

Issues and Requests Relating to Foreign Trade and Investment - The Philippines

| Category | No | Issue | Issue Details | Requests | References |
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| 1 Restrictions on Entry of Foreign Capitals | (1) | The Philippines Residents/ Indigenous People Requirement for Establishment of a Legal Entity | - Due to the following requirements for an incorporator, director, corporate secretary, a member firm (MF) of JBCTIF without reliable local contacts faces much difficulty in selecting proper persons: -- The majority of founders, directors, must be the Philippines residents, -- The corporate secretary must be a native Filipino, residing in the Philippines. | - It is requested that GOP deregulates the requirements for being: -- residents in the Philippines concerning founders and directors, and -- both a Filipino and residing in the Philippines concerning Corporate Secretary. | - Corporation Code of the Philippines -- Founder, Section 10, -- Director, Section 23, -- Corporate Secretary, Section 25 |
| | (Actions) - Corporate code of the Philippines provides: " <u>Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes</u> ". | | | | |
| | (2) | Equity Ratio Requirement on FFEs Acquisition of Land Ownership Right and Right of Water | - The local capital contribution requirement of 60% or more for landownership /right of water could block new foreign investment into the Philippines. | - It is requested that GOP takes steps to either deregulate or amend the requirements described in the left column. | - <u>9th Regular Foreign Investment Negative List</u> |
| | (Actions) - <u>With capital contribution of maximum 40%, foreign corporation may establish real estate corporation and lease the land property to its local manufacturing subsidiary.</u> | | | | |
| 5 Regulations on Parts Industrial Policy | (1) | <u>Anxiety over New Car Policy for Small-Scale Car Manufacturers</u> | - <u>Toward integration of AEC in 2015, Department of Trade and Industry (DTI) and Board of Investment (BOI) now works on formulation of automotive industrial policy, which could possibly disfavour small-scale car manufacturers.</u> | - <u>It is requested that DTI/BOI formulates the automotive policy that does not differentiate incentives by production scales.</u> | |
| (Actions) - <u>On 19 December 2015, Department of Trade and Industry (DTI) and Board of Investment (BOI) announced implementing rules and regulations for the Comprehensive Automotive Resurgence Strategy Program (CARS Program). The minimum qualification required on car manufacturers include: (1) internationally renowned car manufacturer/international brand name holder, or domestic manufacturer, holding authorised domestic licence, operating jointly with such enterprises, (2) car manufacturer with international business results, internationally recognised brand, holding substantial market share in Asia, Europe, and/or North America, (3) an enterprise with international business activity, engaged in R & D, manufacture, marketing, and after service in Asia, Europe, and/or North America. (MUTB dated 15.01.2016)</u> | | | | | |

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| 6 | Reduction and Elimination of Preferential Policies for Foreign Capital | (1) | Land Tax Levied within Subic Freeport Zone | - By right, Government of the Philippines (GOP) has developed and expanded Subic Freeport zone (SFZ) as special economic zone (SEZ), free from all taxes and dues, save for payment of 5% corporate income tax, and has attracted foreign investment, after its conversion from the U.S. military reservation. However, since October 2011, Subic Bay Metropolitan Authority (SBMA) has compelled, upon enterprises entering SFZ, payment of 2 to 4 peso per cubic meter for common service fee (CSF), ostensibly comprising the road overhauls within SFZ, and forestry maintenance. In effect, however, it is apparent that CFS is collected to cover the loss from SMBA's failure in conversion of the Subic Airport into a container yard. It amounts to nothing but property tax. Japanese affiliated enterprises, leading the on-going court proceedings on this issue. | - Business Environment Committee (BEC) of Japanese Chamber of Commerce and Industry of the Philippines Inc. (JCCIP), at member firm's request has takes up this issue with competent authority of GOP. However, no development has taken place in the past few months. - It is requested that JCCIP also extends its helping hand toward solution of this problem. | - Republic Act No. 7227 & R.A. No. 9400, Amending R.A. No. 7227: "The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone." |
| | | (2) | <u>Prospect of Dwindling Tax Incentive Measures</u> | - <u>The discussion has revived over the review of tax incentive measures on enterprises in PEZA (Philippines economic zones) and the newly entering enterprises, focused on repeal of tax exemption period and extension of tax reduction period.</u> | - <u>It is requested that GOP holds on and maintains the status quo of the existing scheme.</u> | |
| 7 | Procedures for the operation of the Foreign Investment Law | (1) | <u>Arbitrary Restriction on FFE's Majority Control on Construction Business Licence</u> | - <u>While Board of Investment (BOI) approves entry by 100% foreign funded enterprises into construction business, PCAB declines to issue PCAB Licence to foreign funded enterprises in excess of 40% capital contribution.</u> | - <u>It is requested GOJ negotiates with GOP for it to allow fully foreign owned FFEs' participation in construction business.</u> | - <u>PCAB Internal Rule</u> <u>PCAB: Philippine Contractors Association Board</u> |
| 9 | Restrictive Export/Import Trade, Duty, and Customs Clearance | (1) | Import Control | - GOP restricts or bans import of certain goods for reasons of public sanitation and safety, national security, international treaty or fostering the local industry. -- Items subject to restrictions require prior governmental approval at the competent authority, and -- Banned items cannot be imported in any circumstances. | | |
| | | (2) | Levy of Safeguard Duty | - On 30 September 2009, GOP imposed safeguard tariff on angle bar and other section steel. On 10 March 2012: GOP extended by 3-years the due termination date of the safeguard tariff imposition (until March 2015), as a result of re-investigation made upon the request of the local Mill. On 8 October 2013: Philippines Department of Trade and Industry (DTI) published on the two major newspapers initiation of safeguard measures investigation on zinc plated steel and coloured steel plate. | - It is requested that GOP: -- repeals the safeguard measures, -- terminates the Investigation, and -- excludes Japanese steel from the scope of application of the safeguard measures. | |

