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LEGISLATIVE SUMMARY

Bill C-30:

An Act to implement the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States and to provide for certain other measures

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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**.

Legislative Summary of Bill C-30
(Legislative Summary)

Publication No. 42-1-C30-E

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LEGISLATIVE SUMMARY OF BILL C-30: AN ACT TO IMPLEMENT THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION AND ITS MEMBER STATES AND TO PROVIDE FOR CERTAIN OTHER MEASURES

1 BACKGROUND

Bill C-30, An Act to implement the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States and to provide for certain other measures (short title: Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act)[1] was introduced and read for the first time in the House of Commons on 31 October 2016.

As its title indicates, the bill implements the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) and its member states that was signed at Brussels on 30 October 2016. The bill also amends several Acts to give effect to Canada's obligations under CETA and to make other amendments.

1.1 History of the Canada–European Union Comprehensive Economic and Trade Agreement

Canada and the EU have long-standing economic cooperation relations. With its 28 member states, a total population of over 500 million and a gross domestic product (GDP) of more than C$19 trillion in 2015, the EU is the largest single market in the world. As an integrated entity, the EU is Canada's most important trading partner for goods and services after the United States.

CETA is the most recent attempt to tighten official economic relations between the two entities since negotiations for an agreement to strengthen trade and investment were suspended in 2006.

CETA developed over several years. At their bilateral summit in 2007, Canada and the EU announced that they had agreed to conduct a joint study of the costs and benefits of a closer economic partnership. According to the joint report, *Assessing the costs and benefits of a closer EU–Canada economic partnership*,[2] published by Canada and the EU in October 2008, Canada could expect "significant benefits" if it strengthened its economic partnership with the EU. The report indicated a potential increase of 22.9% in the value of bilateral trade and a possible annual increase in Canada's GDP of about €8.2 billion by 2014 (C$13.0 billion, at the Bank of Canada 17 October 2008 exchange rate).

The official launch of CETA negotiations was announced on 6 May 2009 at the Canada–EU Summit. More than four years later, on 18 October 2013, Canada and the EU announced that they had reached an agreement-in-principle concerning

CETA. The technical summary of final negotiated outcomes (or the agreement-in-principle)[3] was tabled in the House of Commons on 29 October 2013.

At the Canada–EU Summit in Ottawa in September 2014, the officials presented the full text of CETA, which was published in Canada in both official languages. On 29 February 2016, Canada and the EU announced that the legal examination of the English version of CETA had been completed. On 30 October 2016, at the Canada–EU Summit in Brussels, CETA was signed by Justin Trudeau, Prime Minister of Canada; Donald Tusk, President of the European Council; and Jean-Claude Juncker, President of the European Commission.[4] CETA[5] and an implementation bill to incorporate the international obligations into Canadian law were tabled in the House of Commons on 31 October 2016.

1.2 Next Steps Concerning the Coming into Force of the Canada–European Union Comprehensive Economic and Trade Agreement

1.2.1 Canada

If Bill C-30 receives Royal Assent, and once the necessary regulatory amendments have been made, the next step will be for the government to obtain an order in council authorizing ratification.

CETA would come into force on the first day of the second month following the date on which Canada and the EU each inform the other of the completion of their respective ratification processes, or on another date, by mutual agreement. At that point, Canada would be bound by the provisions of CETA. As described below, some provisions could apply during the period before CETA as a whole comes into force.

1.2.2 European Union

On 5 July 2016, the European Commission proposed that CETA be signed and concluded as a “mixed” agreement, that is, an agreement that contains provisions that fall under the competence of both the EU and of the member states of the EU.[6] Accordingly, each member state will have to ratify CETA in accordance with its own internal procedure. However, with the approval of the Council of the EU and the European Parliament, mixed agreements can be applied provisionally in the EU before ratification of the treaty by each member state. Such provisional application would apply to the provisions of CETA that fall under exclusive EU competence – the fields where the EU alone has the authority to legislate and make enforceable laws.

