

Issues and Requests Relating to Foreign Trade and Investment - Chile

Category	No	Issue	Issue Details	Requests	References
9 Restrictive Export/Import Trade, Duty, and Customs Clearance	(1)	<u>Vexatiously Complex Customs Clearance Procedures</u>	- <u>On air freighting cargoes to Chile, GOC (Government of Chile) requires confirmation approvals on the documents (invoice, packing list) sent to the local agent of the carriers for confirmation and approval, before loading the cargo on to the aircraft. Even if the cargoes are ready for shipment, a few days at minimum are wasted in waiting from the receipt of confirmation of air-cargo booking. It is inefficient, especially troublesome in emergency shipping.</u>	- <u>It is requested that GOC repeals prior confirmation protocol and permits expeditious cargo loading and air transport.</u>	
12 Exchange Controls	(1)	Restricted Forward Booking of Foreign Exchange	- <u>Chilean enterprises are authorised to contract forward booking in foreign exchange only with the Chilean domestic banks.</u>	- <u>It is requested that GOC deregulates foreign exchange control.</u>	
14 Taxation Systems	(1)	Tax Treaty Not Ratified	- <b>Compared to ROK (that already ratified the tax treaty) and PRC (that has begun its negotiation), Japan can likely be in subordinate position in the future investment environment. Especially, in the mining business, tax position will be an important factor for investment decision. To the extent possible, it is imperative that Japan begins from the same starting point as the neighbouring competitors.</b>  - <u>Direct/indirect investment into Chile from Japan has grown to the level exceeding 1 trillion yen (US). On the other hand, Japanese Affiliated Enterprises (JAEs), unprotected by Bilateral tax treaty with Chile, face the growing risk of double taxation from Chilean administration's severer application of transfer price taxation system. Thus, JAEs face the deteriorating competitiveness against such countries as South Korea (ROK) that have already ratified the Bilateral tax treaty, as regards additional tax levied on external remittance to Japan of dividend and interest relative to loan from Japan (so called withholding tax). Urgency and importance of early conclusion of tax treaty with Chile grow, in order to invigorate Japanese affiliated enterprises' desire to invest in Chile.</u>  - <u>Due to the pending ratification of the tax treaty between Japan and Chile, Japanese enterprises need to consider the high risk of tax consequences in entering the bidding.</u>	- Letters of Request have been submitted to GOJ already from Camara Chileno-Japonesa de Comercio e Industria Asociacion Gremial and JCCI. It is requested that GOJ presses on with its tax treaty negotiation with GOC and provides periodic report on its negotiation status.  - <u>It is requested that GOJ takes steps as soon as possible to start negotiation toward conclusion of tax treaty.</u>  <u>(Chilean negotiator says: "Government of Chile (GOC) is ready and willing to sit at the negotiation table at any time awaiting the Japan side.")</u>	- Chilean Tax Act - OECD Model Treaty Commentary - OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations

Category	No	Issue	Issue Details	Requests	References
			<p><b>(Actions)</b></p> <ul style="list-style-type: none"> <li>- In April 2002, Chile signed Convention for the Avoidance of Double Taxation ("CADT") with Korea.</li> <li>- In November 2002, Platform Enterprise Act ("PEA") having an effect of complementing the CADT was promulgated. Foreign investor establishing a business entity in Chile would be exempted from all Chilean taxes on any gains accrued from such third country investment pursuant to the PEA and Income Tax Act.</li> <li>- On 31 March 2003, Chile signed a double taxation treaty with Spain, the second most important country investing in Chile.</li> <li>- In January Chile signed the tax treaty with Peru and Ecuador, respectively, after the OECD Model.</li> <li>- As of November 2012, Home Page of Internal Revenue Service (Servicio de Impuestos Internos) provides the effectuation status of the Chilean bilateral tax treaty for avoidance of double taxation as follows: <ul style="list-style-type: none"> <li>-- Already entered into force: Argentine, Canada, Mexico, Ecuador, ROK, Spain, Norway, Brazil, Peru, Poland, U.K., Croatia, Denmark, Sweden, France, New Zealand, Ireland, Paraguay, Portugal, Malaysia, Russia, Thailand, Columbia, Belgium, Switzerland,</li> <li>-- Already signed, pending ratification: the U.S., Australia, South Africa.</li> </ul> </li> <li>- On 4 September 2012, GOC raised the Corporate Income Tax from 17% to 20% for the year 2012 (1 January through 31 December 2012). On the other hand, GOC would raise the Additional Tobacco Tax for the year 2013, and the Stamp Duty and Personal Income Tax, from the beginning of 2013, while repealing the Additional Tax of 15% on Royalty levied on purchase of software.</li> <li>- <u>In each past year, the concerned bodies of this country (Japan Business Council for Trade and Investment Facilitation, Japan Chamber Of Commerce and Industry, Japan Machinery Center for Trade and Investment, Japan Foreign Trade Council, Inc., International Tax Liaison Council) have requested early ratification of Japan-Chile tax treaty.</u></li> <li>- <u>The 2014 Tax Amendment has since 2015 progressively raised the corporate income tax, while the tax levy method has been made selective between integrated method and Semi-Integrated Method (SIM). Under SIM, 35% additional tax is levied only when external dividend remittance is made, while the amount corresponding to 65% of corporate income tax is deducted, provided, however, that in the case the dividends or remittances are made to countries / regions contracting tax treaty, the total amount of the corporate income tax is deductible.</u></li> </ul> <p><b>(Improvement)</b></p> <ul style="list-style-type: none"> <li>- <u>On 19 October 2015, Japan-Chile tax treaty was agreed in substance.</u></li> <li>- <u>On 21 January 2016, Japan-Chile tax treaty (JCTT) was signed. After the completion of ratification procedures, JCTT will be enforced on 1st January of the tax year following the year of ratification.</u></li> </ul>		
	(2)	<u>Nebulous Tax Reform</u>	<p>- <u>Tax Reform of 2014 included announcement of change in incentive measures on foreign investment. To this date, however, no substantive measures have been made public.</u></p> <p><b>(Actions)</b></p> <ul style="list-style-type: none"> <li>- <u>Major issues on tax reform of 2014 include among others: (1) Progressive staged increase in corporate income tax (CIT) (20% up to the reform point, brought down to 21% upon reform implementation, 22.5% in 2015, 24% in 2016). (2) CIT tax scheme after FY 2017 will be by tax payor's choice between Integrated and semi-integrated schemes, (3) reduction in tax rate of general complementary tax from 40% to 35%, (4) Simplified tax scheme for SMEs, and (5) Other incentive measures to SMEs.</u></li> </ul>	<p>- <u>It is requested that GOC clearly identifies the foreign investment incentive measures.</u></p>	<p>- <u>Ministry of Finance, Law No. 20,899.</u></p>

