

Issues and Requests Relating to Foreign Trade and Investment - Canada

Category	No	Issue	Issue Details	Requests	References
1 Restrictions on Entry of Foreign Capitals	(1)	Unclear basis of permits and approvals of the Acquisition of Canadian Enterprises by foreign capital	- <u>Due to the Government of Canada's (GOC's) policy under its preferential measures to protect its domestic industries such as telecommunications, media industries, and financial service sectors, where oligopoly prevails, foreign enterprises' entry into these sectors are extremely difficult. Acquisition of Canadian enterprises by foreign capital is subject to the approval of the federal and provincial government. However, the terms to apply for and obtain approvals are unclear and undefined.</u>	- <u>It is requested that GOC clearly defines the terms and conditions of the acquisition of Canadian enterprises by foreign capital.</u>	
9 Restrictive Export/Import Trade, Duty, and Customs Clearance	(1)	Handicapped Japan due to Pending Ratification of Japan-Canada FTA	- Following the ratification of FTA by and among Canada, South Korea (ROK) and EU, Japanese affiliated enterprises face a severe handicap in price competition, while ROK affiliated enterprises are advertising the entering into force of FTA. It will be the same when CETA comes into force. (Actions) - <u>Since November 2012, Japan-Canada EPA Negotiation has been under way. The 7th negotiation was convened in November 2014.</u> - <u>On 1 January 2015, ROK-Canada FTA came into effect.</u> - <u>On 5 October 2015, TPP in which Japan and Canada participate was agreed in principle.</u> <u>On 4 February 2016, 12 countries including Japan and Canada signed the TPP agreement.</u> <u>(Note) Negotiation on Bilateral EPA between Japan and Canada remains temporarily suspended since the 7th negotiation meeting in November 2015.</u>	- It is requested that GOJ ratifies EPA between Japan and Canada as soon as possible (simultaneously paralleling with the TPP negotiation.)	
	(2)	Antidumping Measures	- On 5 September 2013, Canada Border Services Agency (CBSA) notified in the Gazette, its initiation of an investigation into the dumping of certain hot-rolled carbon steel plate and high-strength low-alloy steel plate originating in or exported from Japan, Republic of Korea, Taiwan, Indonesia, Brazil, Denmark and Italy, covered by HS code 7208.51 and 7208.52. On 14 November 2013, preliminary determination was made against all countries subject to investigation. (Actions) - <u>On 20 May 2014, Canadian international trade tribunal (CITT) released final affirmative anti-dumping determination to levy antidumping duty on the subject steel plate from all respondent countries including Japan.</u>		

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	(3)	<u>GOC Response on Export Licence to Canada of Nuclear Reactor Materials & Components (NRMC) and their Technical Information (TI)</u>	<p>- <u>METI's export licence is necessary for provision from Japan to Canada of materials and parts for nuclear reactor and their technical information.</u></p> <p>- <u>Before issuing export licence, METI enquired with Ministry of Foreign Affairs through Canadian embassy in Japan about the customer of NRMC and the recipient identity of TI. However, it has taken about 6-months for METI to issue export licence, due to much delayed response from Government of Canada (GOC).</u></p> <p>- <u>It has prolonged the delivery lead-time from Japan, a factor that has weakened the competitive edge of the Japanese exporters.</u></p>	<p>- <u>It is requested that GOC expedites the response.</u></p>		
12	Exchange Controls	(1)	<u>Rapid Exchange Fluctuations</u>	<p>- <u>Radical exchange fluctuations prevail. As it stands, member firm's subsidiary (MFS) benefits from exchange gain on a direct export transaction in yen. Nevertheless, negotiation for raise in price is difficult. In a transaction with its parent company, the prevailing Yen depreciation enables MFS to offer special prices to its customers. However, MFS runs on a thin margin, so that if the exchange rate swings toward appreciation of Yen, it will instantly show operational loss: such is the severity of the fluctuation band.</u></p> <p>(Actions)</p> <p>- <u>Canadian \$ exchange rate against Japanese Yen, after undergoing a weaker yen transition of 75.2 yen in October 2011 to 103.5 yen in December 2014, since January 2015, has turned around to stronger Yen of 85.8 yen to Canadian \$1.0 in April 2016.</u></p>	<p>- <u>It is requested that GOP takes step to:</u></p> <p>-- <u>stabilise foreign exchange fluctuations, and</u></p> <p>-- <u>holds the fluctuation band within a few percents in 6-months.</u></p>	
