

QUESTIONNAIRE ON A COMPREHENSIVE ECONOMIC AGREEMENT WITH CANADA

07 MAY 2009

Introduction

On April 27 the European Commission was authorised to open negotiations for a comprehensive economic agreement with Canada. The agreement will provide for the progressive and reciprocal liberalisation of trade both in goods and in services, as well as rules on trade-related issues. It will aim at a very high level of ambition, above existing WTO commitments, and address issues such as intellectual property rights, competition & state aid, and government procurement, and will provide for a binding dispute settlement mechanism.

The following questionnaire has been prepared in order to provide the Commission with information to assist it in establishing priorities and taking decisions throughout the negotiating process. The Commission, subject to the application of the EU's rules on access to documents¹, will treat the information that you provide as confidential. EU rules on access to documents allow the Commission to withhold access to a document where disclosure would undermine the commercial interests of a natural or legal person or harm the EU's relations with third countries, unless there is an overriding public interest in disclosure.

The questionnaire is based on those launched in recent years for the proposed trade agreements with Ukraine, Korea, India, ASEAN, Libya, Central America and the Andean Community. Fairly detailed questions are being asked, in order to capture all possible issues related to the EU's trade interests in these countries. This approach may lead to some difficulties in filling in all the details of the questionnaire, in which case respondents are invited to focus on the questions which are of most relevance to them.

The questionnaire is divided into the following sections:

- A. Trade in Goods
- B. Trade in Services and Investments
- C. Regulatory Issues (Intellectual Property Rights, Competition & State Aid, Government Procurement)
- D. Sustainable Development
- E. Other issues

Please note that energy is taken up as all other sectors in the corresponding horizontal chapters, hence, questions in preceding sections on trade in goods and services/investment as well as other sections (transparency, dispute settlement) apply also to energy. Should there be any additional point you wish to draw the Commission's attention to, please describe this under chapter E, "Other Issues".

¹ Regulation No 1049/2001

For each question and to the extent that it is relevant, respondents are invited to provide an answer.

In addition, where possible, we would appreciate receiving as specific information as possible (substantiated where possible by economic indicators and/or data) of respondents' interests, prioritisation within sectors, and any proposals for solution, where problems have been identified.

Please send your replies by Monday 6 July 2009 to the following e-mail address:
trade-industry@ec.europa.eu

A. TRADE IN GOODS

The Trade in Goods section of this questionnaire is organised in the following manner:

- 1) General goods-related questions
- 2) Questions related to import duties and rules of origin
- 3) Questions related to export restrictions
- 4) Questions related to import and export procedures (included under a general heading "trade facilitation")
- 5) Questions related to discrimination and transparency in domestic regulation and taxation
- 6) Questions related to trade defence instruments (safeguards; antidumping; anti-subsidy)
- 7) Questions related to Technical Barriers to Trade (TBT) (industrial goods)
- 8) Questions related to Sanitary and Phytosanitary Measures (SPS) (agricultural goods, fish and fishery products)

1) General goods related questions

- a)
 - i. What are the existing trade flows in your sector
 - ii. What is your assessment of the potential for growth in this sector ?
- b) If possible, could you specify your overall "offensive" and "defensive" interests?

(Note: "Offensive interest" is understood to mean the interest you may have in gaining access to the Canadian market. "Defensive interest", is understood to mean competition - particularly unfair competition - from Canadian firms in your domestic market.)

- c) In your sector, do you see either:
 - (i) an interest in EU companies supplying goods to Canada (i.e., an export interest) or
 - (ii) an interest in EU companies setting up production facilities in Canada?
 - (iii) How strongly (for example, in financial terms) would you rate the level of these interests?
- d) What do you see as the main trade-related obstacles to doing business in Canada in your sector?
 - (i) Import duties,
 - (ii) Non-tariff barriers (NTBs),
 - (iii) Other measures (please indicate them).

