



The Canadian Chamber of Commerce in Japan  
La Chambre de commerce du Canada au Japon  
在日カナダ商工会議所

## Position Paper on Trade Issues in Selected Sectors of the Japanese Market

prepared by the  
**Trade Policy Committee**  
of the  
**Canadian Chamber of Commerce in Japan**

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## RECOMMENDATIONS

### I Canada-Japan Economic Framework

The CCCJ has been supportive of government efforts over the last few years to reinforce the trade and economic relationship between Canada and Japan. In that context, the launch of the development of a Canada-Japan Economic Framework by Prime Ministers Martin and Koizumi was most welcome. It is the CCCJ's hope that the Framework will be officially concluded as soon as possible, and that the progress already achieved in some sectors will continue at a good pace, along the following lines:

The CCCJ is pleased to see that the Economic Framework calls for “appropriate and effective ways to take into account the interests raised by Canadian and Japanese private sectors”, and looks forward to an effective mechanism be put in place to reflect this, both in the context of the annual Joint Economic Committee (JEC) meetings and for the planned one-year Joint Study. It is CCCJ's view that cooperation between respective governments and private sectors should provide for an executive-level committee or forum (including private business representatives) charged with responsibility to report to the respective governments of Canada and Japan at regular intervals. This committee must promote a coherent and strategic bilateral economic agenda. Both countries need to assign a higher political priority to the relationship. The fact that the Canada-Japan relationship has been generally free of major problems is the very reason why Japan should build on a solid foundation with Canada.

**As the official voice of Canadian business in Japan, the CCCJ should be involved in the selection process of forum members.**

In order for the Canada-Japan relationship to grow, this new framework needs to ensure there is a clear mechanism for Canadian (and Japanese) business concerns to be discussed in a timely manner with a strong obligation on the part of the respective Governments to respond to these concerns and act on the recommendations.

The CCCJ welcomes the identification of Energy, Environment, Telecommunications, Tourism, Investment, Social Security and Tax Convention as Priority Areas of Cooperation under the Framework, as well as the inclusion of Regulatory Reform as an ongoing concern. Those had been highlighted by the CCCJ in its previous Trade Policy Paper. In addition, greater efforts should be made to overcome linguistic barriers to trade and commerce between Canada and Japan. It may be helpful to have a special group or committee dedicated to English and Japanese translations of key statutes and regulations. Education and youth exchange

should also be identified as priorities.

More broadly, we see a Canada-Japan Economic Framework being a means of:

1. facilitating the movement of people between the two countries;
2. communicating social and economic priorities in each country, and seeking to have such priorities reflected in laws and regulations which benefit citizens of both countries (e.g., tax policy harmonization, promotion of FDI); and discussing matters of mutual interest in the administration of justice, including exchange visits by appeal court judges, and promoting mutual understanding of legal procedure for citizens of each country.

### II. Financial Services

The Canadian Chamber of Commerce in Japan (“CCCJ”) applauds the efforts of the Government of Japan to deregulate the financial services sector, in a number of key areas results still fall short of the stated goal of a “free, fair, and global” financial marketplace.

An aggressive ongoing program of deregulation will benefit both Japanese consumers and Japanese business by increasing customer choice and improving customer value. In particular, the CCCJ encourages the Government of Japan to proceed aggressively with change in the following areas:

#### 1. Transparency

The Financial Services Agency (“FSA”) should continue to improve transparency in all aspects of regulatory oversight. Operating rules and procedures should be clear and available for public review. Also, we encourage the FSA to provide more regular opportunities for all financial companies to discuss current operating rules or procedures and review any potential changes to these procedures.

#### 2. Postal Insurance (Kampo)

While insurance products offered by Kampo compete directly with products offered by private insurance companies in Japan, Kampo operates outside the scope of the Insurance Business Law and without the supervision of the FSA. The result is inequitable and restricted competition and the range of products and services offered to customers is more limited than it would be with greater competition.

#### 3. Product and Rate Approval Process

The current regulatory process, which requires prior

approval of all insurance products, results in higher costs, less choice for customers, and slower development of the financial market in Japan. We strongly encourage the Government of Japan to move away from the current process of prior approval to a system of notification combined with clear standards of public disclosure. Until such a notification system is adopted, the guidelines and procedures used by the FSA for review and approval of products should be clear, transparent and publicly available.