1.3 Provisional Application of the Canada–European Union Comprehensive Economic and Trade Agreement

The provisional application of CETA is described in paragraph 30.7(3)(a) of the agreement, which states:

> The Parties may provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other that their respective internal requirements and procedures necessary for the provisional application of this Agreement have been completed or on such other date as the Parties may agree.[7]

On 28 October 2016, the Council of the EU adopted a series of decisions relating to CETA, by which it agreed to sign CETA, to provisionally apply the agreement, and to ask the European Parliament to ratify it.[8]

As stated by the chief CETA negotiator for the Government of Canada, the European authorities and the member states of the EU have agreed that virtually all of the provisions of the agreement could be provisionally applied.[9] However, it was agreed that this would not be the case for the provisions concerning the settlement mechanism for disputes between an investor and a state.[10]

According to a guide published by the European Parliamentary Research Service, if an EU member state does not ratify a provisionally applied free trade agreement and it becomes impossible for the agreement to come into force, the provisional application would have to be lifted. The document also states:

> The [European] Commission could argue on the basis of the duty of cooperation that the provisional application, which concerns EU competences only, should be maintained in order to allow renegotiation and to find a mutually acceptable solution.[11]

1.4 Possible Obstacles to the Coming into Force of the Canada–European Union Comprehensive Economic and Trade Agreement

All indications are that the European Parliament will make a decision on CETA in January or February 2017.[12] A positive vote on CETA would allow the provisional application of the agreement. However, a number of questions remain concerning the future of the agreement and its final coming into force, in particular because of the possible obstacles to ratification in some member states.

In that regard, Belgium informed the Council of the EU in a statement published on 27 October 2016 that:

> [u]nless their respective parliaments decide otherwise, the Walloon Region, the French Community, the German-speaking Community, the French-speaking Community Commission and the Brussels–Capital Region do not intend to ratify CETA on the basis of the system for resolving disputes between investors and Parties set out in Chapter 8 of CETA, as it stands on the day on which CETA is signed.[13]

That statement suggests that amendments will have to be made to the text of CETA in order for it to be ratified by Belgium.

Moreover, over the next 12 months, elections will be held in some EU member states, including Germany, France and the Netherlands. In the event that a Eurosceptic party with an unfavourable predisposition toward free trade were elected

or made substantial gains, it is conceivable that this would make ratification of the agreement more difficult in certain member states.

Although the United Kingdom's eventual withdrawal from the EU should have no immediate effect on the fate of CETA, it is difficult to predict what might be the long-term impact of the departure of Canada's largest trading partner within the EU and one of the biggest advocates among EU member states of a free trade agreement with Canada.

2 DESCRIPTION AND ANALYSIS

Bill C-30 consists of 138 clauses and 6 schedules. The description that follows highlights certain aspects of the bill rather than reviewing all of its provisions.

- Clauses 2 to 5 set out the definitions and rules of interpretation.
- Clause 6 binds Her Majesty in right of Canada.
- Clause 7 states the purpose of the bill.
- Clause 8 specifies how proceedings relating to causes of action based on CETA may be undertaken.
- Part 1, which consists of clauses 9 to 14, deals with the implementation of CETA.
- Part 2, which consists of clauses 15 to 117, contains related amendments made to certain Acts to give effect to the obligations contracted by Canada under CETA and to make other amendments.
- Part 3, which consists of clauses 118 to 132, deals with the consequential amendments made necessary by the enactment of the bill.
- Part 4, which consists of clauses 133 to 138, deals with the coordinating amendments made necessary by the enactment of and coming into force of the bill.

2.1 Definitions and Rules of Interpretation, Obligation of Her Majesty, Purpose of the Bill and Causes of Action

2.1.1 Definitions and Rules of Interpretation (Clauses 2 to 5)

Among other definitions, clause 2 defines the "CETA Joint Committee" as the committee established under Article 26.1 of the agreement. This committee is composed of representatives of the EU and Canada and is responsible for all questions concerning trade and investment between the parties, as well as for the implementation and application of CETA.

Clause 4 provides that nothing in the bill or in CETA (except chapters Twenty-Two and Twenty-Four of the agreement, which relate to sustainable development and the environment, respectively) applies to natural surface or ground water in liquid, gaseous or solid state.

