Annex I

Suggestion No.1. Tax System (1) SAD (Special Additional Duty)

Executive Summary for Issue

Issue : **Delay in SAD refund from various ports**

As per Chennai Sea Customs, Goods on which CVD is levied based on Retail Sale Price ('MRP') are not eligible for ACD Refund in terms of Notification No. 102/2007-Cus dated 14 September 2007 ('Notification'), as they are hit by bar of unjust enrichment. Also port authorities are asking for Bank Statement in order to evidence the payment of VAT/ CST

Cochin Customs authorities are asking for additional documents not prescribed in the document list to be attached for claiming refund

Submission: Custom Authorities be requested to follow CBEC Circular No 6/2008 –Cus read with Circular No 16/2008-Cus dated 13 October 2008 requires an importers to produce a certificate from the VAT/ statutory auditor/Chartered Accountant who certifies the importer's annual financial accounts under the Companies Act, VAT Act of the State or the Income Tax Act, 1961 explaining how the burden of 4% ACD has not been passed on by the importer.

NOTE -JCCII

1 **As per Chennai Sea Customs, Goods on which CVD is levied based on Retail Sale Price ('MRP') are not eligible for ACD Refund in terms of Notification No. 102/2007-Cus dated 14 September 2007 ('Notification'), as they are hit by bar of unjust enrichment and they have even issued the SCN for the recovery of the past ACD Refund granted by them on the following reasoning:**

As per definition of terms 'MRP' under Central Excise Act, 1944 all taxes and expenses are required to be included in the MRP, hence component of ACD appears to be included in the MRP and passed on to the ultimate buyers, hence not eligible for ACD Refund ;

Alternatively, they are demanding the Cost Structure of all the Goods subjected to RSP based assessment for grant of ACD Refund, which is totally against the requirement specified by the Notification/ Circulars in this regard .

INDUSTRY SUBMISSIONS

A. Notification No. 102/2007-Customs ('the Notification') dated 14 September 2007, grants exemption to all goods falling within the First Schedule to the Customs Tariff Act, 1975 ('the Tariff'), when imported into India for subsequent sale, from the whole of the Special Additional Duty of Customs ('SAD') leviable thereon, subject to the satisfaction of the conditions specified in the Notification.

B. CBEC Circular No 6/2008 –Cus read with Circular No 16/2008-Cus dated 13 October 2008 requires an importers to produce a certificate from the VAT/ statutory auditor/Chartered Accountant who certifies the importer's annual financial accounts under the Companies Act, VAT Act of the State or the Income Tax Act, 1961 explaining how the burden of 4% ACD has not been passed on by the importer.

Additionally, the importer is also required to make a self-declaration along with the refund claim to the effect that he has not passed on the incidence of 4% ACD to any other person.

In fact, in order to further streamline the process of ACD refund and expedite the long pending refund claims, recently a Circular No 18/2010 –Cus dated 8 July 2010 was issued by CBEC.

The said Circular has further liberalized the procedure of ACD Refund and minimized the requirement of the documents to be submitted along with Refund Claims by an ACP Client and has clarified that refund claims shall be sanctioned within a maximum time period of 30 days for the ACP Client.

For processing the refund claim of ACP Client the Circular has required submissions of only following documents

a) TR-6 Challans (in original) for ACD payment

(b) VAT/ST payment Challans

(c) Summary of sale invoices; and

(d) Certificate of statutory Auditor/Chartered Accountant, for correlating the payment of ST/VAT on the imported goods with the invoices of sale and also to the effect that the burden of 4%ACD has not been passed on by the importer to the buyer.

Further, the said Circular has also clarified that for granting refund claim, the Customs authorities are not required to examine the Audited Balance Sheet or Profit and Loss Account of the importer, rather the Certificate issued by the Chartered Accountant/ Auditor and self declaration given by importer for not passing the burden of SAD should be accepted for processing the refund claims. The relevant paragraph of the Circular is reproduced below.

