

Issues and Requests Relating to Foreign Trade and Investment - Germany

	Category	No	Issue	Issue Details	Requests	References
4	Restrictions on Withdrawal Of Operations	(1)	Restricted Withdrawal by Exit Tax	- GOG controls by Exit Tax withdrawal of foreign enterprises' operation in Germany.		
9	Restrictive Export/Import Trade, Duty, and Customs Clearance	(1)	Import Licence	- <u>Export licence is required in Japan under CITES to export to Germany crocodile-skin watchband (CSW). In addition, importers must obtain import licence. It takes much time and work to export CSW to Germany.</u>	- It is requested that GOG: -- <u>repeals the requirement for import licence in Germany for import of CSW, as export licence issued in Japan suffices, and</u> -- <u>dispenses with export/import licence requirement for samples under ATA Carnets.</u>	- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
		(2)	Abrupt changes in HS Code Classification and Duty Rates	- Out of the blue, a firm received Notification under Binding Tariff Information (BTI) from German Taxation Authority (GTA) that due to the change in EU import duty rates, it would impose 14% import duty on the product (a large video projector, incorporating LED) instead of zero percent import duty, previously confirmed by the GTA. However, the firm renewed its BTI application, this time as "Parts" as it had not received such notification from any other EU member states. While finished products attract 14% import duty, 5% import duty now applies. However, abrupt future change in taxation system can result in the same set of circumstances and may disrupt the stable business activity.	- It is requested that EU: -- will provide opportunities for exchange of dialogues in expanding or changing the applicable scope of import duty, -- will ensure transparency by giving a proper and sufficient explanation, and -- harmonises the tax law implementation within the EU Regions.	- EU Customs Regulations
		(3)	Existence of Products subject to Export Restrictions	- Certain products manufactured or held in stock in Germany purchased for export may not be exported, depending upon the destination country. (Case) Member firm's subsidiary (MFS) purchased in Germany certain chemicals required for aircraft maintenance. However, the item in concern was prohibited for export from Germany to Taiwan. MFS had to withdraw the goods from the warehouse in the U.S., delaying the delivery dates.	- It is requested that GOG takes steps to deregulate export restrictions from FRG after the fashion of the U.S. regulations.	
12	Exchange Controls	(1)	<u>Rapid 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</u>	- It is requested that GOP takes step to: -- <u>stabilise foreign exchange fluctuations, and</u> -- <u>holds the fluctuation band within a few percents in 6-months.</u>	

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				<u>swings toward appreciation of Yen, it will instantly show operational loss: such is the severity of the fluctuation band.</u>		
14	Taxation Systems	(1)	<b>High Income Taxes</b>	<ul style="list-style-type: none"> <li>- Personal income tax (PIT) of Germany is higher than that of Japan by nearly 10%, and the scope of PIT is so broad that cost of expatriates to Germany is relatively high, heavily burdening enterprises that guarantee net amount of wages to expatriates.</li> <li>- German income tax is high at 40%, and fringe benefits are also taxable.</li> </ul>	<ul style="list-style-type: none"> <li>- It is requested that GOG: <ul style="list-style-type: none"> <li>-- reduces income tax rate, and</li> <li>-- excludes fringe benefits from taxable income.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Income Tax Act</li> <li>- Personal Income Tax Act</li> </ul>
		(2)	Double Taxation of Income Tax	Income tax is levied both in Japan and Germany upon a German trainee who got transferred to Japan (restricted to branch office) to receive training.	Japanese tax office holds that the German working in Japan is taxable in Japan, while German tax office holds the German is taxable in Germany as the German works for the benefit of Germany in Japan.	
		(3)	<b>Withholding Tax/Double Taxation Problems under Japan-FRG Tax Treaty</b>	<ul style="list-style-type: none"> <li>- External remittance of dividends from FRG to Japan is subject to 15% withholding tax. In light of exemption or reduction of withholding tax granted in other EU member states, the environment for investment into FRG largely lags behind.</li> <li>- GOG levies 15% withholding tax on the dividends received from a firm's subsidiary in Germany. Compared to the majority of other EU member states that have either reduced or exempted withholding tax under the tax treaty, the environment of Germany lags behind as a target country for foreign investment.</li> <li>- Germany tax law provides for withholding tax (capital gain tax). therefore, 15% withholding tax levy applies even if the going Japan-Germany tax treaty were applied.</li> </ul>	<ul style="list-style-type: none"> <li>- Since December 2011, it seems negotiation on amending bilateral tax treaty has been under way on and off intermittently between the two countries. It is requested that GOJ and GOG materialise the amendment just as soon as possible.</li> <li>- While negotiation on amending tax treaty continues, it is requested that GOJ and GOG lose no more time in materialising the amendment in order to improve the environment for investment into Germany.</li> <li>- While a member firm is aware of the going negotiation for amendment of Japan-Germany tax treaty, It is requested that GOJ and GOG expedite the negotiation to reduce to zero withholding tax (capital gain tax).</li> </ul>	<ul style="list-style-type: none"> <li>- Income Tax Act</li> <li>- Japan-Germany Tax Treaty</li> <li>- Japan- Germany Tax Treaty, Article 10(2)</li> <li>- Anti-avoidance provision of Section 50 d paragraph 1a Tax law.</li> <li>- Section 44d / 43 b Income Tax law</li> <li>- Amend the German and Japan Double Tax Treaties to reduce the impact of local legislation</li> <li>- Various laws in each EU country and Japan</li> </ul>

