

Issues and Requests Relating to Foreign Trade and Investment - South Africa

| Category | No | Issue | Issue Details | Requests | References |
|--|-----|--|--|--|--|
| 2 Grant of a Preferential Tariff Rates based on Increased Home Production, and/or Local Procurements | (1) | Localisation Requirement | - As regards the requirement for the localisation rate achievement, the process for the exemption application and the exemption list for products and parts, which are incapable of localisation, due to the cost economy (in regard to international competitiveness, and marketability) and to realization, have not yet been prepared. | - It is requested that Government of South Africa (GOSA) takes steps for: -- clear, express identification of the exempted parts, -- early establishment of exemption list for products and parts, and its subsequent timely renewal, and -- nimble response to the exemption application. | |
| | (2) | Overly Protective Preferential Treatment on Local Production | - <u>Automotive industry policy in South Africa has evolved by the grant of incentive measures: from MIDP (Motor Industry Development Programme) initiated in September 1995 to APDP (Automotive Production Development Programme) since 2013, while by so doing, avoiding conflict with WTO. It has materially injured the fair competition with import dealers of finished car products. It has focussed mainly on holding back departure of the existing automotive manufacturers by offering protectionist excessive incentives. The results: the existing domestic businesses are assured of continuation of their business without hardly any effort for upgrading the qualitative competitive edge of their products, while containing the importers' growth possibility by additional requirements of minimum 50,000 units production.</u> - <u>New APDP which has been implemented since 2013, provides measures to give preferential treatment on enterprises manufacturing more than 50,000 units of vehicles per annum under GVW 3.5 tons. It is said hereafter preferential measures will be further tightened so that it will become difficult to maintain and/or invest into the local production facilities.</u> (Reference) - Automotive Investment Scheme (AIS): The AIS provides for a cash grant of twenty percent (20%) the value of qualifying investment in productive assets. On an investment project recognised as Strategic by Department of Trade & Industry (DTI), additional 5% or 10% financial assistance will be granted and paid out in equal installment over the 3-year period. - In January 2013, in lieu of the previous MIDP, Automotive Production and Development Programme (APDP) was introduced. The APDP is a programme to foster the South African automotive industry (that gives preferential treatment to the domestic car assembly in S.A.) Its introduction, continuing into 2020, will enhance the competitive edge of the car parts manufacturers and create job opportunities. GOSA | - <u>It is requested that Government of South Africa (GSA) nurtures / supports automotive policy making authorities with an international vision.</u> - <u>Provision of opportunities for seeing/hearing positive experiences in other countries.</u> - <u>Educational campaign leading to sound policy development.</u> - <u>It is requested that GSA deregulates the current policy or postpone the timing of reviewing incentive measures.</u> | - <u>Automotive Production And Development Program</u> |

| Category | No | Issue | Issue Details | Requests | References |
|--|-----|--|---|--|---|
| | | | has switched from the previous export subsidy to domestic production subsidy to make it consistent with the WTO rules. GOSA sets its goal to reach 1.2-million car production per annum by 2020. Under APDP, GOSA will issue credit to set off the tariff levied on imported parts to car manufacturers producing 50,000-cars or more per annum within South Africa. In addition, for protection of the domestic car assembly industries, import tariff rates for finished car and car parts will be held at 25% and 20%, respectively. Up to now, GOSA has issued credit to set off import duty on finished cars and parts thereof against export value. However, hereafter, GOSA will issue credit corresponding to 50-55% of the domestic added values. | | |
| 9 Restrictive Export/Import Trade, Duty, and Customs Clearance | (1) | High Import Tariffs | - GOSA levies 10% import duty on wheel loaders originating from Japan. | - It is requested that GOSA reduces or <u>repeals the import duty.</u> | |