13	Finance	(1)	<u>Canadian Banks Guarantee on the Loan for the Mines Development Fund</u>	<p>- <u>A firm at times extends a loan for mining development of Canadian mining company. The firm requests the Canadian development bank (CDB) to extend the repayment guarantee for this loan.</u></p>	<p>- <u>It is requested that the CDB, etc. will execute repayment guarantee for the loan extended by foreign capital for the mining development.</u></p>	
14	Taxation Systems	(1)	<u>Complex Accounting Work due to the Different Sales Tax by each Province</u>	<p>- <u>Since 1 July 2010, Province of Ontario and Province of B.C. inaugurated harmonised sales tax (HST), by merging the federal goods and services tax with the provincial retail sales tax.</u></p> <p>- <u>However, HST rate is 13% in Ontario and 12% in B.C., while tax law on HST differs in two provinces. Programming of the accounting system and data input, together with all the necessary clerical works, had been made even more complex.</u></p> <p>- <u>Quebec sales tax was raised by 1% on 1 January 2011 and again on 1 January 2012, adding more complexity to the works involved all around.</u></p>	<p>- <u>It is requested that GOC harmonises GST (HST) all across the Canadian provinces and territories..</u></p>	<p>Federal/Ontario Province/B.C. Province HST</p> <p>Provincial Retail Sales Tax, Quebec</p>

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			<p>- <u>Both federal sales tax (FST) and provincial sales taxes (PST) exist in Canada. While in 5-provinces (Ontario, Nova Scotia, New Brunswick, Newfoundland & Labrador, and Prince Edward Island), federal government collects both federal and provincial sales tax together as harmonized sales tax (HST).</u></p> <p><u>As to the remaining 5-provinces and 3-territories, federal government collects FST while each province collects PST. Thus, complexity arises from inability to unify book keeping with tax payments.</u></p>	<p>- <u>It is requested that GOC takes step to convert to systematic unification of federal and provincial/territorial consumption tax collection.</u></p>	
	(2)	Withholding Tax Levied on Consideration for Service Rendered by Despatch of Instructors, Etc.	<p>- <u>GOC levies uniform 15% withholding tax (WTX) upon payment made by a firm in consideration for the service rendered for installation and test run by an instructor of an enterprise not registered in Canada. WTX levy deprives the firm of its competitive edge.</u></p>	<p>- <u>In the case of other countries (such as the U.S.), tax is exempted for despatch of an instructor, etc. if the instructor's stay in Canada is within a certain period, beyond which corporate income tax becomes taxable. Likewise, it is requested that GOC repeals the tax levy.</u></p>	
	(3)	Complex Payment Procedures of the Goods and Services Tax (GST)	<p>- <u>Payments for Federal GST (Goods and Services Tax) and Federal part of HTS (Harmonized sales Tax) made upon import customs clearance and made in the domestic transactions are not integrated. The dual payment requirements complicate the clerical procedure.</u></p> <p>(Reference)</p> <p>- Please refer to Canada border services agency website at: (http://www.cbsa-asfc.gc.ca/menu-eng.html).</p> <p>Also, as regards federal goods and services tax(GST)/harmonised sales tax(HST), please refer to Canada revenue agency website at: (http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/menu-eng.html).</p> <p>- Since 10 February 2015, 5-provinces (Ontario, Newfoundland, Labrador, New Brunswick and Prince Edward Island and Nova Scotia) have integrated PST and GST into a single tax, named harmonised sales tax (HST).</p>	<p>- <u>It is requested that GOC integrates the payment periods of Federal GST and Federal part of HTS.</u></p>	<p>- Canada Border Services Agency Memorandum D17-1-5</p>
	(4)	Complexity of Goods and Services Tax	<p>- <u>As the applicable rules for goods and services tax are quite complex, it takes much time and work in calculating and determining if taxable or not. In addition, it is extremely difficult to systemise. Largely varying rules employed by each province, increases the system maintenance cost, including its modifications.</u></p>	<p>- <u>It is requested that GOC streamlines and simplifies both the goods and services tax system and, the procedures for filing tax returns and tax refund applications.</u></p>	