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			<ul style="list-style-type: none"> <li>- Under the going Japan- Germany tax treaty, withholding tax of 15% is levied on dividends a member firm receives from MFS in Germany. In Japan, with the introduction of "Dividend Tax Exemption Scheme", withholding tax levied on dividends received from overseas subsidiary (MFS) is excluded from the foreign tax deduction scheme. In the end, a member firm, MFS' shareholder, must absorb the amount corresponding to the withholding tax.</li> <li>- MFS is compelled to forego remittance to Japan headquarters for dividends, subject to 15% withholding tax. The mid-term funding projection is frustrated by the withholding tax issue on dividends.</li> <li>- Under Japan-Germany tax treaty 15% withholding tax is payable on dividends received from MFS (member firm's subsidiary), forming double taxation on profits.</li> <li>- It is requested that for avoidance of double taxation, GOG repeals as soon as possible withholding tax of 15% on dividends.</li> <li>- Withholding tax remains payable on dividends paid to Japan head office. Withholding tax remains payable even now. Filing request for reduction or withdrawal is to no avail. Withholding tax of 15% remains payable.</li> <li>- MFS is under obligation of the going Japan- Germany tax treaty to pay to GOG 15% withholding tax on dividend remitted to member firm in Japan, parent of MFS.</li> <li>- Unjustifiable treatment exists on royalty payment from Germany to Japan of technical assistance fee . While 10% is deductible, it is hardly sufficient.</li> <li>- The Current Law dictates that the authorities of the both countries to use "the best efforts" for resolution and expulsion of double taxation between the two countries. In light of the fact that EU taxation authorities employ "the Mutual Agreement Procedure (MAP)" for expulsion of double taxation for 3-years, "the Exercise of Best Efforts" is considered insufficient.</li> </ul>	<ul style="list-style-type: none"> <li>- It is requested that GOG and GOJ take steps to repeal withholding tax by amending Japan-Germany tax treaty.</li> <li>- To begin with, it is requested that both GOG and GOJ agree on the tax reduction schedule (tax rate reduction) under the tax treaty.</li> <li>- It is requested that GOG/GOJ expedite enforcement of the amended bilateral tax treaty.</li> <li>- It is requested that GOG/GOJ amends Japan-Germany tax treaty.</li> <li>- It is requested that GOJ approaches GOG to continue the tax treaty amendment negotiation to enable its early resolution.</li> <li>- It is requested that new Japan-FRG tax treaty (on 0% withholding tax on dividend) is ratified as soon as possible.</li> <li>- It is requested that GOG reduces withholding tax rate to 0% to secure the competitive taxation environment (e.g. U.K.)</li> <li>- It is requested that under the OECD BEPS Initiative, multi-national measures for avoidance of double taxation are established. These multi-national measures will obviate the need for renegotiation the tax treaty, enabling acceleration of the entire process.</li> </ul>	