2.1.2 Obligation of Her Majesty (Clause 6)

Clause 6 provides that Her Majesty in right of Canada is bound by the bill.

2.1.3 Purpose of the Bill (Clause 7)

Clause 7 states that the purpose of the bill is to implement CETA, the objectives of which are to:

> (a) establish a free trade area in accordance with the Agreement;
>
> (b) promote, through the expansion of reciprocal trade, the harmonious development of the economic relations between Canada and the European Union in order to create opportunities for economic development;
>
> (c) promote conditions of fair competition affecting trade between Canada and the European Union;
>
> (d) substantially increase investment opportunities in Canada and the European Union, while preserving the right of each of the parties to the Agreement to regulate to achieve legitimate policy goals;
>
> (e) eliminate barriers to trade in goods and services in order to contribute to the harmonious development and expansion of world and regional trade;
>
> (f) provide adequate and effective protection and enforcement of intellectual property rights in the territory where the Agreement applies;
>
> (g) protect, enhance and enforce basic workers' rights, strengthen cooperation on labour matters, and build on the respective international commitments of Canada and the European Union on labour matters;
>
> (h) enhance and enforce environmental laws and regulations and strengthen cooperation between Canada and the European Union on environmental matters; and
>
> (i) promote sustainable development.

2.1.4 Causes of Action (Clause 8)

Clause 8 states that no person has any cause of action and no proceedings of any kind are to be undertaken, 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 clauses 9 to 14 of the bill (or an order made under those clauses) or solely under or by virtue of the agreement.

An exception to that requirement is provided in clause 8(3), which concerns causes of action arising from Section F of Chapter Eight or Article 13.21 of CETA. Section F of Chapter Eight (which deals with investing) relates to the controversial subject of the settlement of disputes relating to investments that arise between investors and states. Article 13.21 relates to disputes related to investments in the financial services sector.

In both of these cases, the consent of the Attorney General of Canada will therefore not be necessary to undertake a cause of action relating to rights and obligations that are claimed or arise solely under or by virtue of CETA.

2.2 PART 1 – IMPLEMENTATION OF THE AGREEMENT (CLAUSES 9 TO 14)

Clause 9 of the bill provides that CETA "is approved."

Clause 10 provides that the Minister of International Trade is the principal representative of Canada on the CETA Joint Committee.

Clause 11 confers on the Ministers of International Trade, Finance, Labour, and the Environment the power to propose the names of individuals who may be assigned various responsibilities incumbent on Canada under the agreement.

Clause 12 provides that the Minister of International Trade is to designate an agency, division or branch of the Government of Canada to facilitate the operation of Chapter Twenty-Nine of CETA, which relates to dispute settlement.

Payment by Canada of expenses associated with the application of the institutional and administrative aspects of the agreement, such as the expenses incurred by the CETA Joint Committee, is provided for in clause 13 of the bill.

Clause 14 gives the Governor in Council the power to make orders in accordance with CETA.

2.3 PART 2 – RELATED AMENDMENTS (CLAUSES 15 TO 117)

Part 2 of the bill makes related amendments to the following Acts:

- the *Export and Import Permits Act*;
- the *Financial Administration Act*;
- the *Food and Drugs Act*;
- the *Importation of Intoxicating Liquors Act*;
- the *Patent Act*;
- the *Trade-marks Act*;
- the *Investment Canada Act*;
- the *Customs Act*;
- the *Commercial Arbitration Act*;
- the *Coasting Trade Act*;
- the *Customs Tariff*; and
- the *Pest Control Products Act*.

The following sections of this Legislative Summary present amendments that go beyond the usual changes necessitated by the implementation of a trade agreement. These are amendments to the *Export and Import Permits Act*, the *Patent Act*, the *Trade-marks Act*, the *Investment Canada Act* and the *Coasting Trade Act*.

2.3.1 AMENDMENTS TO THE *EXPORT AND IMPORT PERMITS ACT* (CLAUSES 15 TO 24)

The bill amends the *Export and Import Permits Act*[14] to, among other things, allow the minister responsible for the administration of that Act to issue export permits for goods on the Export Control List that are subject, in a country or territory to which CETA applies, to an access regime in the form of origin quotas.

