



## Suggestions for Government of India by Japan Chamber of Commerce and Industry in India (JCCII)

### Introduction

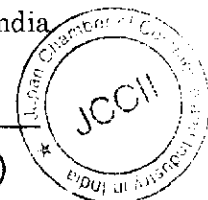
Japan and India have been further developing excellent relations as "Strategic and Global Partnership". There are huge potentials of political, economic and all other aspects in the relations of the two countries. The development of Japan-India relations has significant meanings not only for the two countries but also the peace and prosperity of Asia and world in the 21 century. In the area of economy and economic cooperation, the expansion of Japanese companies into India is accelerating recently, and India is the largest recipient of Japan's ODA loan. Despite the global financial crisis, the business with India continues to be important for Japan.

As the number of Japanese companies in India increases, the problems that they are facing have become more serious. We appreciate that there is certain progress on such issue as Special Additional Duty (SAD) refund procedures, thanks to warm cooperation by the Ministry of Commerce and Industry. However, the reality is that many problems of land acquisition and utilization, taxation, infrastructure, labor, logistics, intellectual property rights, regulations of foreign capitals, visa, and administration's inefficiency and non-transparency have not been resolved, although they are not new issues. It would be indispensable for India to tackle with those problems in order to develop its economy further. Also, when more Japanese companies expand into India, they need to see those issues be resolved steadily one by one.

Based on such recognition, Japan Chamber of Commerce and Industry in India has compiled "Suggestions for Government of India" and hereby submits this for your kind consideration. We sincerely hope that the Suggestions and the subsequent dialogues with the Indian authorities would contribute to the solution of individual issues, further development of Indian economy and strengthening of Japan-India economic relations.

12 February, 2009

Japan Chamber of Commerce and Industry in India



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**Japan Chamber of Commerce and Industry in India (JCCII)**

Functional Office : Flat No. 106, Nilgiri Apartments,

9, Barakhamba Road, New Delhi - 110 001

Tel & Fax : +91-11-4358-6321 E-mail : [jccii@jccii.in](mailto:jccii@jccii.in)

(Registered Office : 7, Barakhamba Road, New Delhi - 110 001)

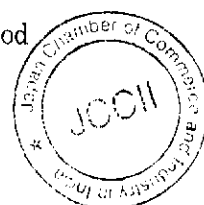
## 1. Land acquisition and utilization

India's procedures for land acquisition and utilization are so complicated and non-transparent that they become major obstacles to the facilitation of Japan's investment in India.

- At for the Bawal Industrial Area in Haryana State, the HSIIDC (Haryana State Industrial and Infrastructure Development Corporation Ltd.) issued additional payment request to the Japanese and other companies who purchased the land from HSIIDC. HSIIDC claims it is a normal contract that when a court decision is made, additional payments are to be borne by the purchasers of land. However, such a practice would create unpredictable risks for investors. It is also irrational for HSIIDC to calculate interests for additional payment from the time before the purchase of the land.
- Tremendous procedures and time are required when the application of land is to be changed from agriculture to industry. More speedy and simple procedures are needed.
- Foreign companies should be entitled to directly acquire land under certain conditions. When foreign companies acquire land with the partnership of Indian local company or companies, there should be guidelines to provide more transparency for the measures to be taken by such Indian company or companies (e.g. conditions and process and land acquisition and registration).

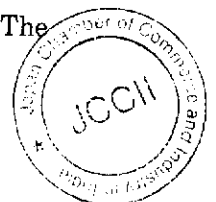
## 2. Tax System

- India's tax system is too complicated and difficult to understand. Authorities should provide prompt information disclosure and explanation about the tax system and its changes. Customs tariff table should be updated immediately on the web-site.
- As for the transfer price tax system, the method of calculating the arm's length price among the parties is not necessarily clear. The establishment of APA (Advance Price Agreement) is needed.
- To reduce or abolish corporate tax gap between domestic companies (30%) and foreign companies (40%). To improve complicated system of taxation such as Surcharge (domestic 10%, foreign 2.5%) and Education Cess 3% or to integrate them into the single system of corporate tax.
- To completely abolish Central Sales Tax (CST) with the introduction of the Good



Service Tax (GST) in 2010. To integrate Work Contract TAX (WCT) and Service Tax into GST. They are peculiar to construction industry, and make tax treatment cumbersome and complicated.