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				<p><b>(Improvement)</b></p> <ul style="list-style-type: none"> <li>- In December 2011, GOG and GOJ inaugurated negotiation for renewal of Japan-Germany tax treaty.</li> <li>- In December 2015, new Japan/FRG tax treaty was signed. It exempts or reduces withholding tax on gains from investment (Dividends, Interests, Utility).</li> </ul>		
		(4)	Discriminatory Treatment on Withholding Tax between Domestic and Foreign Enterprises	- Withholding tax levied upon dividends received by a domestic corporate shareholder in Germany is subject to tax deduction, therefore, almost the total amount of tax paid is refunded to the domestic corporate in Germany. On the other hand, on the dividends received by a foreign corporate, if the total amount of the German withholding tax is not deducted, that portion is payable by the foreign shareholder in the end.	- It is requested that GOG takes steps to dissolve its discriminatory treatment between the domestic German enterprises and foreign funded enterprises in favour of the former, relative to withholding tax.	- The Principle of Free Movement of Capital (Case Ref. C-284/09 Commission, Germany)
		(5)	<b>Complexity of the VAT Refund Procedures</b>	- Under the EU Directive, the EU Member States have been implementing the value added tax system (VAT) at similar tax rates and in the similar tax levy methods, despite the fact that the taxation system is a matter within the sovereign power of each Member State. However, complexity remains on the VAT tax return such as reverse charge. This is quite a burden indeed to the taxpaying enterprises.	- It is requested that EU takes the leadership in achieving the full harmonisation of the VAT taxation system and simplification of declaration procedure within the EU Member States, and that each Member State joins the band wagon to reach this common goal.	- Customs Act - EU Directives
		(6)	More Rigorous VAT Exemption Requirement	- Despite the fact that external sales are VAT free, GOG begins, during 2013, compulsory application of a more rigorous VAT exemption requirement, which makes acquisition of requisite documents difficult.	- It is requested that GOG reverts to the previous system of obtaining the requisite documents from exporters.	- VAT Implementation Order (enforced from 1 January 2012)
16	Employment	(1)	Excessively Protected Labour	<p><u>- The German labour policy places an excessive importance on worker protection and maintenance of employment. It impedes formation of the proper age composition and employees' adaptation to new business. Furthermore, the long-term employment and the aging of workers frustrate suppression of wage increase, impacting soundness of the corporate finance. In addition, sickness leave is legally permitted. Workers taking sickness leave as a matter of routine negatively affects efficiency in business operation. (Workers are entitled to payment of 100% wage for sickness leave).</u></p> <p>- Germany is abounded with Laws and Schemes that protect workers so that it is difficult for the management to adjust the labour cost, commensurate with the economic environment. For example, it is difficult to dismiss employees once employed on the payroll, and to adopt</p>	<p><u>- It is requested that GOG:</u></p> <ul style="list-style-type: none"> <li><u>-- deregulates the inflexible employment terms and the high pay institutional predisposition, and</u></li> <li><u>-- reviews legislative provisions to grant a greater power to management.</u></li> <li><u>- It is requested that GOG reviews the legislation and expands the managerial authority.</u></li> </ul> <p>- It is requested that GOG overhauls the legislative provisions to allow a flexible and expeditious response to dismissal and reduction in pay.</p>	<ul style="list-style-type: none"> <li>- Collective Labour Agreement by Occupation</li> <li>- The Working Time Act</li> <li>- Laws relating to protection of workers</li> <li>- Labour Standard Act (LSA)</li> <li>- The Protection Against Dismissals Act</li> </ul>

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				<p>the merit-based pay system, as laws and regulations disallow reduction in the annual revenue of employees.</p> <p>- <u>Labour Standard Act (LSA) severely restricts wage reduction and dismissal, obstructing substantively justified assessment of employees, and frustrating adjustment of labour cost, commensurate with the management environment.</u></p> <p>- <u>The employment under the term contract is limited to 2-years, non-renewable.</u></p>	<p>- <u>It is requested that GOG takes steps to overhaul legislation in such a way that flexible measures are available to employers as regards dismissal and wage reduction.</u></p> <p>- <u>It is requested that GOG removes restrictions on employment contract without the fixed term provisions.</u></p>	
17	Implementation of Intellectual Property Rights ("IPRs")	(1)	<b>Copyright Compensation Levy, Retroactive Levy</b>	<p>- <u>While remuneration for private copying should not be collected retroactively, the society for administration of remuneration insists on retroactive collection, jeopardising the legal stability on copyright issues.</u></p> <p>- <u>The Amended Copyright Act (ACA) provides that Compensation Administration Body (CAB) and industrial association decide the Compensation Amount for Private Copying (CAPC) by Comprehensive Agreement. However, due to the differences by each party in the interpretation of the bases over numerous rate issues, the cases are now under dispute or litigation. Moreover, the dispute settlement system is inefficient and its disposition is slow. Confusions have arisen. CAB has published the tariff schedules in the irrationally high amounts for CAPC compensation, and that without first completing the factual investigation, etc.</u></p> <p>- <u>Consumers are compelled to absorb the increased burden of so called "Copy Levy", which is levied in each country on the main unit of the multi-function peripheral equipment (MFP) and the single-function peripheral equipment (SFP), creating the gaps in ultimate price among the same EU Euro territories.</u></p> <p>- <u>It appears there are moves for requiring advance deposit upon manufacturers/importers.</u></p>	<p>- <u>It is requested that GOG makes it clear that remuneration for private copying will not be collected retroactively, except the case where comprehensive agreement is reached between remuneration administration association and industrial association.</u></p> <p>- <u>It is requested that GOG takes step to:</u>  -- amend the act concerning the procedures for settlement of disputes, and  -- stipulates the calculation formula for the optimum amount of the tariff rates.</p> <p>- <u>It is requested that GOG cuts down the levy rate and ultimately reduces the Copy Levy.</u></p> <p>- <u>It is requested that German patent and trade mark office (DPMA) takes step to curb the lawmaking project on the advance deposit scheme.</u></p>	<p>- Implementing Regulation of Copyright Article 13 and Article 13a.</p> <p>- Copy Levy</p> <p>- <u>It is said that Draft SAR will be released in February 2015.</u></p>