With respect to goods that are included for certain purposes on the Export Control List and that are subject in another country to origin quotas, the proposed amendments allow the minister responsible for the administration of the Act to determine the quantity of goods covered by the access regime and to issue export allocations for such goods.

Under the proposed amendments, the minister must also issue, upon request, export permits to the holders of such export allocations.

2.3.2 AMENDMENTS TO THE *PATENT ACT* (CLAUSES 32 TO 59)

The bill amends the *Patent Act*[15] by, among other things, introducing the concept of a certificate of supplementary protection. This new certificate is modelled on the certificate used in the EU. As explained in more detail below, the certificate provides up to two years' additional protection to an existing patent and gives the certificate's holder the same rights, privileges and liberties regarding the making, constructing, using or selling of a drug, as defined in the bill, as are granted by the patent to which the certificate relates.

The definition of "certificate of supplementary protection," which is added to section 2 of the Act by clause 32(5) of the bill, provides that the certificate in question is issued by the Minister of Health under new section 113 of the Act. Clause 32(5) also adds to section 2 of the Act the definition of "holder," which means, with respect to a certificate of supplementary protection, the person who currently is entitled to the benefit of the certificate.

Consequential to the introduction of the concept of certificate of supplementary protection into the *Patent Act*, a number of the bill's technical provisions add the concept elsewhere in the Act and in other Acts and provide the necessary structure to govern it.

Clause 46(2) of the bill adds to section 79(1) of the Act the definitions of "medicine" and "rights holder," which apply to sections 79 to 103 of the Act. The part of the Act containing those provisions, which pertain to patented medicines, will now, by operation of clause 45 of the bill, be entitled "Patented or Protected Medicines" rather

than “Patented Medicines” to reflect the addition of the concept of certificate of supplementary protection to the Act.

Clause 46(2) of the bill states that a “medicine” includes a drug, as defined in new section 104 of the Act, and a medicinal ingredient. “Rights holder” is defined by the same provision as meaning a patentee and the person who currently is entitled to the benefit of a certificate of supplementary protection for the related patented invention, as well as any other person who is entitled to exercise rights in relation to the certificate.

The major amendment made to the Act is found in clause 59 of the bill, which adds new sections 104 to 134 to the Act, concerning the supplementary protection available for inventions related to medicinal ingredients; at present, the *Patent Act* ends at section 103 (before its schedules). The definition of “minister” provided in new section 104 specifies that it is the Minister of Health who is responsible for this new part of the Act.

New sections 106 to 112 pertain to applications for a certificate of supplementary protection. Under new section 106(1), a patentee may (on payment of the prescribed fee) apply to the Minister of Health for a certificate of supplementary protection related to the patented invention if all of the conditions listed in the section are met.

New sections 113 to 117 of the Act pertain to the certificate of supplementary protection itself. New section 113 lists the conditions that must be met in order for the Minister of Health to issue a certificate of supplementary protection to a patentee for the patented invention set out in the patentee’s application. New section 114 lists the information that a certificate of supplementary protection must contain.

New section 115(1) of the Act pertains to the scope of the supplementary protection. That section provides that the issuance of a certificate of supplementary protection “grants the certificate’s holder and their legal representatives, during the certificate’s term, the same rights, privileges and liberties that are granted by the patent set out in the certificate.” However, that protection is limited to the making, construction, using and selling of any drug (as defined in new section 104 of the Act) that contains the medicinal ingredient or the combination of medicinal ingredients set out in the certificate, alone or in addition to other medicinal ingredients.

New section 116(3) of the Act provides that the maximum term of a certificate of supplementary protection is two years. The term is calculated by subtracting five years from the period beginning on the filing date of the application for the patent and ending on the day on which the authorization for sale set out in the certificate is issued. Notwithstanding that provision, section 116(4) provides that if the person to whom the authorization for sale set out in the certificate is also the patentee, the Minister of Health may, if he or she is of the opinion that the person’s failure to act resulted in a period of unjustified delay in processing the authorization for sale, reduce the term of the certificate by the amount of the delay period when issuing the certificate.