### **III. Commercial Code, Judicial Reform, Legal Services and Competition Policy**

#### 1. Corporate Governance

The CCCJ acknowledges that recent amendments to Japan's Commercial Code have the potential to increase the flexibility of companies' capital structures, facilitate corporate financing and restructuring, and streamline corporate governance procedures. From the perspective of increasing both investor confidence and foreign investment, these revisions are welcome developments.

##### *1.1 Outside Directors*

While the CCCJ applauds the planned introduction (in April 2003) of a new optional system of corporate governance for large companies (requiring, among other things, the appointment of a majority of outside directors to various internal committees), we have concerns whether the amended provisions concerning outside directors will be sufficient to assure such directors a true level of independence. If outside directors are to properly perform their function as guardians of company and shareholder interests, we consider it essential that the scope of their responsibility and authority be precisely defined such that there can be no question as to their independence. We agree with the recent submissions of both Canada and the United States that outside directors must not be employees or former employees of companies with significant cross-shareholders or that are in the same *keiretsu*.

While recognizing that the optional nature of the new system of corporate governance may be desirable in a Japanese context (though perhaps only as an interim measure), the CCCJ will be interested to see how many companies take up this opportunity.

**The CCCJ urges Japan to attempt to engage Japanese companies on the subject of incorporating outside directors, and to carefully monitor progress in this regard.**

#### *1.2 Future Collaboration*

The CCCJ notes that the Legislative Council intends to make efforts to take into account the comments and opinions of the international business and legal communities in preparing summary draft legislation concerning future revisions to the Commercial Code ("Draft Commercial Code Revisions"). The CCCJ also notes that the Ministry of Justice has indicated that it will provide the international business and legal communities with opportunities to give input on a future study examining the introduction of new merger and acquisition techniques in Japan (the "M&A Study," initiated in 2002).

**The CCCJ urges Japan to provide Canadian businesses with opportunity to comment on both the Draft Commercial Code Revisions and the M&A Study.**

#### 2. Judicial Reforms

##### *2.1 Civil Litigation and Arbitration*

The CCCJ notes that the Justice System Reform Council (in its Recommendations to Cabinet on June 12, 2001) has recognized the importance of reducing the expense of litigation (both in terms of time and resources) to companies and individuals doing business in Japan, and has further recommended that an appropriate legal scheme for arbitration be established "at an early date". The CCCJ also notes that the Justice System Reform Promotion Law was enacted in November 2001, that the Cabinet has adopted a Program for Promoting Justice System Reform (the "Program"), and that the Office for Promotion of Justice System Reform (the "Reform Office") is presently playing a central role in preparing necessary legislation according to the Program.

**The CCCJ urges Japan to quickly enact legislation to implement the Justice System Reform Council's recommendations to increase the speed and efficiency of civil litigation, and to reform Japan's arbitration law.**

##### *2.2 Judicial Review*

In its Recommendations to Cabinet, the Justice System Reform Council identified a number of problems with Japan's existing system of judicial review. A functional judicial review process is essential to ensure that administrative agencies are subject to appropriate checks and balances, and are otherwise accountable to principles of fundamental justice. Such a process is also necessary if investors are to have complete faith in the fairness of Japan's administrative and judicial systems.

The CCCJ notes that the Reform Office is presently undertaking a comprehensive study of the judicial review process (including a review of the Administrative Case Litigation Law), and intends to take necessary measures by November 2004.

**The CCCJ urges Japan to quickly complete a review of the judicial review process, and to take steps to improve the accountability of administrative agencies by increasing the authority of the courts to adjudicate upon administrative decisions.**

### 3. Legal Services

Amidst economic globalization and ongoing regulatory reform, the business community in Japan is becoming increasingly international. Confronting challenges in the current business environment requires sophisticated legal and accounting support. However, under the existing regulatory framework, businesses in Japan are finding it increasingly difficult obtain necessary professional services. The acute shortage of capable legal professionals is well documented. As of 1997, there were only about 20,000 legal professionals in Japan (compared to approximately 83,000 in Britain). Furthermore, existing regulatory restrictions can make effective collaboration between foreign lawyers and Japanese lawyers extremely difficult.