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| | (3) | The L/C based Import System | <p>- GOP requires the letter of credit (L/C) in principle as a means of payment for all imports of steel products. To the L/C opening bank, all importers must:</p> <p>1) submit application for opening L/C and import declaration form, 2) pay deposit for opening L/C (the amount of deposit varies depending upon the credit standing of the applicant), and 3) make provisional payment of tariff (based on the contract amount at the going rate of exchange prevailing on the L/C opening date.)</p> <p>(Actions)</p> <p>- On 2 July 2009, National Economic Development Authority (NEDA) announced the final firm safeguard measures on steel angle bars from 33-countries, including Japan, pursuant to R.A.8800, known as "Safeguard Measures Act".</p> | <p>- It is requested that GOP repeals this system.</p> | |
| | (4) | Pre-Shipment Inspection Obligations | <p>- Since 4 January 2010, Administrative Order (AO243-A) has been enforced. Bulk, break-bulk cargo, other than containerised cargoes, must have pre-shipment inspection completed at the port of export. On 12 May 2010, Customs Order (CMO18-2010) was promulgated. Implementation rules have been tightened by adding high-risk cargo provisions for high-risk cargoes, such as conducting inspection at the unloading port.</p> <p>- <u>Pre-shipment cargo inspection (costing 60,000 yen per invoice) in the exporting country is compulsory for shipment by bulk carrier for export to the Philippines. However, it is difficult to take advantage of the lower freight rate, because of the heavy inspection charge and extra lead-time (of about one week), resulting in change to shipment by container steamer with the increased physical distribution cost.</u></p> <p>(Actions)</p> <p>- On 12 May 2010, Bureau of Customs promulgated Circular No. 2000-18 (enforced on the same date) that implements pre-shipment inspection of bulk cargoes and break-bulk cargoes.</p> <p>- Effective from 4 January 2010, pre-shipment inspection at the place of export shipment by the designated enterprises for quantities and the items of shipment has been made a mandatory requirement on bulk cargoes and break-bulk cargoes entering the ports of the Philippines.</p> | <p>- It is requested that GOP repeals the requirement.</p> <p>- It is requested that GOP either repeals pre-shipment inspection requirement or reviews the pre-shipment inspection method.</p> | <p>- Presidential Administration Order (AO) 243-A - Customs Order (CMO18-2010)</p> |
| | (5) | <u>Overly detailed requirements on Customs Clearance Documents</u> | <p>- <u>Customs requires numerous documents (PICCS, PMPIN, SQI, MSDS), requiring disclosure of confidential data, including ink ingredient, etc. This trend is noticeable in air shipment (not in normal ocean shipment). The customs requirement for data and information exceeds beyond the tolerable technological boundary in contents.</u></p> | <p>- It is requested the Philippine customs review the information sought in the customs clearance documents to streamline its requirement within the reasonable extent.</p> | |

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| | (6) | <u>Introduction of New Import Procedures</u> | - <u>Upon import of storage equipment loaded with optical media information and Operation System (OS), GOP requires Optical Media Board (OMB) permit, acquisition of which takes a long time. It blocks having an emergency business conference.</u> | - <u>It is requested that GOP facilitates the customs clearance procedures to avoid interference with the business conference, and to enable timely delivery.</u> | |
| | (7) | <u>Delayed Export/Import Cargo by Traffic Regulation/Increased Transportation Cost</u> | <p>- <u>The traffic congestion in the Manila metropolitan area was not born yesterday. In February 2014, the city of Manila (COM) started Manila truck ban, disallowing the truck passage within COM from 5:00 a.m. until 9.00 p.m. However, this was an apparent political misjudgment, with the 2-largest ports in the Philippines located in north and south of COM. It caused the heavy container congestions at Manila port, and gave a serious operational impact. GOP experienced heavy reduction in customs duty income, while meeting with strong opposition from export/import industries, and truck association. By September, GOP was compelled to lift the ban on the truck entry into COM. The harbour operation has not fully recovered, with the chronic delays in steamer schedule continuing even now. To begin with, the main culprits of the traffic congestions include long-distance bus, jeepneys, tricycles (motor bike with side car). However, cutting them down will surely meet with citizens' oppositions, leaving GOP with no other choice. Some reported this was performance of Mr. Estrada (ex-Philippines president, now Manila mayor), who now vies for the 2016 presidential election.</u></p> <p>- <u>City of Manila's truck ban (total ban of large vehicle during the day time) has caused much delay in parts and materials delivery, and product shipments, even now after lifting the truck ban, 60% of the commodity traffic suffers delays. It has caused material cost up by having to airfreight cargoes, a serious state of affairs.</u></p> <p>- <u>The cargo jam-up triggered by the truck ban in the Manila area last year continues, causing continued delays in the handling of inbound-outbound vessels and the related work.</u></p> | <p>- <u>It is incumbent upon GOP to hold consultation with the economic/ industrial concerns to establish the countermeasures, shifting from the going scheme of concentration into Manila to spreading into suburban ports (by reduction in port fees, etc.). During the period of congestion, the capacity utilization at both ports has gone up, as a result. However, it was not achieved by planning.</u></p> <p>- <u>It is imperative that GOP:</u></p> <ul style="list-style-type: none"> - <u>avoids concentration of all cargoes into Manila port only.</u> - <u>accelerates effective deployment of Subic port and Batangas port</u> - <u>overhauls the infrastructure of both ports for boosting their cargo handling capacity.</u> <p>- <u>It is requested that GOP takes step to resolve congestions, jam-ups and delays in the harbour area as soon as possible.</u></p> | - <u>Metropolitan Manila Council Special TRAFFIC Committee Resolution No.10 Series of 2014</u> |