Category	No	Issue	Issue Details	Requests	References
			<p><b>(Improvement)</b></p> <p>- On 1 February 2016, tax reform simplification law was promulgated. It clearly identifies the selection base on tax payment method for corporate income tax, restricting switching to other methods.</p>		
17 Implementation of Intellectual Property Rights ("IPRs")	(1)	<b>Infiltration of Counterfeits Goods</b>	<p>- Inflow of counterfeits forms a great obstacle for local sales and distribution in Chile. In addition, should quality problems result from counterfeits, it would damage the MFS reputation, apart from sales also. As such distributors dealing in counterfeits could be tied to mafia and crime organization such as mafia narcotic dealers, daring busting is risky and difficult to take.</p>	<p>It is requested that GOB:</p> <ul style="list-style-type: none"> <li>-- tightens its water's edge clampdown,</li> <li>-- invigorates clampdown upon counterfeits,</li> <li>-- develops campaign, etc. to exterminate counterfeits.</li> </ul>	
			<p><b>(Actions)</b></p> <p>- In "USTR Special 301 Report of 2015," Chile remains in the Priority Watch List.</p> <p>- Chile participated in "Operation Pangaea", in association with Interpol, WCO, Police, Customs, and private enterprises from 10-South American Countries.</p>		
	(2)	Copying for Private Use	<p>- <b>Private copying of music CD to PC is very common. Also, such copying from PC to mobile audio recorder/player, recording of the broadcasting programs for time-shift viewing, rerecording to Smartphone, and copying of the book into tablet are seen in regular, daily level. In light of the fact that such action cannot be considered as being harmful to the copyright holder, the copyright granted to the copyright holder should be eased to allow the above common practices. However, we should take into account of the fact that there are countries where such practices are considered illegal, and it is insufficient that partial easing of the conducts in legal basis is not sufficient.</b></p>	<p>It is requested that GOC takes step to restrict the copyright in the practical manner reflecting the reality.</p>	<p>No provisions for permitting private copying.</p>
	(3)	Copyright Protection Period	<p>- While one thought relies on the EU/U.S. based international streams, both of which, however, have been prompted by the respective unique domestic needs: In the case of the U.S., the protection of the movie industry, and EU, the formation of the single market, both which were incapable of completion without taking substantial time. On the other hand, Japan fails to see any needs for prolonging the protection period. If anything, maintenance of copyright for "50-years after the end of life" should be appropriate, in the burgeoning Asian contents industries geared toward PRC/Korea, etc.</p> <p><u>Extension of copyright protection period to "50-years beyond life" means a delay by a few decades to make the copyrighted work public, forming the base of next creative work. It leaves a question as to its propriety.</u></p>	<p>It is requested that GOC maintains the copyright protection period for 50-years after the end of life.</p>	<p>- Countries permitting Copyright Protection for 50-years after the End Of Life: New Zealand, Vietnam, Brunei, Malaysia</p> <p>- Countries permitting Copyright Protection for 70-years after the End Of Life: the U.S., Australia, Singapore, Chile and Peru.</p>