In its recommendations to Cabinet, the Justice System Reform Council devoted an entire chapter to the difficulties posed by the shortage of capable legal professionals in Japan, and offered a number of concrete suggestions for reform (including an increase in the number of candidates passing the national bar examination, the creation of a law school system, and the promotion of collaboration and cooperation between Japanese and foreign lawyers). The CCCJ also notes that the Reform Office is planning to submit legislation in 2003 to deregulate requirements for specified joint enterprises (*tokutei kyodo jigyo*) between foreign and Japanese lawyers.

**The CCCJ urges Japan to implement the Justice System Reform Council's recommendations with a view to (a) increasing the number of capable legal professionals available to support the increasingly international business environment in Japan, and (b) enabling greater collaboration and cooperation between Japanese and foreign lawyers.**

### 4. Competition Policy

The CCCJ applauds Prime Minister Koizumi's commitment in his inaugural address to strengthen the structure of the Japan Fair Trade Commission ("JFTC") to permit it to act as a guardian of

competition in the Japanese market. A fully functioning competition policy, particularly as it relates to the ability of new entrants (domestic or foreign) to penetrate a market, is essential to the proper functioning of a fair and efficient marketplace.

The CCCJ is also encouraged by the Council on Economic and Fiscal Policy's Work Schedule (adopted in September 2001) and its recommendations (a) to improve enforcement of Japan's Antimonopoly Act ("AMA") with respect to excessive concentration of market power, (b) to reinforce JFTC investigations into merger plans, and (c) to generally strengthen the JFTC's independence. The CCCJ further acknowledges the December 11, 2001 report of the Council for Regulatory Reform, which concluded that a comprehensive study should be undertaken of the system of enforcement measures available to the JFTC under the AMA with a view to ensuring strict enforcement of the AMA.

The CCCJ notes that, during 2002, there was an increase in the total number of JFTC staff and in the number of its enforcement activities.

**The CCCJ urges Japan to further increase the independence, resources and investigative authority of the JFTC, with a view to strengthening its capacity to effectively enforce the AMA.**

## IV. Air Transport Policy

The demand for additional flights to and from Tokyo is high and the provision of such services is vital to the economies of both Japan and Canada. There is a recognized need to increase capacity at Narita Airport, which prompted the building of a second runway. Narita slots are a very scarce resource, and their limited availability constitutes a serious bottleneck to the development of business and tourism relations between Japan and Canada.

Because every slot is a valuable commodity, airlines want to keep their current slots at the longer runway and request additional slots for the new runway. Under IATA guidelines, normal practice is to allocate slots on an airport basis, and not on a specific runway.

There is still great potential to simplify and enhance regulations to ensure they conform to international (IATA) standards. While improvements appear to have been made in the transparency of slot allocation, certain rules specific to Japan's Ministry of Land, Infrastructure, and Transport ("MLIT"), e.g. the hourly, three-hourly and daily limits on slot numbers, continue to limit the freedom of the slot coordinator to meet demand.

Changes in both air traffic control procedures and the management of runway capacity could bring about an increase in the number of slots available on existing runways at Narita. This could be done within internationally recognised noise limits and without compromising safety.

Both foreign airlines operating in Japan and Japanese airlines have commented negatively on issues relating to capacity and costs. For example, landing fees in Japan are among the highest in the world. The pricing of international airfares in Japan and the ways in which they may be publicized are all matters of deep concern to the airline industry, as is the setting of fees for navigation in Japanese airspace and the setting of charges for the use of common spaces at Japanese international airports.