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| 10 Restrictive Measures for Operations in Free Trade Zones ("FTZs") and Special Economic Zones ("SEZs") | (1) | <i>Nebulous Procedures involving different Free Port Zones</i> | - <i>Plural competent authorities govern Free Port Zones in the Philippines. While Port Clark belongs to BCDA, nearly all MFS's customers belong to PEZA. Where transactions include cargo handling at both Free Port Zones, it takes one day each for moving cargoes in and out for the customs clearance, requiring complex documents, plus handling fees. All these requirements hinder the cargo movement, while prolonging the local procurement lead-time.</i> | - <i>It is requested that GOP: -- simplifies the requisite application documents between Free Port Zones under different jurisdictions, and -- repeals handling fees.</i> | - <i>Clark Free Port Law</i> - <i>Competent Authority: Bases Conversion Development Authority (BCDA), Department of Trade and Industry (DTI)</i> |
| 12 Exchange Controls | (1) | Difficult Inter-Enterprise Foreign Exchange Transactions within a Single Group | - <u>All foreign exchange transactions in the local peso currency are restricted to actual trade. Thus, transactions in peso are not possible within the financing institutions of the same group.</u> | - <u>It is requested that GOP liberalises the foreign exchange transactions.</u> | - BSP Foreign Exchange Scheme - Bangko Sentral ng Pilipinas (BSP) (Central Bank) |
| | (2) | <u>Rapid Foreign Exchange Fluctuations</u> | - <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> | - <u>It is requested that GOP takes step to: -- stabilise foreign exchange fluctuations, and -- holds the fluctuation band within a few percents in 6-months.</u> | |
| 14 Taxation Systems | (1) | Vexatiously Complex VAT Levy and Excessive Burden | - Upon cargo arrival 12% VAT is payable on the Invoice Amount. Payment due: Upon cargo arrival for the invoice amount, converted into peso at the prevailing rate on the date of cargo arrival, 12% of which is payable in Peso. calculation of customs duty: Apply the duty rate to the highest of: (1) invoice amount, (2) home consumption value on SGS's clean report of finding, or (3) actual home consumption value in the exporting country [customs owns price lists of major countries] to calculate the customs duty amount. Then, recalculate at the prevailing exchange rate on the date of cargo arrival as final, and settle the differences. (Actions) - In November 2005, GOP enforced the new VAT Act that includes the raise of VAT from 10% to 12% and setting up of the limit of the deductible amount of the purchase tax. - Effective 1 February 2006, GOP raised the VAT from 10% to 12%. | - It is requested that GOP repeals the VAT levy. | |

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| | (2) | Un-refunded and Delayed Refund of Value Added Tax | <p>- <u>VAT exempted PEZA enterprises are uncertain when the VAT provisionally paid is refunded by GOP, as such refund is long overdue.</u></p> <p>- VAT (Value Added Tax) reaching the refund position never gets refunded smoothly. Frequently, prompt letters requesting refund have been sent to GOP via chamber of commerce and industry, and Japan embassy.</p> <p>- <u>Up to now on VAT refund, its non-smooth refund has been pointed out. Last year BIR promulgated revenue memorandum circulars (RMC), providing: If the claim for VAT refund or credit is not acted upon by the commissioner within 120-day period as required by law, such 'inaction shall be deemed a denial' automatically. Moreover, failure to file complaint within 30-days of denial determines the denial, so that by retroactive application, the pending case past 150-days from the filing date of refund request automatically confirms the refund denial.</u></p> <p>- <u>VAT refunds are lagging behind. Revenue memorandum circulars RMC-54-2014, enforced last year, sets forth, among others:</u></p> <p>(1) <u>BIR (Bureau of Internal Revenue) decides whether or not to execute refund within 120-days of the filing date of the refund request</u></p> <p>(2) <u>No refund decision past 120-days automatically means denial.</u></p> <p>(3) <u>Failure to file complaint with The Court of Tax Appeals of the Philippines (CTAP) within 30-days of denial voids the right for the VAT refund.</u></p> <p>(4) <u>Appeal to CTAP may not be made within 120-days of refund request filing date.</u></p> <p>(5) <u>RMC-54-2014 applies retroactively to all past tax returns.</u></p> | <p>- <u>It is requested that GOP:</u></p> <p>-- <u>secures the adequate fund that enable VAT refund, and</u></p> <p>-- <u>expedites the tax authority's examination.</u></p> <p>- It is requested that GOJ takes steps to have GOP appreciate:</p> <p>-- smooth VAT refund is the fundamental requisite step for introduction of value added tax, and</p> <p>-- the failure to complete the VAT refund process smoothly gives negative impact upon business transactions.</p> <p>- <u>It is requested that GOP:</u></p> <p>-- <u>sincerely accepts the rebuttals filed by Japanese chamber of commerce & industry of the Philippines, embassy of each country in the Philippines, and</u></p> <p>-- <u>repeals the RMC-54-2014, revenue memorandum circulars.</u></p> <p>- <u>While the negotiation stage has gone up to the bilateral ministerial level, it is requested that GOJ powerfully press on to get the RMC54-2014 repealed.</u></p> | <p>- National Internal Revenue Code of the Philippines, Sec.112</p> <p>- <u>RMC-54-2014, Revenue Memorandum Circulars, Clarifying Issues relative to the application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as Amended</u></p> |