- (iv) Please rank these in order of what you see as their importance, with an indication of the criteria for the determination of priorities.
- e) (i) How important is it in your sector to be able to give assurances about the sustainability (especially social and environmental) of conditions throughout the supply chain?
- (ii) What specific issues arise in relation to Canada?
- f) Have you experienced problems or difficulties arising from the division of responsibility for trade-related measures between the government of Canada and the governments of its Provinces, or from regulatory differences between different parts of Canada?

2) Questions related to import duties/tariffs and rules of origin

- a) Do you face problems with customs duties or any other taxes, fees or charges in Canada? If so, please specify.
- b) Please describe your interests with respect to how tariff dismantling Canada might take place: (1) What products or tariff lines would you like to see tackled as soon as possible (*front-loading*); (2) What products or tariff lines would you prefer to see eliminated slowly (*back-loading*); and (3) Is your interest in this area affected by the outcome of negotiations on other issues (e.g. rules of origin; safeguard measures; removal/reduction of NTBs, etc.)?
- c) Do you have problems related to tariff classification (i.e. determining the tariff applicable to a particular product)? If so, please specify.
- d) What preferential rules of origin should apply in the sector(s) of your interest in any agreement with Canada?

3) Questions related to access to raw materials (including export restrictions and prohibitions)

- a) Does your sector have an interest in purchasing raw materials from Canada? If so, please specify what raw material and describe its economic relevance. Are there any measures that could be included in an agreement to facilitate trade or reduce costs for trade in raw materials?
- b) Does your sector face export restrictions or investment restrictions regarding establishment and/or exploration of mines with respect to Canada? If so, which (export duty; tariff rate quota, VAT rebate schemes; licensing; discriminatory promotion schemes)? Please specify the likely effect of their elimination.
- c) On top of legally binding provisions in an eventual EU-Canada agreement, does your sector favour closer cooperation in the field of raw materials with Canada? If so, in which form (e.g. regular dialogue)? What could be the topics discussed in the framework of such a cooperation (e.g. rules, points of concern, alliance building)?
- d) Do any environmental issues arise?
- e) To what extent could an agreement facilitate EU investment into the Raw Materials sector in Canada? Please explain.

4) Trade facilitation (import, export and transit procedures including customs)

Do you face problems regarding one or several of the following issues? Please respond with yes/no and where possible provide a more detailed description of the problem faced.

a) Overall problems with procedures and requirements for imports, exports and/or transit in Canada?

b) Specific problems related to:

- transparency / publication of and access to trade regulations	YES/NO
- documentation requirements	YES/NO
- data requirements	YES/NO
- fees and charges	YES/NO
- inspections and controls during clearance	YES/NO
- other customs procedures	YES/NO
- discriminatory treatment	YES/NO
- lack of uniformity in application of procedures	YES/NO
- customs valuation	YES/NO
- co-ordination between different border agencies	YES/NO
- use or non-use of information technology	YES/NO
- application or non-application of relevant international standards	YES/NO
- procedures for legal recourse/appeal	YES/NO
- other (please specify)	YES/NO

5) Questions related to discrimination and transparency in domestic regulation and taxation

a) Is your sector faced with discriminatory measures and practices between domestically produced goods and imported goods into Canada? If so, describe the nature of this discrimination (e.g. is it based on legislation or on de facto discrimination? Does it concern a regular domestic regulation and/or taxation regime?) Can you provide written substantiation of discrimination (including reference to legislation)?

b) Do you encounter problems due to lack of transparency of Canadian regulation, e.g. in the form of lack of publication of legislation or other documents? (Please also refer to the detailed questions under section C) below regarding transparency).

6) Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)

a) Have you had experience related to the use of trade defence instruments in Canada (anti-dumping, anti-subsidy or safeguards)?

b) Were there particular difficulties in communicating with and/or receiving information from the Canadian authorities dealing with trade defence instruments?

- c) Have you encountered market distortions (subsidies, pricing policies) in Canada which should be addressed by e.g. trade defence measures or other types of measures or which create structural trade difficulties?