	(5)	Obligations to Collect Non-Resident's Withholding Tax at Source	<p>- <u>Where a non-resident, such as a Japanese, an American, etc. provides service, etc. domestically in Canada, the employer owes obligations to collect from source the amount of withholding tax (WT) payable to revenue agency (RA) from the wage/remuneration paid during the corresponding period. Despite the fact that the amount of WT so paid to</u></p>	<p>- <u>Repeal of the withholding tax levy provision for a less than 183-days stay.</u></p>	<p>- Canada Income Tax Act Regulation 102</p>

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			<p><u>RA is refundable under the 183-days' rule, and as a result non-taxable, the employer is held responsible for collecting from source the withholding tax amount, and complete refund procedures by filing application to Canadian revenue agency. Its administration is not only vexatiously complex but costly to the employer.</u></p> <p><u>While the exemption clause for withholding tax collection at source exists, it takes much time for obtaining approval, while approved cases are rare, extremely small in number.</u></p>		
16Employment	(1)	Restricted Nationality of the BOD Members	<p><u>Both Federal Canada Business Corporation Act and Ontario Business Corporation Act require: "At least 25 per cent (or minimum 1-person in case of the Board comprising of less than 4-directors) of the Board Members of a corporation shall be Canadian national".</u></p> <p><u>However, in the prevailing circumstances of the heavier legal responsibility upon board members, it is getting more difficult to request Canadian national to assume directorship in a business corporation. This provision sometimes forms a barrier for Japanese investment into Canada.</u></p>	<p><u>It is requested that GOC repeals the provisions of the law concerning the nationality requirements.</u></p>	<p>Canada Business Corporation Act 105</p> <p>Canada Business Corporation Act 118</p>
	(2)	Complex and Delayed Visa Renewal Procedures	<p><u>GOC started the clerical processing of work concerning Work Visa Acquisition at Canadian Embassy in Manila. It is said there was a case where the Visa of only one-year validity was issued upon actual entry, notwithstanding the fact the 3-year validity visa should have been granted.</u></p>	<p><u>It is requested that at GOC:</u></p> <p><u>-- ensures issuance of Work Visa at all issuing depots, and</u></p> <p><u>-- uniformly applies the work visa issuance which should not be affected by individual personal judgement of officers in charge.</u></p>	
	(3)	Job Hopping of Engineers	<p><u>Since 2007 when the energy related business began flourishing, job-hopping of engineers mushroomed in Alberta, making it difficult to retain its engineers even by raising in salary, etc. The difficulty continues.</u></p>	<p><u>It is requested that GOC introduces a scheme that equalises the workforce across- the-State through mobilising inter-provincial movement of workforce.</u></p>	
	(4)	GOC's Support Solicited for Securing Workforce	<p>While the growth of energy resources development is expected, focused on oil sand, LNG, etc., there is concern over procurement of the requisite workforce. GOC's assistance is helpful to dispose of this anxiety, by way of relaxing immigration and work visa requirements for foreign workers.</p>	<p>It is requested that GOC deregulates its policy on immigration and visa issuance to support the enterprises' effort to secure the workforce from abroad.</p>	

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17 Implementation of Intellectual Property Rights ("IPRs")	(1)	Disallowance of Temporary Reproductions even on Maintenance and Repair of Machineries, etc.	<p>- <u>Reproduction should be permitted to the extent regarded as necessary in maintaining, repairing and replacing machineries, as is provided in Article 47-4 of Japan Copyright Act. Transfer of ownership of reproductions is made pursuant to the provisions of limitations on the right of reproduction.</u></p> <p>(Reference)</p> <p>- In the U.S., the owner or lessee of machineries are authorised to replicate temporarily the computer programme for the purpose of maintenance and / or repair of machineries, "if such new copy is used in no other manner and is to be destroyed immediately after the maintenance or repair is completed" (U.S. Copyright Act Section 117©), with a leeway applied under Section 107, 'Limitations on Exclusive Rights: Fair use.'</p>	- It is requested that GOC takes steps to introduce a provision that allows reproductions in the case of maintenance, repair, etc. of machineries, etc.	