#### **The CCCJ urges Japan to:**

1. Ensure that the government's decision to privatize Narita independently benefits not only the operators of Narita and the Government of Japan, but also the airlines, passengers and shippers. An independent regulatory regime should be established to ensure that:
  - (i) charges are just and reasonable;
  - (ii) infrastructure development is timely and cost-effective;
  - (iii) service standards are acceptable; and
  - (iv) there is the ability to redress the users' weak bargaining position.
2. Allocate additional slots at Narita and additional capacity entitlements in Japan. Canadian officials have held consultations with their Japanese counterparts in Tokyo in May 2004. The pending issue of additional slots at Tokyo international airport was not solved but Japanese authorities assured the Canadian delegation that Canada would be given fair and equal treatment when they are in a position to allocate future slots at Narita.
3. Deregulate the setting of official prices in the Japan market, which currently requires the MLIT's approval. Carriers should be allowed to sell fares at market levels directly to consumers. As e-commerce and online opportunities develop in Japan, the airlines themselves will not be able to offer market prices directly to consumers through these potentially important channels without a change in the regulations.

4. Reduce inbound and outbound delays that have resulted from the operation of Narita's Runway B. The new runway has increased traffic, but there has been only a limited increase in air traffic control capacity.
5. Consider airport development in Japan in an organized manner. There are too many airport projects being driven by factors other than passenger travel or that are based on dated forecasts of passenger travel. A significant downturn in growth in recent years has resulted in too much capacity at Kansai. Meanwhile, the Kanto region has too little airport capacity; Narita's Runway B needs to be full-length, while Haneda develops a fourth runway.
6. In view of the shortage of capacity in the Metropolitan Tokyo area, consider opening Haneda for international flights as early as possible, leveraging its 24-hour operation and under-utilized late-night to early-morning slots. Furthermore, the potential shared use of the Yokota Airforce Base between the US Airforce and Japanese commercial domestic flights should result freeing up slots at Haneda for international flights.
7. Ensure an equal footing and a level playing field when the Japan Post enters the international air express business and comes into direct competition with private air express businesses on April 1, 2006.

#### **V. Building Products**

Over the last few years, the Government of Japan has made some notable achievements in deregulation efforts related to housing and wood construction, key sectors for Canada's export industries. These positive results include:

- (i) amendments to the Building Standards Law ("BSL"), which moved toward performance-based (rather than prescriptive) building standards;
- (ii) the implementation of a revised Japan Agricultural Standards Law allowing foreign organizations to obtain Registered Certification Organization and Registered Grading Organization status; and
- (iii) initiating a scheduled review of JAS standards.

The CCCJ suggests that mechanisms to further increase transparency, simplify regulations and comply with internationally recognized standards

and practices while not undermining consumer confidence are needed in order to benefit both Japanese consumers and Canadian suppliers of building materials.

## SPECIFIC RECOMMENDATIONS

### 1. Transparency

The 30-day review period has been a very welcome addition, but this does not allow sufficient time to fully understand the complex nature of these technical documents in order to comment.

**The CCCJ urges Japan to provide an extended public review and comment period to allow for a more complete review of changes to building code regulations.**

### 2. Internationalization

In moving to a more performance based building code, Japan has partially adopted international test methods and standards into their own codes pursuant to the BSL. Additionally, foreign organizations can be accredited to perform tests and evaluate products that do not meet either JIS or JAS standards. These changes are welcome and important steps towards a more international approach, but some challenges remain which can hinder foreign products from entering this market., including a tendency to develop regulations and standards which are unique to Japan,

The new system has brought greater clarity but may not offer flexibility as many of the test methods are now codified. Also, while the notifications that set out test methods offer an equivalency clause, there is, as yet, limited or no experience with drawing on this for product approvals in Japan that are judged to also meet Japanese performance requirements under international test methods. In short, further clarity on the issue of conformity between Japanese and international test methods and standards is required.

#### **The CCCJ urges Japan to:**

- a) continually strive to adopt international standards and practices and revise notifications in this direction;
- b) ensure that “equivalency” clauses in notifications dealing with standards, test methods and procedures effectively allow for the approval of products judged to meet Japanese performance requirements. This applies primarily to fire test methods and JAS species equivalency; and
- c) consider recognizing foreign organizations that

already have designation pursuant to ISO certifications.

### 3. Tariffs

Spruce Pine Fir (“SPF”) lumber from Canada is the primary species of lumber used in 2x4 platform frame construction. The Government of Japan has resisted repeated attempts to eliminate tariffs on SPF, despite favourable treatment of functionally similar products.