7) Technical Barriers to Trade

Note: In this context, Technical Barriers to Trade (TBT) is intended to mean technical regulations for products, standards, conformity assessment systems such as testing and certification procedures, and market surveillance and enforcement.

Please provide comments on the following issues. Comments are particularly welcome if you or your colleagues in the industry consider that some or any of the areas should take priority in the TBT discussions.

- 1) Have you found TBTs to be a problem in exporting your products to Canada?
- 2) If you have encountered such TBT problems, can they be explained as:
 - (i) Specific "cases" of obstacles arising from specific rules applicable to a specific product or,
 - (ii) of a systemic nature related to technical regulations in general or across product boundaries.
 - (iii) Both of these?
- 3) Does Canada or its Provinces have national or provincial public comment procedures for proposed technical measures, to which industry can submit comments?
- 4) Do importers (or domestic industry in Canada) have other opportunities to submit comments during the drafting of new technical measures, before the proposal is adopted?
- 5) In your experience, have comments made by stakeholders been taken into account?
- 6) Have you experienced problems or difficulties arising from the division of responsibility for TBT-related measures between the government of Canada and the governments of its Provinces, or from regulatory differences between different parts of Canada?
- 7) On the basis of the provisions laid down in the WTO Agreement on Technical Barriers to Trade, do any or all of the following issues pose particular problems with regard to exporting your products to Canada?
 - (i) transparency in the drafting procedure for new technical regulations or similar measures;
 - (ii) poor alignment of Canadian rules or standards to international standards;
 - (iii) short implementation periods for new measures;
 - (iv) discriminatory treatment, for example in the areas of testing, certification or market surveillance requirements;
 - (v) excessive or discriminatory labelling requirements;
 - (vi) burdensome, disproportionate or unnecessary standards , regulations, conformity assessment procedures or documentation requirements;
- 8) (i) With your knowledge of the technical regulations, standards and conformity assessment systems both in the EU and Canada; do you have any recommendations for solutions which would facilitate trade?

(ii) Would your proposed solutions be achievable within the provisions of regulatory systems currently applied in the EC and Canada, or would changes to the systems or legislative framework be necessary?

8) Sanitary and Phytosanitary Measures (Agricultural products, fish and fishery products)

Sanitary and Phytosanitary Measures apply in order to protect human, animal, and plant health.

Your answers to specific product questions (a) to (c) will be taken as an indication of interest that might change over time.

- (a) List the agricultural products (these include **animals and animal products, plants and plant products and fishery products**) you are currently exporting to Canada.
- (b) **List the agricultural products** that you may be potentially interested to export in future to Canada (regardless of whether exports are currently taking place or have taken place in the past).
- (c) Please specify the major **Sanitary and Phytosanitary (SPS) barriers** you have encountered in the past (or may potentially encounter) when trying to export agricultural products into Canada.
- (d) Do you expect that an SPS chapter in the proposed future agreement will benefit your industry? If so, please clarify.
- (e) On the basis of your previous response, which **basic elements/provisions** should an SPS chapter with Canada contain in order to potentially fulfil your priorities?
 - Transparency (better notification provisions on SPS import rules including predictability and stability of SPS rules)
 - Regionalisation for animal and plant diseases
 - Equivalence (system of recognition)
 - Pre-listing of exporting establishments²
 - Undue delays (provisions to avoid long delays to authorise/resume trade due to SPS or other administrative provisions)
 - Other

B. TRADE IN SERVICES AND INVESTMENT

² Pre-listing of establishment means that, once the competent authority of an importing country has approved the audit and control system of the exporting country, from then on, the list of establishments authorised to export is maintained by the exporting country. This avoids the need for continuous inspections and so reduces delays.