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| | | | | <p>- <u>GOP fails to process MFS's VAT returns smoothly.</u></p> <p>(Actions)</p> <ul style="list-style-type: none"> - In 1988, VAT Act was enforced. - Due to the deficit balance of GOP, there is much delay in GOP's executing the VAT refund as regards enterprises to which 0% VAT is imposed. Moreover, in lieu of cash refund, in many cases, GOP issues a certificate for tax deductions, which can be offset against the tax liability of enterprises. - New VAT Act enforced in November 2005 stipulates the limit on the deductible amount from the purchase tax (The limit of the deductible VAT from the VAT amount received is 70% of the VAT amount received). The new VAT Act compels enterprises to carry forward to next quarterly fiscal term the amount of the input VAT exceeding 70% of the output VAT. - A survey conducted in September 2006 by the Philippine Chamber of Commerce And Industry in the U.S. cites refund of VAT is one of the three most burdensome procedures. - Republic Act No.9361 that removes the 70% cap on the input VAT is enforced on December 13, 2006. By virtue of this removal, enterprises are able to transfer the full 100% input VAT from raw materials to the output VAT at point of sales, assuring compatibility in the profit and loss. - The VAT refund delays are on the agenda of Business Environment Committee established under Japan-Philippines Economic Partnership Agreement (JPEPA). Bureau of Internal Revenue (BIR), Philippines has committed to check individual refund requests, providing information to Japanese Embassy. BIR is using its best efforts to expedite the VAT refund. (20 May 2010 JETRO News Letter (TSUSHO KOHO)) - Since 2008, GOP has imposed import duty on raw plastic compounds imported by the BOI registered enterprises, which were imported duty free up to 2007. While VAT refund may be obtained by filing application for re-export, the delay of its refund has become chronic, due to the vexatiously complex refund procedures. - Since July 2011, GOP has prohibited transfer to third parties of Tax Credit Certificate (TCC). - On 2 July 2012, GOP released the guideline concerning discount of Tax Credit Certificate (TCC) of VAT. - At the fourth meeting of the Subcommittee convened on 28 March 2013 on the Improvement of Business Environment under the Japan-Philippines Economic Partnership Agreement (JPEPA), the discussion was held over the VAT refund issue. | <p>- <u>It is requested that GOP taxation authority secures adequate fund and expedites VAT examination to execute the VAT refund promptly.</u></p> | |
| | | (3) | Arbitrary Tax Investigation, Back Taxes and Penalties | <p>- <u>Enterprises must put up with considerable amount of time and expenses at each tax investigation that involves submission of a vast amount of documents, notification for imposing unilateral, illogical additional taxes, etc. The manner of conducting tax investigation requires renovation, such as one-sidedly compelling the burden of proof entirely upon taxpayers.</u></p> | <p>- <u>It is requested that GOP makes a thorough overhaul of the essential renovation that includes the institutional restructuring and the fundamental manners of tax investigation.</u></p> | |

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| | (4) | Vexatiously Complex Procedures Required in Filing Request for Application of the Maximum Tax Rate on License Fees under JPTT | <p>- Despite the affixed withholding tax rate (on technical service fees and service engineer service fees) being stipulated under the Japan-the Philippines Tax Treaty (JPTT), BIR continues requirement for production of a set of documents, including Technical Assistance Agreement (TAA, requiring apostille formally signed by the Philippines Consul in Japan). Moreover, such apostille is necessary for TAA each amendment. Failures to produce the documents will void the benefit under JPTT, and the 30% withholding tax rate will apply.</p> <p>- <u>The procedures under JPTT are complex and time consuming on both sides including GOJ on filing application for reduction in the withholding tax rate concerning licence fees, etc. It takes more than one-year before the approval is obtained.</u></p> <p>- <i>Change in equity participant and payment of royalty have both delayed, due to the inadequate instructions given by the competent authority at the prior confirmation. Member firm's subsidiary (MFS) had to submit documents, which were newly added, including the consular apostille certificate.</i></p> <p>(Actions)</p> <p>- On 25 August 2010, BIR promulgated RMO No. 72-2010, the Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) pursuant to existing Japan-Philippine Tax Treaties, amending TTRA forms and the required documentary attachments. TTRA forms, newly established, comprise of the 8-categories in accordance with the classification of income (business profits, profits from shipping and air transport, dividend income, interest income, royalty income, capital gains, income from services, and other income earnings), the general documentary attachments required are newly classified in accordance with the classification of income, newly adding proof of residency, articles of incorporation (for income earner other than an individual), special power of attorney, certification of business presence in the Philippines, and certificate of no pending case.</p> | <p>- It is requested that GOP:</p> <p>-- repeals the requirement for apostille by the Philippines consul in Japan, and</p> <p>-- accepts, when amending the TAA, the submission of only the new contract without requiring other certificates by the Philippines Consul in Japan.</p> <p>-- streamlines and expedites the application procedures.</p> <p>- <u>It is requested that GOP streamlines and expedites the procedures related to the application.</u></p> <p>- <i>It is requested that GOP clearly identifies the requisite documents.</i></p> | <p>- Japan-Philippines Tax Treaty</p> <p>- 2010 BIR Memorandum Circular Directing prior filing of application minimum 15 days before remittance of Dividends, Royalties, etc. on which Reduced Tax Rate(s) applies(y) (2010 BIR Memorandum Circular)</p> |
| | (5) | <u>RMO remains Uncensored Despite the Supreme Court's Unconstitutional Judgement</u> | <p>- <u>BIR requires prior filing of request for application of vexatiously complex preferential tax rate(s), the failure of which results in BIR's refusal of tax refund. Despite the Supreme Court's Decision (SCD) of August 2013, holding procedural irregularities under RMO-1-2000 are incapable of depriving the preferential treatment under the tax treaty. BIR has failed to issue new RMO reflecting the supreme court's decision.</u></p> | <p>- <u>It is requested that GOP takes step to:</u></p> <p>-- <u>simplifies and expedites the going procedures for prior filing of request, and</u></p> <p>-- <u>amends RMO-1-2000 in accordance with the SCD of August 2013.</u></p> | <p>- <u>Japan-the Philippines Tax Treaty</u></p> <p>- <u>Revenue Memorandum Order, RMO-1-2000</u></p> |

