cause damage which it would be difficult to repair."<sup>5</sup> These provisional measures are applied pending the results of an investigation by a competent national authority,<sup>6</sup> which, in the case of Canada, is the CITT.

Before it was amended, the *Customs Tariff* prevented the reimposition of safeguard measures on products that were subject to previous safeguards for a period of two years following their last imposition. The amendments in Bill C-101 temporarily remove the two-year moratorium on the imposition of safeguards for products that were recently subject to such measures.

These amendments follow a series of events that began on 10 October 2018, when the Government of Canada made an Order in Council that imposed the provisional safeguard measure of a surtax on the importation of seven categories of steel products: heavy plate; concrete reinforcing bars; energy tubulars; hot-rolled sheet; pre-painted steel; stainless steel wire; and wire rod.<sup>7</sup> On the recommendation of the Minister of Finance, the Governor in Council asked the CITT to conduct an inquiry into whether safeguard measures are warranted in this case.

The CITT's 3 April 2019 report to the Governor in Council concluded that safeguard measures are warranted on imports into Canada of two of the seven categories mentioned above: heavy plate and stainless steel wire.<sup>8</sup> Accordingly, the Order in Council imposing the safeguard measures on the other five imported products expired on 28 April 2019, which was the 200<sup>th</sup> day of the imposition of safeguard measures.<sup>9</sup> Under the pre-amendment *Customs Tariff* provisions, safeguards could not be imposed until April 2021 on those five products.

## 2 DESCRIPTION AND ANALYSIS

Bill C-101, which has three clauses, amends the *Customs Tariff* and the *Canadian International Trade Tribunal Act*.

### 2.1 CUSTOMS TARIFF (CLAUSE 1)

Clause 1(1) repeals sections 55(5) and 55(6) of the *Customs Tariff*. Section 55(5) prohibits the Governor in Council from reimposing safeguard measures on goods imported into Canada that were previously subject to Canadian safeguard measures until a period equal to the duration of the original safeguard measures has elapsed, provided that this period is at least two years. Section 55(6) provides exceptions relating to this prohibition. In particular, if safeguard measures are imposed on goods imported into Canada under section 55(1) of the *Customs Tariff* for a duration of 180 days or less, new safeguard measures may be imposed on the same imported goods provided that the following two conditions are met:

- at least one year has passed since the imposition of the original safeguard measures on those imported goods; and
- not more than two safeguard measures were imposed on these goods during the five-year period that immediately precedes the implementation date of the new safeguard measures.

Clause 1(1) came into force on 21 June 2019, when the bill received Royal Assent. As a result, the Government of Canada has the ability to reimpose safeguard

measures on goods imported into Canada that were previously subject to Canadian safeguard measures.

Clause 1(2) sets out the identical provisions repealed in clause 1(1). Under clause 3, these provisions will be re-enacted two years after the date on which Bill C-101 received Royal Assent.

## 2.2 CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT (CLAUSE 2)

Clause 2(1) amends section 26(7) of the *Canadian International Trade Tribunal Act* to remove references to the *Customs Tariff*. The section before amendment provided that, if section 55(5) of the *Customs Tariff* or section 5(3.1) of the *Export and Import Permits Act* prohibits the imposition of either an import surtax or a restriction on the volume of any goods imported into Canada during any period, the CITT may begin a safeguard inquiry regarding those goods “no earlier than 180 days before the end of the period.”

Clause 2(2) reinstates the section, with the references to the *Customs Tariff*.

These consequential amendments reflect the repeal of section 55(5) of the *Customs Tariff* for a two-year period, as noted above. Clause 2(1) came into force on 21 June 2019, when Bill C-101 received Royal Assent. As set out in clause 3, clause 2(2) will come into force two years after the date of Bill C-101’s Royal Assent.

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## NOTES

1. [Bill C-101, An Act to amend the Customs Tariff and the Canadian International Trade Tribunal Act](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. Senate, Standing Committee on National Finance, [Forty-second Report](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 19 June 2019.
3. *Customs Tariff*, S.C. 1997, c. 36, [s. 55\(4\)](#).
4. *Canadian International Trade Tribunal Act*, R.S.C. 1985, c. 47 (4<sup>th</sup> Supp.), [s. 20\(a\)](#).
5. World Trade Organization, “[Article 6: Provisional Safeguard Measures](#),” *Agreement on Safeguards*.
6. Department of Finance Canada, “[Backgrounder – Support for Canadian Steel Producers Through Provisional Safeguards on Certain Steel Imports](#).”
7. [Order Imposing a Surtax on the Importation of Certain Steel Goods](#), SOR/2018-206.
8. Canadian International Trade Tribunal, [Safeguard Inquiry into the Importation of Certain Steel Goods](#), Inquiry no. GC-2018-001, 3 April 2019.
9. Greg Tereposky, Vincent DeRose and Daniel Hohnstein, “[The Government of Canada introduces legislation to temporarily remove the two-year prohibition against imposing additional rounds of safeguard measures on the same steel products](#),” Tereposky and DeRose LLP, 3 June 2019.