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				- <u>Lawmaking project is underway that compels manufacturers/importers to deposit that covers the copy tax levy.</u>	- <u>It is requested that DPMA takes step to put a stop to the lawmaking project on the advance deposit scheme.</u>	
		(2)	Insufficient Patent Examination Scheme	<p>- <u>Patent examination standard is ambiguous. Especially, inventive criteria is said to be ambiguous, compared to the European Patent Office (EPO).</u></p> <p>- <u>While Patent Prosecution Highway Programme has been introduced between Japan and Germany, there is no clear-cut early examination scheme in the German domestic patent system. Especially, compared to EPO, DPMA tends to take more time for examination of the domestic patent application. Therefore, early examination scheme that assures acquisition of the needed right at the needed time is all the more necessary.</u></p>	<p>- <u>It is requested that German patent and trade mark office (DPMA) takes steps to clarify the examination standard.</u></p> <p>- <u>It is requested that DPMA takes steps to stipulate in the domestic law a clear-cut early examination scheme.</u></p>	
		(3)	Restrictions on Use of Languages	- <u>It is possible to secure the filing date on a patent application filed in a language (English) other than German. However, submission of German translation is necessary within 15-months from the priority date. In addition, if a German patent application is filed under the Patent Cooperation Treaty (PCT), there is no opportunity to submit the patent specification in English to DPMA, leaving the applicant in the dark for possible mistranslations.</u>	<p>- <u>It is requested that DPMA takes steps to:</u></p> <p>-- <u>accept extension of the submission deadline for the German translation, after filing patent application in English, and</u></p> <p>-- <u>accept use of English for the patent application filed under PCT.</u></p>	
19	Industrial Standards, Approval of Safety Standards	(1)	Delays in Notification of Amendment in Product Safety Act	- Amended General Product Safety Directive (GPSD) compels listing of importers' addresses within the EU Member States. Notification reached an enterprise only at the beginning of February 2012, while 1st December 2011 is shown as the effective date in the implementing details.	- It is requested that GOG provides a sufficient preparatory period or a grace period on issues requiring product design changes.	- General Product Safety Directive (GPSD), amended on 1 December 2011
		(2)	Variation in standards under the respective domestic laws of individual Member States	<p>- Quasi-domestic individually separate laws or local government's regulations have emerged in part relative to General Product Safety Directive (GPSD), to meet the needs for model specifications concerning construction machineries and equipment. Such individual legislation has brought up the cost for product development, sales materials, certification work, and the secondary distribution of construction machineries and equipment.</p> <p>Example:     -- Germany: Maximum speed limit of construction which</p> <p>                  -- Italy: Restricted vehicle size class / crawler width (transport restrictions).</p>	- It is requested that EU establishes the uniform standard all across the EU.	

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23	Inefficient Administrative Procedures, Regimes and Practices	(1)	<u>Disclosure of Financial Statement</u>	- <u>Listed or unlisted, regardless, in each year, all registered enterprises in FRG submit to the court of competent Jurisdiction their financial statements (F/S), which are accessible to any person on the internet, not only in Germany, but world over. While access to the competitors' F/Ss is a merit, it has demerit of letting other competitors to access own F/S.</u>	- <u>It is requested that German courts will discontinue releasing F/S on unlisted enterprises.</u>	
25	Government Procurement	(1)	<u>Frequently Changing Rules on Tender / Nebulous Industrial Standards</u>	- <u>While ostensibly extolling the transparency and fairness for railway parts procurement (tender), EU's tender for the railway parts procurement is plagued by EU's own unique standards (EN Standards), railway's own unique standards (TSI/IRIS certifications and approvals), etc. which effectively serve as de facto entry barriers against suppliers outside the EU.</u>	- <u>It is requested that GOG takes step to:</u> -- <u>establish the clear and precise rules on its procurement of products with the same specifications</u> -- <u>provide explanation in English (not German) on all changes that may arise, and</u> -- <u>clarify certification/approval process.</u>	- <u>EN 10025 Standard (European Structural Steel Standard (for Railway Wheels))</u> - <u>TSI Approvals</u> - <u>IRIS Approvals</u>