New sections 124 to 126 of the Act concern infringement and impeachment of a certificate of supplementary protection. New section 124(1) provides, among other things, that an action for the infringement of a certificate of supplementary protection

may be brought in the same manner as an action for the infringement of a patent, with the necessary adaptations as set out in the bill.

New section 124(2) expands the regulation-making powers provided in section 55.2(4) of the Act so that patent disputes arising under regulations made under that section may be the subject of complete actions that will result in final rulings concerning patent infringement and validity, in place of the existing summary procedure scheme.

New sections 127 and 128 of the Act pertain to the abuse of rights. Among other provisions, section 127(3) sets out the circumstances in which the exclusive rights under a certificate of supplementary protection are abused.

New section 134 of the Act gives the Governor in Council a broad power to make rules and regulations concerning the administrative framework that applies to certificates of supplementary protection.

With respect to offences and penalties, clause 43 of the bill amends section 75 of the Act by, among other things, adding new section 75(2) pertaining to certificates of supplementary protection. A person who does one of the things listed in that provision is guilty of an indictable offence and is liable to a maximum fine of $200 or to imprisonment for a maximum term of three months, or to both.

2.3.3 AMENDMENTS TO THE *TRADE-MARKS ACT* (CLAUSES 60 TO 79)

The amendments to the *Trade-marks Act*[16] primarily pertain to geographical indications, which are defined in clause 60 of the bill. Among other provisions, the bill protects the European geographical indications listed in Annex 20-A of CETA.

The definition of “geographical indications” was previously limited to wine and spirits. Clause 60 of the bill protects geographical indications in respect of agricultural products and food by adding these concepts to the definition:

> geographical indication means an indication that identifies a wine or spirit, *or an agricultural product or food of a category set out in the schedule*, as originating in the territory of a WTO Member, or a region or locality of that territory, *if* a quality, reputation or other characteristic of the wine *or* spirit *or the agricultural product or food* is essentially attributable to its geographical origin. [Italics indicate amendments under Bill C-30.]

Clause 60 of the bill also amends the definition of “confusing” in section 2 of the Act to exempt section 11.13 (as amended by clause 62(1) of the bill) and section 11.21 (added by clause 67 of the bill) from its application. New section 11.13 concerns the production of a statement of objection against a geographical indication. New section 11.21 concerns, among other things, the removal, by order of the Federal Court, of a geographical indication from the list kept under the supervision of the Registrar of Trade-marks (through new section 11.12, discussed below).

In the case of sections 11.13 and 11.21, it is new section 11.11(3) of the Act, added by clause 61 of the bill, that establishes the circumstances under which an indication designating an agricultural product or food could be confusing with a trade-mark:

> if the use of both the indication and the trade-mark in the same area would be likely to lead to the inference that the agricultural product or food associated with the indication originates from the same source as the goods or services associated with the trade-mark.

New section 11.11(4) lists certain conditions that the Registrar of Trade-marks or Federal Court, as the case may be, must take into consideration, having regard to all the surrounding circumstances, when deciding whether an indication designating an agricultural product or food could be confusing with a trade-mark.

Clause 61 of the bill adds mention of agricultural products and foods to section 11.12 of the *Trade-marks Act*, which provides, among other things, that geographical indications are included on a list that is kept under the supervision of the Registrar of Trade-marks.[17]

Clause 62(2) of the bill lists certain grounds of objection that can be invoked in a statement of objection against a geographical indication.

Clauses 63 and 64 of the bill amend sections 11.14 and 11.15 of the Act in order to add various prohibited uses and adoptions of geographical indications protected by the Act, as amended.

Clause 64 of the bill amends section 11.17 of the Act, exempting certain indications that were previously in continued use from the prohibition provided for in new section 11.14.

Clause 67 of the bill adds to the Act new section 11.24, which confers on the Governor in Council the power to amend, by order, the schedule containing the protected geographical indications by adding or deleting a category of agricultural product or food.

Through the transitional provisions set out in clause 132 of the bill, the geographical indications listed in the *Canada–Korea Economic Growth and Prosperity Act* are transferred by the Registrar of Trade-marks to the list of geographical indications kept under section 11.12 of the *Trade-marks Act*.