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| | (6) | <u>Unjustified Denial of VAT Exemption on a Renewable Energy Project</u> | - <u>Under Renewable Energy Law (RE Law) various tax exemption measures are available on power generation projects for renewable energy. VAT, which is one of them, however, does not apply, unless the importer is also the end user. In other words, only the first player gets the VAT exemption. Under the EPC (Engineering, Procurement & Construction) contract, no VAT refund is available, if the contractor acts as importer. It drives up the total cost. It is the same if the contractor is a Filipino company, as it restricts the contract formation. Consequently, it is rather difficult for contractors to participate in the renewable energy project in the Philippines.</u> | - <u>It is requested that GOP takes step to implement VAT exemption not in the perspective importer, but rather from the standpoint of who is the end user, the customer.</u> | - <u>Republic Act No. 9513, also known as the Renewable Energy Act of 2008 (RE Law)</u> | |
| | (7) | <u>Double Taxation Risk under Transfer Price Taxation System</u> | - <u>A member firm, as a group of companies, faces the risk of double taxation, especially under transfer price taxation system, about which the rules vary by country, while their views also vary from one to the other.</u> | - <u>It is requested that GOP/GOJ take step to:</u> -- <u>refurbish the legislation on harmonised transfer price taxation system worldwide, and</u> -- <u>embellish prior approval scheme.</u> | | |
| | (8) | <u>High Withholding Tax levied on Remittance of Dividends to Hong Kong</u> | - <u>An enterprise in the Philippines, with its parent company incorporated in Hong Kong, pays dividends from its operation in the Philippines to its parent in Hong Kong. Withholding tax of high 30% is payable upon remittance, as tax treaty remains unprepared.</u> | - <u>It is requested that tax treaty is ratified between the Philippines and Hong Kong to reduce the rate of the withholding tax.</u> | - <u>Tax Treaty between Hong Kong and the Philippines</u> | |
| | (9) | <u>Too Brief Deductible Period</u> | - <u>Loss carry forward deductible period (LCFDP) is only for 3-years.</u> | - <u>It is requested that GOP takes step to grant minimum 10-years for LCFDP.</u> | - <u>Republic Act No. 8424</u> - <u>Tax Reform Act of 1997, Article 34(D)(3)</u> | |
| 16 | Employment | (1) | <u>Delays in Visa Renewal Procedures</u> | - <u>It takes 23-business days (more than 1-month) for Visa (47(A)2) renewal for PEZA, so that the applicant is unable to exit the Philippines to take a business trip abroad in emergencies.</u> | - <u>It is requested that GOP takes steps to enable visa renewal within 2-weeks or so.</u> | - <u>The Philippine Immigration Act of 1940, Commonwealth Act No.613; Article 47</u> |
| | | (2) | <u>Restricted Fixed Term Employment</u> | - <u>Restricted fixed term employment is allowable only for the work with temporal, seasonal nature.</u> | - <u>It is requested that GOP establishes the scheme that assures flexible personnel adjustments.</u> | |