| | (2) | Unratified Japan-South Africa FTA | - Under the EU-SA FTA already concluded, imports of finished vehicles (FVs) from EU enjoy the difference of 7% benefit in import tariff compared to imports of FVs from Japan (namely, as of 2014, 25% on Japanese FVs versus 18% on EU FVs). On the other hand, the tariff rate on car parts in SA is nominal 20%, which is higher than that of EU FVs tariff rate. As of now, the effective tariff rate is low on car parts, under the preferential measures, which, however, cannot be expected to last forever. Member firm's subsidiary (MFS) is concerned about its continued cost competitiveness on a long-term basis. - GSA grants 7% reduction in customs duty from 25% to 18% only on car vehicles manufactured in EU. <u>It makes difficult for car vehicles manufactured in Japan and other Asian countries by way of cost competitiveness.</u> | - It is requested that both GOSA and GOJ ratify Japan-SA FTA just as soon as possible. - It is requested that EU applies the <u>same customs duty reduction on car vehicles from Japan and Asian countries as well.</u> | |
| | (3) | Pending Ratification of NCA | - Into the year 2014, GSA ratified Nuclear Cooperation Agreement (NCA) with the U.S., France, Russia, ROK, PRC, EU, and Algeria. The unratified status of NCA between GSA and GOJ could block Japan's contribution to GSA (being anxious to expand the scope of operation) of further information, etc., hence its entry into this Project. (Actions) - In September 2010, negotiation started on Japan/SA Nuclear Cooperation Agreement (NCA). | - It is requested that GOJ and GOSA ratify NCA as soon as possible. | |
| | (4) | Pilferage of goods upon import into SA | - <u>Pilferages frequently occur during the import customs clearance and domestic transportation in SA. The shipper is held responsible for the loss in most cases. It drives up the cost.</u> | - It is requested that GOSA will exert <u>it efforts for further improvement of public security.</u> | |
| 11 Restriction on Profits Remittance Abroad | (1) | <u>Dividends</u> | - <u>On distributions of dividends from MFS (member firm's subsidiary in SA) to its parent (in Japan), Chapter 2, Article 46 of The Companies Act requires confirmation of solvency & liquidity test, without, however, clarifying the methods for providing its objective proof.</u> | - It is requested that GSA takes step <u>to stipulate into law an easy to understand calculation basis, such as percentage ratio, etc.</u> | - <u>South Africa Companies Act, Chapter 2, Article 46, Solvency & Liquidity Test</u> |

| | Category | No | Issue | Issue Details | Requests | References |
|----|-------------------|-----|---|--|---|---------------------------------------|
| 12 | Exchange Controls | (1) | Rigid and Delayed Licences and Approvals on Advance Booking in Foreign Exchange | <p>- <u>The large fluctuation margin between rand and Japanese yen makes it difficult to maintain the stable retail price. Forward booking of rand in foreign exchange is difficult to make due to the severe restrictions on licences and approvals.</u></p> <p>- Due to the wide margin of Rand fluctuations, foreign exchange risk control takes a lot of work.</p> | - It is requested that GOSA <u>deregulates restrictions on licences and approvals for rand forward booking in foreign exchange.</u> | - Foreign Exchange Contract Act |
| | | (2) | Rapid Exchange Fluctuations | <p>- <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. 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></p> | <p>- It is requested that GOP takes step to:</p> <p>-- <u>stabilise foreign exchange fluctuations, and</u></p> <p>-- <u>holds the fluctuation band within a few percents in 6-months.</u></p> | |
| 14 | Taxation Systems | (1) | Nebulous Contents and Enforcement Period of the New Taxation System | - The contents and due enforcement date for new legislation and its amendment are promulgated, out of the blue, on taxation and, rules and regulations (relating to CO2 tax, tyre tax, exhaust emission standard, and safety standard etc.). Moreover, their implementing due dates are frequently postponed. It makes difficult to forecast impacts on the vehicles manufacture/sales business. It materially impacts the plans for local production, and the import quantity from overseas, including Japan. | - It is requested that GOSA collects industries' views in the process of evaluating the contents and the implementation schedule, when planning environment related taxation system and legislation, which by themselves are not of problems to the industries in concern. (For example, preferential measures for environment friendly vehicles, etc.) | |