2.3.4 AMENDMENTS TO THE *INVESTMENT CANADA ACT* (CLAUSES 80 AND 81)

The purpose of the *Investment Canada Act*[18] is set out in section 2 of the Act:

> to provide for the review of significant investments in Canada by non-Canadians in a manner that encourages investment, economic growth and employment opportunities in Canada and to provide for the review of investments in Canada by non-Canadians that could be injurious to national security.

That review is generally done in accordance with Part IV of the Act and the thresholds provided in that part.

The bill amends the Act to raise the investment review threshold for investors that are non–state-owned enterprises (private-sector investors) from countries that are parties to CETA or to other trade agreements.

Clause 80 of the bill replaces section 14.2 of the Act with new sections 14.11, 14.2 and 14.3. New section 14.11(1)(a), among other things, sets at $1.5 billion the threshold at which a review of an investment made by a non-Canadian in order to acquire control of a Canadian enterprise must be carried out under Part IV of the Act. This new provision applies to any investment made during the period commencing on the day on which new section 14.11(1)(a) comes into force and ending on 31 December of the following calendar year. After that date, the threshold will be indexed using the formula set out in new section 14.11(3).

At the time of writing, sections 14.1(1) and 14.1(2) of the *Investment Canada Act* set the review threshold at $600 million for investors who are members of the World Trade Organization.

New section 14.2 of the *Investment Canada Act* gives the Governor in Council the power to make any regulations that it considers necessary to carry out the provisions in section 14.1 and new section 14.11 of the Act.

New section 14.3 of the Act, added by the bill, gives the Governor in Council the power to amend, by order, the schedule to the Act in the ways described in the new section.

2.3.5 Amendments to the *Coasting Trade Act* (Clauses 91 to 94)

In the *Coasting Trade Act*, “coasting trade” is defined as “the carriage of goods [or passengers] by ship, or by ship and any other mode of transport, from one place in Canada or above the continental shelf of Canada to any other place in Canada or above the continental shelf of Canada.”[19] It is restricted to Canadian and other vessels holding a licence to engage in coasting trade.

The bill makes a number of amendments to the *Coasting Trade Act* that will allow certain movements of cargo and some dredging activities by EU-flagged and EU-controlled vessels to be conducted without a licence.

Clauses 91(1) and 91(2) of the bill add various definitions to the Act, including those for “CETA,” “EU entity” and “territory of the European Union.”

Clause 92(2) adds sections 3(2.1) to 3(2.6) to the Act, exempting feeder services and dredging activities from the general coasting trade prohibition set out in section 3(1) of the Act. Clause 93 defines exempted dredging activities, while clause 94 confers on the Governor in Council the authority to make regulations.

The bill specifies that a coasting trade licence will not be required for the following activities:

- the movement by an EU or Canadian entity, without payment, of empty cargo containers that are owned or leased by the entity (section 3(2.1));
- a feeder service between Halifax and Montréal, or vice versa, for the carriage of goods by ship as part of an importation or exportation of goods into or out of Canada by a foreign ship registered in the domestic register of a member state of the EU and whose owner is a Canadian or EU entity or is under Canadian or EU control (section 3(2.3));
- the carriage of goods in reusable shipping containers of at least 6.1 metres in length and with a minimum internal volume of 14 cubic metres between Halifax and Montréal, or vice versa, as a leg in the importation or exportation of goods into or out of Canada by a foreign ship registered in the domestic register of a member state of the EU and whose owner is a Canadian or EU entity or is under Canadian or EU control (section 3(2.4)); and
- dredging activities other than those provided under an agreement with the Crown or with an entity which is listed in Annex 19-1 of Chapter Nineteen of CETA, when the total value of the agreement is equal to or greater than 5 million special drawing rights issued by the International Monetary Fund (approximately C$9.15 million)[20] (new sections 3(2.2) and 5.1).

2.4 PART 3 – CONSEQUENTIAL AMENDMENTS (CLAUSES 118 TO 132)

Part 3 of the bill makes consequential amendments to the following Acts to include a reference to the certificate of supplementary protection:

- the *Canada Corporations Act*;
- the *Nuclear Energy Act*;
- the *Bankruptcy and Insolvency Act*;
- the *Competition Act*;
- the *Defence Production Act*;
- the *Federal Courts Act*; and
- the *Public Servants Inventions Act*.