- To unify different tax systems of each state like Octroi and Entry Tax.
- To reduce Basic Custom Duty (BCD) rate. To abolish complicated system of taxation such as Additional Duty, Countervailing Duty (CVD), Special Additional Duty (SAD) / Additional Duty of Customs, and Education Cess.
- To further simplify the SAD refund procedures.
- The Dividend Distribution Tax (DDT) is imposed on the dividend-payer side. However, it should be imposed on the recipients of dividend in view of the purpose of the taxation.
- It is necessary to give merits of local production in order to promote FDI into India. While the end users are exempted from VAT when directly importing final products, made-in-India products are less advantageous since they are not exempted from VAT. In case when the duty rate of final products is the same as that of parts, it would be very discouraging situation for Japanese companies to continue local production in India.
- To abolish mandatory MRP indication, or to improve its rules in a more flexible manner.
- To make more transparent the process of deciding the abatement rate of duty on the basis of MRP.
- HS code differences among countries should be resolved. For example, when importing products or parts from Thailand, the HS codes in India are sometimes different from those which are used for exporting from Thailand. Refrigerator which were imported from Thailand without tariff under Indo-Thai FTA have been recently classified as combined refrigerator and subject to 10% tariff (Circular No. 23/2008-Cus dated 29 December 2008) . This creates heavy burdens for Japanese companies. We request that the Indian side re-negotiate with the Thai customs authorities to put those refrigerator under tariff-free items.
- To abolish R&D Cess 5% on technology transfer from abroad.
- To abolish IT software duty 8.24%.
- CENVAT credit rules 2004 allow manufacturers or producers to take credit of CENVAT arising from the difference between the sum of CVD and SAD – i.e. invert duty structure – on imported materials and Excise Duty on the final products. However, there are no procedures to enable reimbursement of CENVAT credit. The establishment of procedures to this end is needed.



- If Permanent Establishment (PE) tax on foreign companies is applied broadly, that would give shrinking impacts on business activities in India.
- To abolish Fringe Benefit Tax on business trip expenses, transport expenses and rent subsidy.

### 3. Infrastructure

- Infrastructure such as water, power, road, port and telecommunication should be prepared on sites where Japanese companies are investing. Although there are clauses in a contract with the industrial parks that the latter should develop power, water supply, drainage, and so on, such clause are not honored. This situation greatly discourages Japanese companies from expanding their business hereafter.
  - Since it cannot help that the power supply to factories relies entirely on self-generation, the share of factory's power cost in India is three times as large as Japan or Thailand. This situation gives little merit to the production in India.
  - Regarding water supply, it is extremely difficult to obtain permission from GWA to dig a well. This also discourages Japanese manufacturing companies from expanding their business to India.
- To resolve chronic shortage of hotels by easing of regulations for hotel industry and site acquisition for hotel.

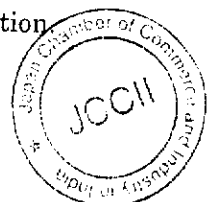
### 4. Logistics Distribution.

- To simplify and to increase procedural efficiency of custom clearance.
- To adopt the EDI (Electronic Data Interchange) system in all the ICD (Inland Container Depot) for custom clearance for both imports and exports immediately.
- To construct better roads and undertake adequate repair/maintenance of the existing roads in and around the ICD, as well as to undertake steps to reduce traffic jam in and around the ICD.

These improvements will help the companies to operate efficiently without incurring any time lag in distribution due to the traffic jam and damage to the fragile products such as precision machinery caused by uneven roads.

- To have fixed charges for the custom clearance and terminal handling.
- To expand the capacity of bonded warehouses which are jointly used by companies and to maintain bonded warehouses which are jointly used by companies.

As bonded warehouses are too small, companies are frequently suffering damages due to crash in the warehouse, resulting in loss and delay in distribution.



Warehouses are also poorly maintained, less hygienic with shortage of transportation machinery like forklifts, resulting in loss and delay in distribution.

- To disclose the valuation standard of the custom inspection, and to prepare and disclose the criteria of inspection.

Appropriate training should be provided to the Customs Staff. At present, the inspection procedure is very much dependent on the official, and it varies from official to official. The documents and the data requested for the procedural formalities vary from official to official. Handlings of the packages during the custom inspection are too rough that the packages are damaged frequently. Sometimes the items in the consignment are lost.

- At present, checks are used for tax payments for the custom clearance. This is very inconvenient for companies located far from the port or the cities. It is necessary to develop a system which accepts bank transfers as a mode of payment.
- The quality and efficiency of the computer systems installed at Customs office should be improved. Currently there are frequent system crashes. Especially, transport carriages by sea are seriously suffering the problem.
- There is obligation for companies to register the manifest (invoice) of goods with the custom system 24 hours before the arrival of the goods. But in case of emergency shipment or if it is from nearby Asian countries, this procedure is almost impossible. Request to modify the procedure.

5. Relaxation of the regulation for FDI, Requests related to Foreign Investment Implementation Authority (FIIA), etc.

- To simplify procedure for granting permission for foreign exchange transfer.
- To entirely rescind the Non Objection Certificate (NOC) rule.