- a) What are the main barriers that your sector encounters in cross-border services trade with Canada (ex. obligation to have a local commercial presence, etc.)?
- b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in Canada (ex. Capital ownership/ Equity cap, Difficulty in obtaining a licence or authorisation, complex and lengthy procedure between federal and provincial level, etc.)?
- c) What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in Canada (ex. difficulty in obtaining work permits and visas due to lengthy procedures, lack of transparency in regulations at various administrative levels, etc.)?
- d) Do you observe any self-imposed constraints (i.e. voluntary codes of conduct that are agreed and followed by operators) relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in Canada? And if so, which?
- e) Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.
- f) Is there an interest in having Mutual Recognition Agreement in your sector (to cover recognition of standards, licenses, qualifications or else)?

C. REGULATORY ISSUES

GENERAL: To the extent applicable, indicate what problems arise due to lack of transparency such as lack of publication of legislation or other relevant documents. In particular:

- a) Is information on trade-related regulations and their administration published and readily available, including on laws and regulations, procedures, penalties, appeal procedures, administrative guidelines and practice, decisions, and agreements with Canada where relevant.
- b) Is information made available in a readily accessible way, including through websites?
- c) Are there enquiry points available and accessible to interested parties (including through web-sites) which help making information on trade-related regulations and their administration available?
- d) Other requirements, suggestions concerning the availability of information?
- e) Are the intervals between publication and entry into force sufficient to allow interested parties to become acquainted with and well prepared for complying with them?
- f) Are appropriate opportunities offered for prior consultation and commenting on new and amended rules?
- g) Are there effective consultation mechanisms between interested parties and government? Are there any areas or sectors where consultation could be improved?
- h) Are advance rulings available from the administration (such as for trade in goods on customs classification and origin)?

- i) Are there adequate complaints possibilities and appeal procedures?
- j) Are the appeal procedures adequate in terms of non-discrimination, transparency, possibility for representation by independent legal counsel, cost and timelines?
- k) Other comments on the administration of trade-related regulations, including on the use of discretion, system of penalties, coordination and control mechanisms?

Please specify any shortcomings identified. Where transparency is of a particular concern in a specific field. Where available, identify best practices (such as existing information and transparency mechanisms in Canada) that could serve as a reference or starting point.

1) INTELLECTUAL PROPERTY RIGHTS

1. Are you satisfied with the current conditions of protection and enforcement of intellectual property rights (IPR) in Canada? Please explain briefly nature/scope of the problem, if any?

2. Is an adequate and effective protection and enforcement of IPR in the country essential for the pursuit of your trading activities there?

3. Please indicate whether you consider intellectual property rights issues as priorities:

- (a) Copyright and related rights
- (b) Trademarks
- (c) Geographical Indications (GIs)
- (d) Designs
- (e) Patents
- (f) Data protection
- (g) Plant variety
- (h) Enforcement

4. Please indicate one particular aspect of intellectual property protection or enforcement that you would wish to see addressed in a trade agreement.

4-1. Have you encountered problems in protecting/enforcing your IPRs in Canada? If yes, how did the protection/enforcement mechanisms function in this country? Did you encounter difficulties in protecting/enforcing your rights being a foreigner in Canada?

4-2: Have you used the services of an IP agent or lawyer in this country? How do you judge their competence, time for reaction, costs and fees?

4-3: Have you participated in meetings/seminars on awareness in IPR? If so, what was the reaction/opinion of the relevant competent authorities, public or private entities?

4-4: According to your experience/knowledge of the technical capacities of the Canadian industrial/services sector, do you think that trading in technology and technology transfer may be an important aspect to develop in a future agreement with Canada?