In addition, glue laminated lumber, laminated veneer lumber, softwood plywood and particle board are subject to tariffs that contribute to more costly housing.

**The CCCJ urges Japan to eliminate all tariffs on SPF lumber and engineered wood products.**

### 4. Regulations Concerned with Fire Prevention

One of the main obstacles to Canadian market access resides in Japan's approach to fire codes. The CCCJ accepts without question the need for sound fire safety measures to ensure public safety and to minimize property damage in the event of fire. The CCCJ applauds MLIT for creating the framework resulting in wood frame construction achieving “fire-proof” approval. However, many of the regulations applied by Japan substantially increase the cost of housing in Japan. Factors that could be considered include building-related issues like firewalls and sprinklers. More broadly, statistics in North America and Europe suggest that dramatic improvements in fire safety could be realized without the need for enacting stringent building regulations if limits were placed on the flammability of upholstered furniture and mattresses and other interior furnishings and decorations.

The CCCJ urges the Government of Japan and the agencies responsible for fire related issues to consider the following issues:

#### 4.1 Prescriptive Size and Other Limitations

Current standards impose restrictions on large-scale quasi-fire proof wooden buildings and construction of “special buildings.” They also prescribe material requirements as well as size and distance limitations. For example the size limit of 1500m<sup>2</sup> imposed on three-storey construction in quasi-fire protection districts severely restricts market access. In addition, prescriptive standards do not allow for sprinkler systems or other design-related solutions to fire safety concerns. Though the CCCJ recognizes the necessity of adaptation for the specific and unique circumstances of buildings in Japan, these restrictions lack sound scientific evidence.

**The CCCJ urges Japan to:**

- a) examine alternative fire prevention and spread designs which would include sprinkler systems and other systems that may be appropriate.

5. Japan Agricultural Standards

The CCCJ applauds the Ministry of Agriculture, Forests and Fisheries changes with respect to foreign Registered Grading and Certification Organizations. Canadian certification bodies have worked closely with Japanese officials to achieve accreditation under this system which has involved considerable investment by those Canadian organizations. More recent changes in the JAS Law will result in yet another certification system. While Canada supports this move to the internationally recognized ISO 65 Standard, JAS Law stipulates supplementary requirements which are burdensome and unnecessary, particularly in light of the historical performance of Canadian certification bodies. Another issue associated with certain aspects of the JAS grading system, is the heavy costs associated with mandating requirements for quality assurance. For instance, properties such as the formaldehyde emission of phenolic bonded products can be established and assured without the need for ongoing frequent testing. There is now a good opportunity to reduce this burden based on the extensive test data that has been developed.

On other JAS matters, there remain some significant issues. For example, wood species such as Jackpine and Hem-Fir(N) are not listed as a distinct species in structural glulam standard (JAS 111). Canada acknowledges Japan's effort to introduce new species adoption criteria for the JAS111 standard. However Canada has concerns respecting the testing procedures and criteria. Further, there is still no facility for the adoption of commercially significant and technically documented Species Groups such as Hem-Fir North. We encourage the design of a performance based standard. Such a standard would better facilitate development of higher performance products, than the current standard that is based on the properties of the weakest species in a group.

**The CCCJ urges Japan to:**

- a) recognize Jack Pine and Hem-Fir(N) in JAS 111
- b) revision of evaluation procedures to ensure all species are treated equitably and evaluated on the same basis.
- c) consider the development of a performance based standard for both JAS 111 and 143 to ensure recognition of higher performance products

in accordance with internationally accepted practice reduce the frequency of formaldehyde testing for phenolic bonded products

**VI. Food and Agriculture**

Precise requirements and a high standard of taste, presentation and other specifications make Japan a complex market, requiring considerable patience and perseverance to succeed. Additionally, a variety of domestic subsidy programs, as well as regulatory and other barriers to entry, reduce Japanese consumers' ability to benefit fully from the high quality food and agricultural products that Canadians have to offer.