| | | (2) | Non-refundable STC | - Secondary Tax on Company (STC) levy is 10% on the dividend paid to the investor (parent). However, its refund in the investor's country is not possible, STC being levied upon SA legal entity. | - It is requested that GOJ request GOSA to change the withholding tax refundable in Japan. | - SA Income Tax Act, Section 64 b.&c. |
| | | (3) | Parent-Sub-Sidiary Loan Disabled by Nebulous Definition of Thin Capitalisation | - <u>For avoidance of the group fund outflow, member firm desires to make parent-subsidiary loan. However, due to ambiguity of the criteria for thin capitalisation (determined by transfer price taxation system), its execution remains pending.</u> | - It is requested that GSA takes step to set forth precise definition of the <u>thin capitalisation into legislation.</u> | - <u>Income Tax Act No.58 of 1962</u> |
| 16 | Employment | (1) | Delayed Work Visa Issue/ Renewal Procedure | - The internal transferees visa validity is for two-years. Moreover, GOSA has tightened its renewal examination since 2012. | - It is requested that GOSA deregulates and streamlines visa renewal procedures especially for up to four-year renewal. | - <u>Immigration Act</u> |

| Category | No | Issue | Issue Details | Requests | References |
|----------|-----|--|---|--|---|
| | | | <p>- Following the amendment of Immigration Law, MFS business is much affected by delays, dismissal by mistakes, non-reaction of Department of Home Affairs (DHA), concerning issuance, extension procedures of work visa.</p> <p>- <u>Along with the Amended Immigration Law, MFS has suffered much inconvenience in business concerning issuance of work-visa issue, and its validity extension procedures due to the unfinished administrative process, reflecting the Law Amendment.</u></p> <p>- <u>Since May 2014 Amendment of Immigration Law, it has become difficult to obtain work visa as scheduled, due to the frequent changes that have taken place in its implementation.</u></p> <p><u>In addition, on filing visa application, it is necessary to use a DHA authorised enterprise, which requires another agent for making appointments, necessitating both much cost and time.</u></p> <p>(Reference)</p> <p>- The validity of intra-company transferees' visa has been extended from 2-years to 4-years.</p> | <p>- It is requested that GSA streamlines and expedites visa issuance procedures, and normalises the administrative procedures.</p> <p>- <u>It is requested that DHA:-- optimises and expedites the visa acquisition process and-- normalises administrative procedures.</u></p> <p>- It is requested that GSA: -- <u>optimises the work visa acquisition process and -- deregulates the requirements.</u></p> | |
| | (2) | Irrational Employment Policy | <p>- <u>Member firm must have second thoughts when it knows the employment issues: complex laws (over-protection of workers' right), high wages (inflationary wages accompanying strikes), productivity (inability to adjust workforce commensurate with production volume), etc. in investing into South Africa.</u></p> | <p>- It is requested that GOSA improves <u>the laws relative to the 3-labour related issues on the left column. As it stands, there has been no remarkable improvement on these issues because the administration, being supported by the trade union, drags its feet to convene meetings for exchange of dialogues between the administration and the business groups.</u></p> | <p>- Basic Conditions Employment Act 75 of 97</p> <p>- Labor Relations Act 66 of 95</p> <p>- Employment Equity Act 55 of 89</p> |
| | (3) | <u>High Increase Rate of Personnel Cost</u> | <p>- <u>Personnel cost increase is higher than the inflation rate. Along with the difficulty in dismissal, it has caused FFEs to think twice about increasing employment.</u></p> | <p>- It is requested that GSA takes step <u>to hold the rising curve of personnel expenses no higher than the inflation rate.</u></p> | |
| | (4) | <u>Union's Walkout and Overbearing Wage Hike</u> | <p>- <u>Multiple strikes halt production, while industrial union goes on strikes in every 3 years. MFS production is affected by the strike that occurs at some source of supply every year. Moreover, wage hike is so steep that it exceeds the managerial efforts to absorb increased production cost.</u></p> | <p>- It is requested that GSA takes step <u>to normalise the labour union activity.</u></p> | <p>- Labor Law</p> |