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| 17 Implementation of Intellectual Property Rights ("IPRs") | (1) | Deficiency in the Regulation for Applicant's Voluntary Submission of Materials on Corresponding Foreign Applications | - In the Philippines, it takes 5 to 6-years from the filing of patent application to examination. To expedite patent issuance, the applicant's voluntary submission is desirable of materials on corresponding foreign application for patents, contrary to the existing rules and regulations on inventions, which provide: "The applicant shall, at the request of the director, furnish him with the date and number of any application for a patent filed by him abroad". | - Intellectual Property Office of Singapore and Intellectual Property Corporation of Malaysia have adopted modified substantive examination (MSE) system that expedites examination by submission of materials on corresponding foreign application for patents. In addition, in Vietnam and Thailand, MSE system is already in operation, although not yet made into laws. It is requested that IPO of the Philippines will adopt MSE system also in the Philippines to expedite issuance of IPRs through adoption of MSE system. | - Rules and Regulations on Inventions, Rule 612 |
| | (2) | Disallowed Divisional Patent Application upon Refusal Examination | - Rules and regulations on inventions, rule 611 prescribes that an applicant may file application for division of patent before the pending application is withdrawn, denied or issued, foreclosing any application for divisional patent during the refusal examination. For this reason, an applicant gets fewer opportunities to obtain the patent right in the scope of claim exactly as intended by the applicant. | - It is requested that intellectual property office of the Philippines will allow filing of divisional application during the denial examination or during the patent examination. | - Rules and Regulations on Inventions, Rule 611 |
| | (3) | Uniquely Peculiar Blank Space for Drawing | - Due to the blank space for drawing uniquely peculiar to the Philippines, the applicant must prepare custom-made drawing for the Philippines different from other countries. | - It is requested that GOP takes step to adjust the blank space for the drawings the same as other countries. | - Rules and Regulations on Inventions, Rule 414.3 |
| 19 Industrial Standards, Approval of Safety Standards | (1) | Compulsory Philippine National Standard (PNS) | - Since June 2008, Department of Trade & Industry of the Philippines (DTI) has made acquisition of PNS standard a compulsory requirement on zinc plated steel pipe, deformed bar, equal leg angle steel, and steel bar. The scheduled extension of PNS standard acquisition to cold-rolled steel plate in July 2010 met with oppositions both externally and internally. It remains as voluntary standard. | - It is requested that DTI streamlines and clarifies the procedures (inclusive of exclusionary system) concerning the target products of compulsory PNS Standard. | - DTI Department Order |

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| 21 | Restrictions on Land Ownership | (1) | Land Ownership Restricted to FFEs | <p>- Member firm (MF) of JBCTIF having established its fully owned manufacturing subsidiary in the Philippines (MFS) has no alternative but to lease the land property, its ownership being denied to FFEs. If MF chooses to purchase the land property, nevertheless, it must divest its capital contribution (CB) to less than 40%. If so, MF must resolve the difficulties such as: (1) finding reliable partners willing to purchase 60% of CB, if MF is unaware of any suitable candidate, (2) weakened control in MFS against the local partner holding part of the land property.</p> <p>(Actions)</p> <ul style="list-style-type: none"> - By amendment of the Constitution during the administration of President Estrada, a policy was established to seek the economic revitalization by permitting the ownership of land property by foreign capitals. However, this policy met with a strong opposition and is now being held in abeyance. - The Bill to amend The Condominium Act envisages extending its application to the Industrial Estates. If this amendment takes place, it will enable foreign capitals investing in the Industrial Estates to own land properties. - The Bill is still pending at the committee level of both Senate and House of Representatives. One of the striking characteristics of the amendment Bill is amendment to the Condominium Act. - Foreign investors under the Bill will be permitted to the following: <ul style="list-style-type: none"> -- A greater guarantee for the land ownership; -- Less than 40% ownership in horizontally expandable housing complex; -- Less than 40% ownership in industrial zones; and -- Improvements in concept concerning the extent of the alien's land property ownership in the context of the 75 years Land Lease Act. - Under the Land Lease Act, amended, the lease period of the property is now allowed to the maximum of 75 years, namely, 50 years of the original lease contract with an extension of 25 years. - With the purpose of curbing potential tax evasion by FFEs, C.A.No.108, An Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchise or Privileges exists. In the event of violations, penalty of imprisonment, fines, dissolution/confiscation of the business/assets will result. - On 1 August 2004, FIC reduced from 250,000RM to 150,000RM the minimum price of the property aliens are authorized to acquire, by implementing the New Guideline. - Executive Order No. 98, s. 2012, "Promulgating The Ninth Regular Foreign Investment Negative List entered into force on 22 November 2012" restricts eligibility for admission to an examination of the real estate service providers "only to Philippine nationals". | <p>- It is requested that GOP deregulates its restrictions upon FFEs on landownership.</p> | <p>- The 1987 Constitution of the Republic of the Philippines, Article XII, Section 2.- Foreign Investment Act of 1991</p> |
| 23 | Inefficient Administrative Procedures, Regimes and Practices | (1) | Vexatiously Complex Procedures on Restrictions Concerning Transfer Of Assets | <p>- <u>The Philippines Bulk Sales Law stipulates distribution to creditors of the consideration from the transfer of the assets, which addresses to disposal of assets outside "the normal course of business", requiring institution of the procedures for protection of creditors, even when the amount of the transfer is so small that the protection of the creditors does not make much sense.</u></p> | <p>- <u>It is requested that GOP narrows the scope of triggering Bulk Sales Law to the case in which the protection of the creditors is warranted in relation to the business scale of the enterprises transferring the assets.</u></p> | <p>- Bulk Sales Law</p> |