	(2)	Removal of Complaint Requirement from Criminal Penalty on Copyright Infringements	<p>- <u>As long as copyright infringements remain infringement of a private property, there is no necessity for recovery when the injured party does not wish to seek recovery. In terms of its deterrent effect, the needs remain at a low level. Conversely, the negative aspect of only the chilling effect remains. In addition, creation and expression in most cases originate from the imitation. Consequently, tightening of the deterrent requires a scrupulous care and deliberation.</u></p> <p><u>As regards copyright, the border surrounding the restricted right/indirect infringement is ambiguous. It requires a careful deliberation (for example, from the viewpoint of the chilling effect) in cases where predictability is not crystal clear.</u></p> <p>(Actions)</p> <p>- <u>On 4 February 2016, all 12-Participating States signed Transpacific Partnership Agreement, the Chapter 18 of which introduces the notion of "For greater certainty, that ex officio action does not require a formal complaint from a third party or right holder," and "Its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder," excluding from the scope of the 'subject coverage' those that have no substantial impact upon profitability of the copyrighted products in the market.</u></p>	- It is requested that Controller General of Patents, Designs & Trade Marks takes steps to remove the Complaint Requirement from Criminal Penalty on Copyright Infringements.	
	(3)	Denial of Patent by Canadian Court	<p>- <u>Canadian Courts could deny the evidence for usefulness, which had been held as useful in Japan, the U.S., EU, etc. As a result the patent could be held invalid. In addition, the evidence submitted after the filing date of patent application cannot form the basis for determining the usefulness. The Canadian judgement basis is extremely rigorous compared to Japan, the U.S., EU, etc.</u></p>	- It is requested that GOC takes step to adopt the criteria comparable to those adopted in Japan, the U.S., EU, etc.	