Consequential amendments are also made to the *Olympic and Paralympic Marks Act* and to the *Canada–Korea Economic Growth and Prosperity Act* to take account of the changes relating to geographical indications made to the *Trade-marks Act*. As mentioned in section 2.3.3 of this Legislative Summary, in accordance with the transitional provisions set out in clause 132 of the bill, the geographical indications listed in the *Canada–Korea Economic Growth and Prosperity Act* are transferred by the Registrar of Trade-marks to the list kept pursuant to section 11.12 of the *Trade-marks Act*.

2.5 PART 4 – COORDINATING AMENDMENTS AND COMING INTO FORCE (CLAUSES 133 TO 138)

Clauses 133 to 137 of the bill set out the coordinating amendments that will link the coming into force of certain clauses with various Acts (including the 2014 and 2015 budget bills) and Bill C-13.

Clause 138 provides for the coming into force of five groups of provisions by means of distinct orders as described below.

First, clause 138(1) establishes that, subject to clauses 138(2) to 138(5) – which contain the other provisions concerning the various orders for the coming into force of the bill – the provisions of the bill come into force on a day to be fixed by order of the Governor in Council, with the exception of clauses 133 to 137 (the coordinating amendments mentioned above).

Second, clause 138(2) provides that the following provisions come into force on the date fixed by order, which cannot be before the day referred to in clause 138(1):

- clause 8(3), which concerns an exception to the requirement that the consent of the Attorney General of Canada be obtained in order to undertake proceedings in respect of a cause of action under Section F of Chapter Eight or Article 13.21 of CETA (with respect to certain disputes relating to investments);
- clause 11(1)(a), which gives the Minister of International Trade the power to propose the names of individuals to serve as members of the tribunals established under Section F of Chapter Eight of CETA (which relates to the settlement of disputes between investors and states concerning investments);
- clause 11(2), which gives the Minister of Finance the power to propose the names of individuals to be included in the sub-lists referred to in paragraph 3 of Article 13.20 of CETA (which provides, among other things, that the CETA Joint Committee may establish a list, which includes three sub-lists, of at least 15 individuals, chosen for their objectivity, reliability and sound judgment, who are willing and able to serve as arbitrators);
- clause 13(a), which provides for payment by the Government of Canada of its share of the aggregate of the expenses incurred by tribunals established under CETA and the remuneration and expenses payable to members of those tribunals; and
- clause 90, which adds CETA to Schedule 2 to the *Commercial Arbitration Act* in order to subject to commercial arbitration the claims submitted under Article 8.23 of the Agreement (which concerns the submission of a claim to the tribunal established under Article 8.27 of CETA).

Third, clause 138(3) provides that clause 32(1), which repeals the definition of “regulation and rule” in section 2 of the *Patent Act*, and clause 32(4), which adds new definitions of “rule” and “regulation” to that section, come into force on a date fixed by order of the Governor in Council.

Fourth, clause 138(4) provides that the following provisions affecting the *Patent Act* come into force on a date or dates fixed by order, which cannot be after the day referred to in clause 138(1):

- clause 32(2), which amends the definition of "country" in section 2 of the Act by using the abbreviation "WTO" ("includes a WTO Member, as defined in section 2(1) of the *World Trade Organization Agreement Implementation Act*");
- clauses 34(1) and 34(2), which replace the word "prévoir" with the word "régir" in the French version of the Act in sections 12(1)(a) ("régir la forme et le contenu des demandes de brevet") and 12(1)(g) ("régir le paiement des taxes réglementaires");
- clause 36 of the bill, which repeals section 29 of the Act (which concerns applicants for patents who do not reside in Canada); and
- clauses 38 to 42 of the bill:
  - clause 38 repeals section 53(3) of the Act, (which concerns copies of court judgments regarding the validity of a patent, which the patentee must furnish to the Patent Office),
  - clause 39 replaces section 55.2(4) of the Act, which concerns the power given to the Governor in Council to make regulations for preventing the infringement of patents,
  - clause 40 repeals section 62 of the Act, which concerns the certificate of a judgment voiding in whole or in part any patent,
  - clause 41 repeals section 66(3) of the Act, which relates to service on a patentee of proceedings to prevent the infringement of the patentee's patent, and
  - clause 42 replaces section 68(2) of the Act to indicate, among other things, that, in the case of an application to obtain relief from an abuse of patent rights that the Commissioner is satisfied is legitimate, the applicant must advertise the application in both the *Canada Gazette* and on the website of the Canadian Intellectual Property Office or in any other prescribed location.