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| 26 | Others | (1) | Inadequate Infrastructure for Traffic and Transportation | <p>- <u>Due to the inadequate maintenance of traffic lights, etc. on the general road, heavy traffic congestions are frequent and so are the traffic accidents. The driving manner is poor. Many roads are submerged in water by small rainfalls. The roads in the periphery of the airports are especially in bad or poor state of repair.</u></p> <p>- <u>Near-sighted truck ban to ease traffic congestions gave rise to huge congestions at Manila port so that the congestions continued even after the lift of the truck ban. The alternative ports (Batangas and Subic) do not function well, due to the capacity shortage.</u></p> <p>- <u>Due to the mismatching traffic volume and the truck lanes capacity in the harbour vicinity, during certain periods in 2014, it took 3~4 weeks for the cargo to reach the destination from its arrival at port.</u></p> <p>- <u>Due to the shortage of the cargo handling capacity at ports, cargoes got piled up at ports, so that exporter/importer incurred additional costs from having to switch to air shipment.</u></p> <p>- <u>As a result of the expanded growth by large margin in trade of the Philippines, the shortage in the handling capacity at ports has occurred. The container steamers have met with unprecedented serious delays (maximum one month at the yearend).Because of this Japanese affiliated enterprise in the Philippines experienced a series of problems from production delays, stock shortage, to increased cases of airfreight, jeopardising the position of the Philippines as their production foothold.</u></p> <p>(Actions)</p> <p>- On June 28, 2001, in order to resolve the power supply shortage and to lower the electric power charge, "Electric Power Industry Reform Act of 2001" was enforced. As a result:</p> <p>(1) the electric industry has been divided into four (4) sectors, namely: generation; transmission; distribution and supply.</p> <p>(2) privatization of the National Power Corporations (Napocor) and</p> <p>(3) a nation-wide supply of electricity power has come into effect.</p> | <p>- <u>It is requested that GOP takes steps to improve the road infrastructure, especially in the area surrounding the airports.</u></p> <p>- <u>It is requested that GOP takes step to:</u></p> <p>-- <u>ease the chronic traffic congestions, and</u></p> <p>-- <u>enhances the cargo handling capacity at ports, including the alternative ports.</u></p> <p>- <u>It is requested that GOP overhauls the infrastructure at ports and roads so that cargoes reach the destination within a few days from the steamers' arrival at ports.</u></p> <p>- <u>It is requested that GOP overhauls the cargo handling capacity at ports.</u></p> <p>- <u>Status quo of Manila ports are loaded with problems, not simply shortage of port handling capacity, but overland transport (traffic congestions)/environment also. It is requested that GOP expands the container handling capacity at Batangas port, accompanied by increased shipping companies to resolve all these problems.</u></p> | |

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| | | | | <ul style="list-style-type: none"> - In 2005, GOP concluded Agreement with World Bank on extension of credit in the amount of US\$60 million and US\$13 million equivalent grant from global environment facility for the Metro Manila Urban Transport Integration Project. - Ninoy Aquino Manila International Airport Terminal 3 (NAIA3) due for opening in 2002 was taken over by GOP in 2005. As of the end of June 2006, the opening schedule remained undecided. - In May 2007, President Arroyo issued order to prioritize several development services and large-scale projects in order to achieve economic expansion, creation of job opportunities, and reinforcement of security. Prioritized projects include among others repair of Ninoy Aquino Manila International Airport Terminal 3 (NAIA3), connection of Manila Light Rail Transit System (LRT) and Manila Metro Rail Transit System (MRT), and construction of Subic-Clark-Tarlac Expressway Project that concerns acceleration in completing large-scale infrastructure projects. - The Philippines was ranked in the 56th position out of the 58 countries in the World Competitiveness Yearbook 2010 in the category of the Basic Infrastructure. The fragile infrastructure of the Philippines (especially, port system, water/land transportation system, distribution network) is pushing up distribution cost by and among the islands. It is quite possible that next Aquino Administration will be confronted by improvement of infrastructure and modernisation of the Philippines. - Since February 2014, Large Truck Driving Regulation within the Manila Metropolitan Area has been implemented, which has been considered as causing the cargo throughput at the Manila Port. On 13 September, Mayor's Executive Order No. 67, repealing the Regulation was promulgated. - The Philippines 2015 Budget shows GOP's policy to boost the expenditure on infrastructure from 4% in 2014 to 5% in 2015 relative to GDP. <p>(Improvement)</p> <ul style="list-style-type: none"> - In newly established industrial estates and economic zones, a certain degree of infrastructure has been secured, such as quality road networks, sufficient water supply system, sewage and draining systems, and underground piping facilities (for electric power cables and telephone lines). - Traffic jams are also getting alleviated somewhat, by the openings of the light weight elevated railroad, and the skyway (express railroad). - President Arroyo's State of the Nation Address on July 23, 2007, includes among others reference to "The Subic-Clark-Tarlac Express Way" funded under the Japanese ODA loan being in its final stages of construction, inauguration of Subic container port, and extension and widening of the South Luzon Expressway. - In April 2008, the Expressway that spans between Clark and Subic SEZs was opened. | | |
| | | (2) | Unstable Supply and Relative High Price of Electric Power | <p><u>The electric power bill in the Philippines is equal to or higher than that in Japan, Singapore, etc. Due to instability of power supply, enterprises must protect themselves against power failures by installing power generator at factories and UPS (uninterruptible power system) at offices.</u></p> | <p><u>It is requested that GOP takes positive steps for the stable power supply and its cost reduction.</u></p> | |