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19 Industrial Standards, Approval of Safety Standards	(1)	<u>Energy Efficiency Control on Low Voltage Motors (LVMs)</u>	- <u>Energy efficiency control on LVMs, including those assembled into machinery, are subject to higher efficiency control regulation in each country, including the U.S., Canada, Brazil and Mexico. The accreditation standards, which vary by country, form de facto trade barriers, due to the complexity of the application process.</u>	- <u>It is requested that GOC dispenses with the accreditation requirement on LVMs, assembled into machinery that satisfies the regulated efficiency level to remove the trade barriers.</u>	- <u>EEAct (Energy Efficiency Act)</u>
20 Monopoly	(1)	Oligopoly in Railway Transport	- <u>A member firm's subsidiary (MFS) ships the bulk of its products across the continent by railway transport, which forms an oligopoly by two firms, Canadian National (CN) and Canadian Pacific Railways (CP). Their tariff and operational policies severely impact MFS's profitability and business operation. In response to the complaints filed by the users, including business associations, and with the participation of the Federal Government, the discussions are now under way, concerning introduction of the Control Scheme, which is geared toward improvement.</u>	- <u>It is requested that with the view to slackening oligopoly and to protect the users' interest, GOC materialises as soon as possible its substantive policy.</u>	
21 Restrictions on Land Ownership	(1)	Existence of Restrictions by Province on Farmland Ownership	- <u>In light of equalising distribution of Canadian farming resources, deregulation is sought on the restricted foreign ownership of land property in the three great plains (Alberta, Saskatchewan and Manitoba provinces).</u>	- <u>It is requested that GOC deregulates restrictions on landownership by foreign funded enterprises (FFE).</u>	
22 Environmental Pollution and Waste Disposal	(1)	<u>Regulation on Certain Toxic Substances based on Unique Evaluation Method</u>	- <u>Concerning Canadian prohibition of certain toxic substances regulations on lubricants that use BNST as an additive, "Law on Environmental Protection" ("BNST regulation"), it has become difficult to conduct research for enterprises that operate supply chains broadly also outside Canada as the toxicity of BNST is not recognised in countries other than Canada.</u> <u><Particulars></u> <u>-- On 14 December 2014, BNST regulation was promulgated (enforced on 14 March 2014).</u> <u>-- In May 2014: While exclusion of "Consumer Electric/Electronic Products (CEEP)" from the scope of BNST regulation was initially confirmed, inclusion of CEEP was revoked as goods subject to BNST regulation, due to the misunderstandings between the parties.</u> <u>-- In June 2014: Upon conducting research on the use of BNST, it was difficult to obtain the amount of BNST if any contained domestically in Japan, or elsewhere, in the absence of legislation that compels submission of information if any product contained BNST.</u>	- <u>GOC introduces regulations on restricted materials after the survey on the utility and solicitation of public comments. However, the restricted materials are selected by the method based on the Environmental Protection Act, which is unique to Canada. Thus, if the materials not recognised as harmful are made subject to restrictions, adequate information is unobtainable after conducting classified survey in accordance with each utility in the supply chain research. Due to the expanded supply chain, regulation of a specified country can cause confusions among the suppliers in</u>	- <u>Canadian Environmental Protection Act</u> <u>- BNST Regulations</u>

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				<u>many countries. When selecting the materials not included in the inventory list of hazardous materials in other countries, it is requested that GOC selects the restricted materials carefully, while sharing the related information both in Canada and abroad.</u>	
25 Government Procurement	(1)	<u>Procurement of goods and Services outside the WTO Agreement on Government Procurement</u>	- <u>As of today, under amendment on agreement on government procurement, GOC excludes:</u> <u>1) metropolitan Railway, equipment, system, parts, materials and all projects related to iron/copper steel</u> <u>2) public service and</u> <u>3) highway project.</u>	- <u>It is deemed necessary to include the items on the left column in Japan-Canada EPA.</u>	
26 Others	(1)	Capacity Shortage of Railway Transport and Delays	- In addition to the chronic capacity shortage in railway transport, serious delays arose on grain exports, due to the increased volume of crude oil transport and the bad winter weather. In light of the expanded grain production forecast in Canada, the capacity shortage in railway transport can materially block the Japan/Canada grain trade. - <u>A member firm is faced with the awkward situation of no place to store products due to shortage of warehouse from the bad wintery weather, in addition to the material shortage of freight car transport.</u> - <u>Delayed logistics by shortage of railway transport.</u> - <u>Cargo transport delays by railway car breakdown.</u>	- <u>It is requested that GOC secures stable, smooth transport on grain export, etc.</u> - <u>Expansion of railway transport capacity.</u> - <u>Well-maintained railway car transport by repair, replacement, etc.</u>	
	(2)	<u>Harbour Congestion</u>	- <u>Harbour congestion delays the cargo withdrawal every time. Attempt at advance container arrangement in Quebec costs extra charges.</u>	- <u>Relaxing harbour constriction and delays.</u>	