Finally, clause 138(5) provides that clauses 45 to 58 of the bill, which contain technical amendments to the part of the *Patent Act* relating to patented medicines (sections 79 to 103 of the Act), come into force on a day to be fixed by order, which cannot be before the day referred to in clause 138(1).

NOTES

1. Bill C-30, An Act to implement the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States and to provide for certain other measures, 1st Session, 42nd Parliament.
2. Global Affairs Canada, *Assessing the costs and benefits of a closer EU–Canada economic partnership*, A Joint Study by the European Commission and the Government of Canada.

3. Government of Canada, *Opening New Markets in Europe: Creating Jobs and Opportunities for Canadians: Technical Summary of Final Negotiated Outcomes – Canada–European Union Comprehensive Economic and Trade Agreement*, Agreement-in-Principle, 18 October 2013.

4. Prime Minister of Canada, "Canada and EU sign historic trade agreement during EU–Canada Summit," News release, 30 October 2016.

5. Government of Canada, *Text of the Comprehensive Economic and Trade Agreement – Table of contents*.

6. European Commission, "European Commission proposes signature and conclusion of EU–Canada trade deal," News release, 5 July 2016.

7. Government of Canada, "Article 30.7 – Entry into force and provisional application," *Text of the Comprehensive Economic and Trade Agreement – Chapter thirty: Final provisions*.

8. Council of the European Union, "EU–Canada trade agreement: Council adopts decision to sign CETA," News release, 28 October 2016.

9. House of Commons, Standing Committee on International Trade (CIIT), *Evidence*, 1st Session, 42nd Parliament, 15 November 2016, 1140 (Mr. Steve Verheul, Chief Trade Negotiator, Canada–European Union, Department of Foreign Affairs, Trade and Development).

10. An investor–state dispute settlement (ISDS) mechanism is a legal mechanism that is present in bilateral or multilateral treaties concerning investment or in chapters concerning investment found in free trade agreements. It gives investors the right to take a dispute to international arbitration where they believe a foreign government that is a party to such an agreement has violated one of its provisions. ISDS mechanisms have been criticized for various reasons, including their alleged lack of transparency, the possibility of conflicts of interest on the part of tribunal members, and the risk that the financial liability resulting from potential claims could deter some governments from making new regulations. For more information on ISDS mechanisms, see Alexandre Gauthier, *Investor–State Dispute Settlement Mechanisms: What Is Their History and Where Are They Going?*, Publication no. 2015-115-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 4 May 2016.

11. Laura Puccio, "A guide to EU procedures for the conclusion of international trade agreements," *Briefing*, European Parliamentary Research Service, October 2016, p. 8.

12. CIIT (2016) (Verheul).

13. Council of the European Union, "37. Statement by the Kingdom of Belgium on the conditions attached to full powers, on the part of the Federal State and the federated entities, for the signing of CETA," *Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part – Statements to the Council minutes*, No. 13463/1/16 REV 1, Brussels, 27 October 2016, p. 29.

14. *Export and Import Permits Act*, R.S.C. 1985, c. E-19.

15. *Patent Act*, R.S.C. 1985, c. P-4.

16. *Trade-marks Act*, R.S.C. 1985, c. T-13.

17. Canadian Intellectual Property Office, *List of Geographical Indications for Wines and Spirits*.

18. *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.).

19. *Coasting Trade Act*, S.C. 1992, c. 31, s. 2(1).

20. International Monetary Fund, *Representative Exchange Rates for Selected Currencies for November 2016*.