1. Zoning Initiative in the Event of an Outbreak of a Foreign Animal Disease and Regulations on Banned Product

Canadian pork processors have made significant investments in product innovation, research and technology, and traceability. Their continuous emphasis on food safety has garnered Canadian pork processors a reputation for maintaining high quality standards. Regardless of how diligent and quality conscious one is, however, there is always a risk of disease outbreak. For example, foot and mouth disease ("FMD") is a highly contagious disease with the potential to severely damage the livestock of any country. Canada has strict measures in place to prevent FMD from entering the country. This has helped to keep Canada free from FMD for over 50 years. The risk of an outbreak in North America, albeit very small, still exists. If such an unfortunate event were to occur in one isolated region of Canada, all pork shipments from Canada would be halted. National borders, as opposed to regional ones, define the ensuing export restrictions. Furthermore, a ban on all Canadian pork would subsequently be imposed for anywhere from 3 to 12 months. This action would effectively cripple the Canadian pork industry! With proper control measures, an outbreak could in fact be contained to a specific region. The Canadian government is working with the Canadian pork industry to put such controls in place. Recognizing the segregation of different regions would allow for pork shipments to resume in a more timely fashion.

Canadian poultry and duck processors are subject to Canadian food inspection, safety system and bio-security measures. They share the same concern about the regionalization when an animal disease occurs in Canada. As the concept of zoning is now accepted by the Japanese government, we would ask that this be extended to Canadian poultry and duck processors.

**The CCCJ urges Japan to recognize Canada's efforts in establishing standardized control**

**measures and to be prepared to discuss the issue in greater detail once these controls are in place.**

## 2. Safeguard Measures on Beef and Pork

Over the last decade, Japan has been steadily increasing its total volume of imported pork. The CCCJ remains concerned about the Japanese snapback safeguard measure on pork. This results in an increase of approximately 25% to the minimum import price. Since it was first triggered in 1995, the snapback safeguard has been of significant concern to the Canadian pork sector. As currently administered, these measures create considerable uncertainty for Canadian suppliers and Japanese importers.

The beef safeguard mechanism, as agreed to in the UR, was designated to protect Japanese producers against surges in imports. The domestic occurrence of BSE in September 2001 resulted in a dramatic drop in beef consumption and of imports. The subsequent recovery of the beef market in 2002 and the concomitant increase in beef imports in no way represents a surge in imports. Domestic production is above pre-BSE levels and live animal prices are above the government recommended price band. Imports however, are still below pre-BSE levels. It is apparent that these import volumes will result in the automatic triggering of the beef safeguard, resulting in a 50% tariff on imported beef. This automatic implementation neither advantages domestic producers (who supply a different part of the market) nor consumers. Japanese legislation neither obliges the automatic implementation of the beef safeguard, nor does it oblige implementation at the 50% tariff level. A full review of the effect this safeguard may have on the domestic situation and a subsequent revision of its foundation is recommended.

**The CCCJ urges Japan to implement revised safeguard mechanisms that eliminate the market uncertainties of the current system.**

## 3. Principles for Instituting Food Safety Standards in Japan

Food safety related problems in Japan have negatively affected consumer confidence in the safety of both domestic and imported food products sold in Japan.

**The CCCJ recommends that the Government of Japan design and implement new policies regarding food safety in Japan in a manner that incorporates the following five principles:**

1. Food safety policies, regulations, and administrative guidance should be

based on sound scientific analysis.

2. Any policies, regulations and rules that are implemented should be consistent with international standards, such as those established by CODEX and other international organizations.
3. The development of food safety policies and regulations should be fully transparent with the full background and analysis supporting the proposed new rules being available to all interested parties.
4. Representatives of all parties which could be affected by the proposed policies or regulations, whether domestic or foreign, should have an opportunity to fully participate in the development of the proposed rules and to share their expertise and experience.
5. All food safety policies, regulations and guidance should treat both imported and domestically produced foods in an equal manner.

## VII. Canada-Japan Pension Totalization

A bilateral pension agreement between Japan and Canada would provide significant benefits for both Japan and Canada in improving the overall bilateral investment climate by reducing some of the costs of investing and facilitating the freer flow of managerial and technical staff between the two countries.

**The CCCJ applauds the working level discussions towards concluding a bilateral pension reciprocity treaty.**