Category	No	Issue	Issue Details	Requests	References
			<p><u>Should grant of the utility licence become more difficult than now, the industry, going hand in hand with the contents industry, will get its impact, not only now but also into the long future.</u></p> <p><u>In this regard, thanks to the provisions under doctrine of fair use, etc., the U.S., are, in effect, balancing to a degree between protection of copyright and use of copyrighted materials, whereas only the negative impact remains in Japan where no equivalent provisions are made into law.</u></p> <p><u>What impact could it give on the extended copyright protection between the result in the protection of copyright and its utility, and in the same perspective, if there are issues that Japan needs to demand other countries over the issues such as restricted rights, etc.</u></p> <p><u>These are some of the additional issues Japan needs to address over the optimum balance between copyright protection and its utility. The same applies equally to the overall tightening of protection of other rights incorporated into TPP, to ascertain, if there are issues Japan must require other countries, while seeking the optimum balance between protection and utility. (The same applies equally, in the context of the total reinforcement of protection of the other rights incorporated into TPP).</u></p> <p><u>Incidentally, in Europe, extension of the protection period, i.e., the copyright on live performance, recording, and measures to reduce dead contents are being incorporated.</u></p> <p><b>(Actions)</b></p> <p><u>- On 15 October 2015, 13-countries including Chili agreed in Principle on Trans Pacific Partnership Agreement (P-TPP). In "Chapter 18 Intellectual Property", it provides the Period Protection of Copyrighted Materials (including Movies), live performance, or recorded materials as follows:</u></p> <p><u>(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death;</u></p> <p><u>(b) on a basis other than the life of a natural person, the term shall be:</u></p> <p style="padding-left: 20px;"><u>(i) not less than 70 years from the end of the calendar year of the first authorised publication of the work, performance or phonogram;</u></p> <p style="padding-left: 40px;"><u>or</u></p> <p style="padding-left: 20px;"><u>(ii) failing such authorised publication within 25 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.</u></p>		<p><u>- Wikileak Document QQ.H.4.X - 1 of 30 August 2013</u></p> <p><u>The U.S. seeks introduction of Statutory Damage for copyright under TPP.</u></p> <p><u>- EU/Korea 10.50.2, 10.50.3</u></p> <p><u>- The U.S./Korea 18.10.6</u></p> <p><u>- The U.S./Peru 16.11.9</u></p> <p><u>- The U.S./Chili 17.11.9</u></p> <p><u>- The U.S./Columbia 244.2</u></p>

	Category	No	Issue	Issue Details	Requests	References
19	Industrial Standards, Approval of Safety Standards	(1)	Excessive Product Safety Requirements, Inadequate Certification Scheme	- <u>In the typical case of the certification scheme concerning a member firm, the Chilean authority conducts factory inspection upon acquisition of certification, followed by annual factory inspection (once a year). In addition, sampling inspection of 6-months after certification, as well as sampling inspection of products placed in the market, requiring considerable number of samplings. The burden is heavier for these alone compared to developed countries. The frequency of factory inspection bears a great burden, as it takes place for each product (protocol), and by each certification institute. Certification by certification institute and testing institute meets the statutory deadline at the last minute, or sometimes fails to meet the deadline.</u>	- It is requested that GOC takes steps to: -- accept the inspection report by certification institute of other countries, -- accept inspection reports among Chilean certification Institutes, -- share in common the factory inspection report on products on which the common product safety standard, -- adjust to the adequate level the number of samples for sampling inspection, and -- allow sufficient time to meet the requirements.	Resolucion 2716/2011, EXENTA Television, Set-Top Box - SEC Resolution 2684/2010, DVD Blue-Ray and Audio Equipment - Resolution 2371, Home Theatre Equipment/ Printer
21	Restrictions on Land Ownership	(1)	Indigenous People's Land Occupation	- <u>Indigenous people's land restitution movement has become active. Indigenous people have illegally occupied a few afforestation land properties of MFS. MFS being unable to fell plantation trees sees no means to avoid their reduction in revenues.</u>	- It is requested that GOC will take drastic in-depth measures to - cope with indigenous people's land restitution movement and - expedite GOC's purchase of the afforestation plots now occupied by the indigenous people.	- Law on the "Promotion, Protection and Development of Indigenous Peoples" ( No. 19,253 of 1993).
22	Environmental Pollution and Waste Disposal	(1)	Nebulous Procedures and Basis for Environmental Approvals	- <u>In the business sector in which a member firm is concerned with there are cases where mining project on which Environmental Impact Analysis (EIA) approval once obtained gets rejected, or the Environmental approval on power generation project is finally rejected. All these denials of approval must have originated from the nebulous environmental approval procedures and approval standards.</u>	- It is requested that GOJ induces GOC for clarification of the power between administration and judicature, and of the procedures for the citizens' participation in Environmental Impact Analysis (EIA) and Declaration of Environmental Impact (DIA).	
23	Inefficient Administrative Procedures, Regimes and Practices	(1)	Delayed Administrative Procedures	- It takes a lot of time for examination in each Administrative Procedure. For example, it took 4 to 5 months to obtain INDECI Certificate upon opening a new store, after submission of voluminous documents.	- It is requested that GOC takes steps to improve efficiency in its administrative procedures.	