There is still an obligation for a company that wants to make fresh investment or expansion of the business in India to obtain NOC letter from its existing Joint Venture (JV) partner if that company has the JV in the same field before January 2005. [Press Note No.1 (2005 series)]

- To simplify procedure for a company to withdraw from India if the company fell into a situation in which debts substantially exceed assets.
- To allow utilizing External Commercial Borrowing (ECB) not only for future projects but also the ongoing projects, so that companies can convert the existing loans on a rupee basis to long term loan on a foreign currency basis.
- To abolish certain regulations on payment of royalty to foreign parties in foreign technology collaboration (Prior Government approval is required in the cases where



(a) the royalty is more than 8% of export amount or 5% of domestic sales amount, or the initial payment at one time based on the royalty agreement is more than US\$2million. [Press Note No.19 (1998 series) and Press Note No.2 (2003)], or, (b) the payment of royalty for use of trademark is more than 2% of import amount or 1% of domestic sales amount. [Press Note No.1 (2002 series)]

- To abolish the regulations of FDI in the retail sector and other.

#### 6. Visa application procedure

- To simplify and speed up the procedure for applying visa for short staying in India and internal (domestic) shifting of personnel.
- To extend the initial visa extension period of three months to longer period. At present, when Japanese who is working in India with Employment Visa tries to extend his visa in India, the person can only get the visa extended for three months.
- To permit Japanese Passport holders to enter India without visa, if the stay in India is less than 90 days.

#### 7. Inefficiency and lack of transparency of the administration.

- To simplify and speed up the procedure for applying for the various permissions related to construction work. To resolve the contradictions among various administrative departments and to improve bureaucratic compartmentalization. (Approval of construction work sometimes requires more than five months.)
- Not to change the rules suddenly without explanation in advance.

Ex.1) A notification about the change in the rule of Employee's Pension Scheme (1952) (EPS) and Employee's Provident Fund (1995) (EPF) was issued in October 2008.

Notification: Ministry of Labour and Employment GSR705 & 706 (1<sup>st</sup> October 2008)

Ex.2) Enforcement of the regulation by Bureau of Indian Standards (BIS) was issued without granting sufficient period of preparation for companies.

#### 8. Social Security Agreement.

- To seek an early conclusion of the social security agreement between India and Japan.
- Enforcement of Employee's Pension Scheme (1952) (EPS) and Employee's Provident Fund (1995) (EPF) will force the foreign companies to bear a heavy burden and make them less competitive. We request to take a temporary step like



postponement of the enforcement of these schemes until the conclusion of the Social Security Agreement between India and Japan.

#### 9. Intellectual Property Rights

- To strictly crackdown on counterfeit items and parallel import.
- To maintain the laws and acts against counterfeit and piracy.

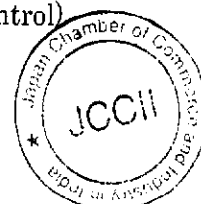
#### 10. Sector-specific issues

##### (1) Financial sector:

- To lower the proportion of Priority Sector Lending (Currently 32% for foreign banks). To make more flexible enforcement of the rule for Priority Sector Lending that forces bank to target specific sectors like Export Oriented Units, MSMEs and etc.
- To ease the restriction of borrowing from the parent company to stabilize the fund management of the foreign banks and to facilitate their supply of the fund to the domestic market, (Currently, the subsidiary of foreign company in India can borrow the money from its parent company up to ten million dollars or 50% of its capital).
- To grant permission to foreign banks to open branch offices in India in a more liberal and prompt manner.
- After global financial meltdown, we are hearing about unfair cases related to L/C like treating it as discrepancy, leaving it unpaid, serious delay of the payment, etc.
- To raise the upper limit of Foreign Direct Investment in Insurance Sector (currently 26% of the equity share) immediately.
- To enable smooth funding of term loan among the inter-bank participants, and to develop the inter-bank market.
- Further relaxation of regulation related to foreign exchange and capital transfer (both inflow and outflow)
- Further simplification and speed up of various bank procedures. (Especially, the formalities related to foreign currency remittance and trading are too much complicated and time-consuming.)
- To remove regulations related to the foreign bank's operation which restrict the increase of the number of Japanese staff. It is obstructing the expansion of the foreign bank's business in India. Japanese banks need to increase the number Japanese staff flexibly along with the expansion of their business.

##### (2) Steel

- To postpone the effective date of The Steel and Steel Products (Quality Control)



Order 2008 of the Ministry of Consumer Affairs, Food and Public Distribution, Dept of Consumer Affairs (Bureau of Indian Standards Section) dated 9th September, 2008, and

- To exempt important industries like automotives that suffer a lot from the said Order

(3) Others

- In case of bid proposals for infrastructure projects, standardization of bid requirements as per international standards (to set up bid preparation time in accordance with international standards, and to review requests of bond application at the stage of prequalification, etc) as well as enhancement of credibility of related schedules and systems (to decrease the frequency of schedule amendments while in tender period or in PQ stage, and to stabilize the bid process in order to enhance credibility although there is a practice that the rule to shortlist bidders through PQ, is abolished with one year of its introduction) is very much required so as to encourage the investment of foreign capitals into India.
- To control smooth traffic in the TAG toll gate lines of NH8.