| Category | No | Issue | Issue Details | Requests | References |
|----------|-----|---|--|---|--|
| | (5) | BEE Policy Made More Stringent | <p>- Black Economic Empowerment (BEE) policy is getting more stringent. (In order to promote effective participation of black people in society, and employment opportunities to black people with high unemployment rate, this policy affords incentives to enterprises that provide preferential treatment to black people in government procurement, etc. To score points get gradually stringent.)</p> <p>- <u>Black Economic Empowerment (BEE) programme is stringent, forming a high hurdle for new entrants. In addition, it costs much to acquire the BEE score. Because of this, migration abroad of "useful whites" has advanced so that it is difficult to secure human resources locally, forming a reverse apartheid syndrome.</u></p> <p>- <u>BEE Programme has gained its severity. While, based on the constitutional intent, the black peoples' rights for resumption of economic opportunities is appreciated, the recipients of the benefits under this policy are limited. It does not relate to correcting the differences. GSA's excessive involvement in capital ratio, operation, etc. could form FFEs' entry barriers, and expel FFEs' operation in SA.</u></p> | <p>- While preclusion of enterprises from government procurement is inevitable, it is requested that GOSA refrains from establishing further penalty provisions in the code.</p> <p>- <u>It is requested that GSA:</u> -- <u>deregulates the BEE programme and</u> -- <u>provides incentives to FFEs.</u></p> <p>- <u>It may be difficult to relate these issues to amended policy/system, etc. However, it is appreciated if GSA arranges a forum to exchange dialogues including these issues/anxieties confronting FFEs.</u></p> | 2013: Revised B-BBEE Codes of Good Practice |
| | (6) | Shortage of Human Resources | <p>- It is difficult to employ quality human resources.</p> | <p>- It is requested that SGA upgrades <u>the educational level in South Africa.</u></p> | |
| 17 | (1) | Implementation of Intellectual Property Rights ("IPRs") Absorption of Cost for Disposal of Counterfeit Goods | <p>- A Member Firm's Subsidiary (MFS) conducting annihilation of counterfeit goods is faced with the problem of the various costs incurred for the confiscated counterfeit goods, i.e., storage, transportation, and disposal costs.</p> | <p>- It is requested that GOSA: -- reinforces implementing rules of intellectual property right, -- tightens clamp down at customs, -- introduces simple, import injunction measures, and -- alleviate financial burdens upon official importers related to confiscated goods.</p> | - The Anti-Counterfeiting Trade Agreement (ACTA), October 2010 |
| 19 | (1) | Industrial Standards, Approval of Safety Standards Rigorous Certification Standard for Telephone Line | <p>- Rigorous requirement is incorporated into the SA standard, more precisely, Lightning Protection which is by far more rigorous than the regular standard of other countries.</p> | <p>- It is requested that GOSA adjust the requirement to the similar level with EU.</p> | ICASA TE001 Clause17 Lightning Protection |
| | (2) | Difficulty in Acquisition of Certificate of Conformance (COC) | <p>- <u>GOSA has mandated immunity conformance on safety standard since January 2011. However, industries have not yet sufficiently caught up with the new requirements. Non-conforming products still circulate in the market, while SA authorities have not yet caught up with the responsive measures.</u></p> | <p>- It is requested that GOSA <u>thoroughly ensures observance of the safety standard throughout the importers in concern.</u></p> | |

| Category | No | Issue | Issue Details | Requests | References |
|----------|-----|---|---|--|---|
| | | | - <u>GOSA requires acquisition of Certificate of Conformance (COC) on import and sales of goods that incorporate AC power source. However, shipment delays frequently occur due to the long time necessary for acquisition of COC.</u> | - <u>It is requested that GOSA ensures National Regulator for Compulsory Specifications (NRCS), as a certifying body, takes measures to expedite processing COC applications.</u> | |