2) COMPETITION AND STATE AID POLICY

a) Have you encountered any anti-competitive practices in Canada as a whole/specific Provinces in particular (cartels, abuse of dominant position, vertical or horizontal restrictions of competition) that are harming your business? If so, describe briefly the nature of the practices and the problems encountered.

b) Have you brought these problems to the attention of the relevant competition authority? If so, what has been their response/follow-up and how have decisions been enforced?

c) Are you aware of instances where state aid granted by Canadian authorities has had adverse effects on you? Has a Canadian State aid or subsidy put you or a company you know of at a competitive disadvantage? If so, please

a) Indicate whether the aid made it more difficult for you to compete in the Canadian market, in the EU market and/or in export markets

b) Describe to the extent possible the form of the subsidies involved (e.g. export rebates, tax/duty exemptions, below-market loans, state guarantees, grants), the objective (e.g. Research and development aid, export aid, regional development aid), the sectors concerned, the granting authority (e.g. federal or provincial government, specific agency) and give an estimate of their amount.

c) Indicate if you have taken any steps to raise this matter, either in Canada or with the appropriate authorities in the EU? Have you had problems in getting information on the aid granted by the Canadian authorities?

d) Have you invested in Canada? Has the availability of State aid played a role in your decision? If yes, please describe the form, amounts and objective of the aid in question and specify the granting authority. Have you experienced discrimination in the access to State aid from Canadian authorities (e.g. aid or higher amounts of aid reserved to Canadian firms)?

3) GOVERNMENT PROCUREMENT (INCLUDING PROVINCIAL GOVERNMENT PROCUREMENT)

Please respond with yes/no and where possible provide comments to expand on the replies to the following issues.

a) Are you satisfied with the current conditions of access to Canada's national and provincial government procurement markets?

b) Are you aware of any existing legislation on government procurement (national and provincial) in Canada? Which are your experiences with its practical application? Are there any areas in which you feel EU suppliers face restrictions or different treatments that do not apply to Canadian suppliers?

c) Please indicate whether you consider the following possible elements of a government procurement chapter as a priority:

(1) Transparency in the tendering process

(2) Easy access to the qualification system

(3) Use of international rather than local technical standards

(4) Effective review mechanisms including the possibility to obtain interim measures

(5) A single point of entry giving an overview of, and access to, all relevant procurement opportunities in a given jurisdiction

(6) National and MFN treatment

- d) Please indicate which key sectors and procuring entities (local/provincial/federal) are priorities for EU suppliers.
- e) Please indicate the key regulatory and market access obstacles faced by EU suppliers when tendering for public contracts. Please specify at what level (Federal, Provinces, Territories, and/or lower administrative level) and the extent to which these obstacles prevent EU suppliers from doing business in Canada.

D. SUSTAINABLE DEVELOPMENT

1) ENVIRONMENT

- a) What are the main environmentally-related issues that your sector encounters in cross-border trade of goods and services with Canada?
- b) Are you satisfied with the current level of implementation of environmental legislation in Canada?
- c) Please indicate whether you consider the following possible elements of an environment chapter a priority:
 - (1) Ratification by Canada of multilateral environmental agreements
 - (2) Effective enforcement of domestic environmental legislation in Canada
 - (3) Effective implementation of international environmental agreements
- d) What provisions in a trade agreement would you consider conducive to better local compliance with environmental legislation?
- e) Could you specify your export and import interest in the area of environmental goods services and technologies? What do you see as the main barriers (tariff and non-tariff) to trade in this area between the EU and Canada?

2) SOCIAL/LABOUR

- a) What are the main social/labour-related issues that your sector encounters in cross-border trade of goods and services with Canada?
- b) Are you satisfied with the current level of implementation of social/labour-related legislation in Canada?
- c) Please indicate whether you consider the following possible elements of a social/labour chapter a priority:
 - (1) Signature and ratification of ILO Conventions on core labour standards

- (2) Effective enforcement of domestic labour and social legislation in Canada
 - (3) Effective enforcement of ILO core labour standards in Canada
 - (4) Ratification and implementation by Canada of ILO conventions related to decent work and other ILO conventions qualified as up-to-date by ILO?
- d) What provisions in a trade agreement would you consider conducive to better local compliance with social/labour legislation?

E. OTHER ISSUES

Are there any other issues that are not mentioned in this questionnaire and that you would like to address?