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| | | | | <p>- <u>Special power price contract for PEZA enterprises expired in December 2012 so that the price reduction rate has dropped. The prospect is nebulous for liberalisation in sales and purchases of electric power as to its mechanism and introduction timing.</u></p> <p>(Actions)</p> <ul style="list-style-type: none"> - In April 2002, Energy Regulatory Commission ordered the counselor of The Manila Electric Company (Meralco) to remove inter-class cross-subsidies for electricity. In May 2002, President Arroyo ordered the National Power Corporation (Napocor) to suspend remove inter-class cross-subsidies. The Supreme Court found that Meralco should refund the amount overly charged during the period of 1994 through 1998. Meralco opposed this judgment. - On 24 October 2004, GOP authorized the counselor of Meralco removal of inter-class cross-subsidies on electricity charge. - In June 2006, commercial operation of the wholesale electricity spot market began. - Department of Energy (DOE) released "Philippine Energy Plan 2008-2030" that envisages doubling of power generation capacity to 10,835mw by 2020, through exploitation of renewable energy such as geothermal, hydro, wind, solar, biomass, ocean energies. - In December 2008, Renewable Energy Act of 2008 (RA 9513) entered into force. - On 22 April 2009, the Philippines Senate passed the Senate Bill No.2121 to amend Republic Act 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA). The Bill No.2121, seeks, among others, to: (1) authorise enterprises' open access to power producers, (2) remove stranded debts (of the National Power Corp. to independent power producers) from charges being passed on to consumers, and (3) put a cap on the amount of loss being passed on to consumers. In addition, the Senate deliberates on the following Bills: The Senate Bill 3282 Electricity Rate Reduction Act of 2009 (to reduce royalty on natural gas) and the Senate Bill 392 An Act Imposing a Uniform Franchise Tax on Distribution Utilities Enjoying Legislative Franchise in lieu of any and all Taxes Collected by The Government with the end in view of Reducing the Cost of Electricity borne by Consumers. - On 4 May 2009, BOI approved duty free import of generators to Mindanao Island to cope with the power shortage in that Island. This measure forms a part of Implementing Regulations of "2010 Priority Investment Plan" for risk management. BOI exempts import duty for all enterprises on the Mindanao Island, duly established under the Philippines laws, with the exception of retailers and retailing enterprises. This measure is intended to cope with the power shortage problem on the Mindanao Island that has ailed the Island over many years. According to the National Grid Corporation of the Philippines (NGCP) (http://www.ngcp.ph), the total demand in March 2010 was 1,400mw, against the total Mindanao power generation capacity of 578mw. The reason for the power shortage is accounted for by the limited capacity of the hydropower generation. The power shortage has negatively impacted upon construction, hospitality industry, tourism, etc. | <p>- It is requested that GOP:</p> <ul style="list-style-type: none"> -- <u>identifies the timing of implementing its policy to liberalise power supply.</u> -- <u>explains the substance of the policy in detail, and</u> -- <u>introduces the policy as soon as possible.</u> | |

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| | | | <p>- The Priority Activity List (that enjoy preferential tax measures) under "2010 Investment Priority Plan" includes newly added infrastructure projects, namely, environment, and project for prevention, alleviation, and recovery of the natural calamity. The infrastructure business sectors listed in the Autonomous Region in Muslim Mindanao (ARMM) includes infrastructure businesses such as refurbishing the existing power generation plant and import of power generation equipment, for use in the Mindanao Island, with the purpose of ameliorating the power shortage in the Muslim region of Mindanao. Import duty is exempted on importers of the power generation equipment taxes are exempted also on reconstruction projects of roads and bridges after the natural disaster.</p> <p>- In June 2013, GOP started power retail market liberalization, reducing the power unit cost.</p> | | |
| | (3) | <p><u>Shortage of Information on Power Supply Review</u></p> | <p>- <u>Power supply has not caught up with the economic growth in the Philippines, while the rumor on the power shortage risk reaches the ears. Japanese affiliated manufacturing enterprises are under severe anxiety over the step to take to meet the problems, what with the shortage of pertinent information on the subject.</u></p> <p>- <u>According to the news media report, power shortage, at maximum 1 million KW, will arise in summer (March-July) 2015. Nevertheless, FFEs are unable to take adequate responsive measures, due to the shortage of accurate information, such as the prospective balance between demand and supply, and the available counter-measures to combat the power shortage.</u></p> | <p>- It is requested that GOP:</p> <p>-- <u>discloses accurate information, and</u></p> <p>-- <u>expedites its deliberation on the substantive measures to avoid scheduled suspension of power supply.</u></p> <p>- It is requested that GOP:</p> <p>-- <u>first of all secures sufficient power supply, and upon occurrence of actual shortage,</u></p> <p>-- <u>both GOP and power supply companies discloses integrated accurate information by grasping the actual state of affairs.</u></p> | |
| | (4) | <p><u>Abrupt Establishment or Changes of National Holidays</u></p> | <p>- Abrupt changes of national holidays by presidential order are not infrequent. Business days are suddenly made national holidays or vice versa. In the worst case, such changes become effective only with a few days notice. Consequently, factories incur unbudgeted payment of holiday allowance, each time the business days are turned into national holidays.</p> | <p>- It is requested that GOP affixes national holidays before the end of each preceding year.</p> | |
| | (5) | <p><u>Non or Delayed Payment</u></p> | <p>- <u>MFS, having experienced nonpayment/delayed payment of accounts receivables, due in part to differences in traditions in commerce, business ethics, balance of power, etc., has switched to advance payment in its terms of sale. However, on products with short life expectancy cycles (such as manufacturing equipment for smartphone parts), the delivery terms and the prices claim the top priority, so that even if collection is completed successfully, the delay in payment severely affects the profitability of the MFS operation.</u></p> | <p>- It is requested that GOI:</p> <p>-- <u>extends its helping hands to the less powerful SMEs by provision of information, and</u></p> <p>-- <u>facilitates collection of accounts receivables.</u></p> | |