| | (3) | <u>Tobacco Plain Packaging Legislation (TPPL) on Tobacco Products</u> | - <u>GSA contemplates introduction of legislation substantially the same as TPPL introduced in Australia. If it is introduced, the identification capabilities (between the products), being the essential faculty of trademarks will get material damage, resulting in the loss of "Brand Value", and consequently damaging the sound market competitions. More precise concerns include, without limitation, purchasers unwittingly purchase unintended products from the difficulty of making distinction, move to lower priced products, and finally, closing the door for new entry into the market. In addition, simpler packages facilitate counterfeiting activities, resulting in the growing counterfeits in the market.</u> <u>(Note) TPPL, a measure to standardise configuration, color, etc., of individual tobacco package, largely restrict the space on the packaging by the mandate to print specifically, "Warnings with Photo" (in the 75% of the total area front, and 90% back).</u> | - <u>As described in the left column, TPPL infringes upon intellectual property right of business operators, consequently hinders the industrial development through sound market competitions. On the other hand, prevention of juvenile smoking is deemed possible through education, with tightened penalties, etc. It is therefore requested that GOF fully appreciates the issues described in the left column and implements the measures based on the principle of proportionate general rules.</u> - <u>GOJ is requested to fully appreciate the issues on the left column and takes positive measures accordingly.</u> | - <u>Undecided (Minister of Health expressed intent to its introduction).</u> |
| | (4) | <u>Stringent Vehicle Homologation Requirements</u> | - <u>Vehicle homologation requirements are stringent, following the EU standards. Moreover, they are based on steering wheels on the right. It is more difficult to obtain homologation for the models without British specifications.</u> | - <u>It is requested that GSA follows the New Zealand model, accepting plural standards, EU, Australia, Japan, USA, etc. so that should specific requirements exist, addition of the homologation corresponding to the specific requirements suffices.</u> | |
| | (5) | <u>Delayed Inspection of Safety Inspection (Letter Of Authority (LOA)) on Imports</u> | - <u>At a time when simultaneous product introduction worldwide is a common occurrence, it takes 120-business days (sometimes 6-months in effect) to obtain Letter of Authority (LOA) for Safety Standard Inspection (SIA) on imported goods. The loss of sales opportunity climbs sky high from 6-months delay for introduction, frustrating timely proposal/supply of merchandise.</u> | - <u>It is requested that GSA:</u> -- <u>expedites SIA to complete SIA within one month, and</u> -- <u>secures transparency.</u> | - <u>Government Notice R 89 dated 6 February 2009 published in Government Gazette 31844</u> |

| | Category | No | Issue | Issue Details | Requests | References |
|----|--|-----|---|---|--|--|
| 23 | Inefficient Administrative Procedures, Regimes and Practices | (1) | No Driver's Licence for Motor Vehicles issued to Aliens | - <u>GOSA refuses to issue driver's licence to aliens. An expatriate to South Africa drives the car in South Africa by getting the translation certificate for the Japanese driver's licence issued by the Japanese embassy in South Africa. However, for private or official use, regardless, it is not possible to drive the car outside South Africa, so that it is necessary for the expatriate to renew in Japan the international driver's licence in each year.</u> | - <u>It is requested that GOJ includes this issue in the agenda for the bilateral talk between GOSA and GOJ, and resolves the problem as soon as possible.</u> | |
| | | (2) | Nebulous Vehicle Legislation and Custom Duty | - In regard to motor vehicle legislation and customs duty, it is rumoured that there will be changes in next generation emission control, carbon tax, and knock-down customs duty. However, no precise details are disclosed to this date as regards the timing of implementation and the contents of the changes. In light of the requisite development lead-time, a written advance statement of the changes in detail is necessary in advance for at least one year (or 2-years for important changes such as emission control). It may not be possible for manufacturers to respond timely to the sporadic changes. | - In effecting changes in motor vehicle laws and regulations, and tariffs, it is requested that GOSA will give ample opportunities to hear industries' views and opinions, company by company, in an unbiased manner, in order to give equal treatment to all. | Vehicle Compulsory Specifications for Motor Vehicles - Customs Act (APDP) |
| | | (3) | <u>Vexatiously Complex Procedures for Licences and Approvals at Ministries and Agencies</u> | - <u>Due to jurisdictional duplications and complex processes, it takes a long-time for issuances of licence and approvals.</u> | - <u>It is requested that GSA streamlines and clearly identifies the process for licences and approvals.</u> | |
| 24 | Indigested Legislation, Abrupt Changes | (1) | Insufficient Control on Political Contribution | - Rules and regulations are insufficient on control of political contribution. There is neither cap on the amount of contribution nor mandatory disclosure provision for the contribution received. | - It is requested that GOSA takes steps to set a cap on the political contribution amount, and to make disclosure a mandatory requirement. | |
| | | (2) | <u>Amendment of Mineral and Petroleum Resources Development Act (MPRDA)</u> | - <u>Draft MPRDA released in last year is nebulous in the process of designating "Strategic Minerals" and GSA's intent of legalising free carry on petroleum and gas development. These are the issues of concern. In addition, negative impact upon industry of unstable electricity supply is a matter of concern, and so is overseas investors' 'departure' from SGA.</u> | - <u>It is requested that GSA gives its deep thought to avoid harming overseas investors' effort to develop SA industries.</u> | - <u>MPRDA</u> |

| | Category | No | Issue | Issue Details | Requests | References |
|----|------------------------|-----|--|--|---|--|
| | | (3) | <u>Nebulous Motor Vehicles Legislation / Tariffs</u> | - While it is rumored there will be legislative changes in contents in regard to "next generation emission control", "carbon tax" and "knock-down duty" on motor vehicles in South Africa, without, however, disclosure of implementing schedule and the details. In light of the development schedule, minimum 2-years advance notice in writing is necessary, with a possibility of inability to adjust to sporadic changes. | - In effecting changes in motor vehicle legislation and customs duty, it is requested that GSA ensures exchange of views with each firm in the industry, without disfavoring any particular firm(s). | - <u>Vehicle Compulsory Specifications for Motor Vehicles</u> - <u>Customs Act (APDP)</u> |
| 25 | Government Procurement | (1) | Nebulous Criteria of Bid | - Due to the undisclosed calculation formula and its coefficient for calculating the evaluation score, bidders may not know in advance weighted priority for scoring each cost element (price, technical evaluation, past record, BEE, social contribution, etc.). Therefore, bid evolution may be made without making black box transparent. | - It is requested that the competent authorities in tender terms: -- <u>discloses clearly the calculation formula and its coefficient plus weighted cost elements, and</u> -- <u>releases clearly the evaluation results.</u> | |
| 26 | Others | (1) | Public Security | - While it seems brutal burglaries are on the decline, "security stop" occurs ever so often (for making extra-small pocket money) by fake or corrupted police. While security check on the road is necessary, improvement in police manner is all the more important. - Judging from the night and day occurrences of car-jack, fake patrol cars, house breaking, etc., it is not possible to lead a peaceful, secure life in South Africa. - Public security is poor. It is problematic to notice existence of fake, fraudulent police. Pin money pocketed by policeman at check point. The task remains for qualitative improvement of police. | - It is requested that GOJ request SA Public Security Authority for improvement in policeman's manner in SA. - It is requested that GOSA makes its crime eradication policy known to everyone without exception in order to assure crime free, safe life. - Functional upgrading of police is necessary. - Annihilation of organised crime. | |
| | | (2) | Inadequate Infrastructure | - Blackout and water outage occur frequently. - Eskom power shortage has gotten aggravated. Frequently planned power outage impairs both business and livelihood. There is anxiety over drop in operation rate in future of the supplying factories. No longer working electric security fence is a matter of concern. | - It is requested that GSA takes step to overhauls infrastructure. - Although deep rooted issues are appreciated, it is requested that GSA takes step to normalise the chaotic situation as soon as possible by accelerating investment into infrastructure, establishment of maintenace factories, governmental aids, means of shot-term power supply, etc. | |