"**In this regard, the issue has been examined by the Board and it has been decided that the field formations shall accept a certificate from Chartered Accountant for the purpose of satisfying the condition that the burden of 4% CVD has not been passed on by the importer to any other person. Further, the importer shall also make a self declaration along with the refund claim to the effect that he has not passed on the incidence of 4% CVD to any other person. Hence there is no need for insisting on production of audited balance sheet and profit and loss account in these cases. It may also be noted that recently the Board has also notified the list of documents required to be filed by the applicants along with the refund claims (Annexure –II) which is also displayed in the departmental website. Hence other than these aforesaid documents, no other document would be required in the normal course of granting 4% CVD refund."**

The Circular referred to above is squarely binding upon the Department Officials , even when the goods are subjected to MRP based assessment at the time of import.

As per the circular and notification, for the purpose of refund claim, certificate issued by a Chartered Accountant certifying that there has been no unjust enrichment is a valid and legally admissible aid of evidence.

Companies have submitted the requisite documents including the Certificate from the VAT auditor confirming non passing of burden of SAD i.e Certificate on unjust enrichment , but despite the same **Chennai Sea Customs** is not granting the refund of ACD Claim for the goods based upon RSP assessment on the presumption that 'MRP' under Central Excise Act, 1944 includes all taxes and expenses , hence component of ACD appears to be included in the MRP and passed on to the ultimate buyers, hence not eligible for ACD Refund.

C. No distinction for goods liable to MRP valuation with other goods for refund of ACD

The objective of the Notification was to avoid double taxation in the form of ACD which was levied in lieu of VAT/ CST, on the goods imported in India for sale as such with applicable VAT/ CST. Accordingly the Notification provides for exemption from ACD to all goods which are sold after charging VAT / CST in India subject to conditions.

The Notification did not differentiate between goods subjected to CVD based on its MRP and those subjected to CVD on transaction value. Further, conditions and procedures prescribed under the Notification and the relevant Circulars were applicable to all kind of goods including goods subject to MRP based valuation for CVD.
The "retail sales price (MRP)" is defined under the SWM Rule is defined to
mean:

"*The maximum price at which the commodity in packaged form may be sold to the ultimate consumer and where such price is mentioned on the package, there shall be printed on the packages the words "maximum or max. retail price.. inclusive of all taxes or in the form MRP Rs…. inclusive of all taxes.*

Explanation : For the purposes of the clause "maximum price" in relation to any commodity in packaged form shall include all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be."

The above definition is also adopted for the purpose of valuation of goods under Section 4A of the Central Excise Act, 1944.

The ultimate objective behind the concept of MRP was to ensure that the ultimate consumer/ common people are not charged extra for any goods and does not pay more than what is required to pay under the law for goods.

Further, the definition of MRP does not stipulate that all the taxes suffered on the goods ***must be or necessarily or statutorily*** have to be passed on to the buyer.

In other words the MRP definition does not rule out the possibility where the seller does not want to pass on all the taxes on the ultimate consumer i.e. it absorb any tax or part thereof and accordingly there is no legal obligation that importer/seller has to pass on all

the taxes on the ultimate consumer (say ACD) , if he opts not to pass on such burden to the ultimate consumer.

Thus in terms of the Notification, goods imported and sold on MRP are also eligible for refund of ACD.

However, keeping in mind the procedural hassles and long delays in grant of refund to importers, the Government vide Notification No. 20/2010 dated 28 February 2010 granted upfront exemption from ACD to all the goods where it is mandatory under Standards of Weights and Measures Act, 1976 ('SWMA') or under any other law to declare MRP on the package of the goods. The Hon'ble Finance Minister in his Budget Speech of 2010 stated as follows:

174. "Industry has represented that the exemption from special additional duty of 4 per cent based on refunds leads to substantial blockage of funds. To ease this difficulty, I propose to provide an outright exemption from special additional duty to goods imported in a pre-packaged form for retail sale. This would also cover mobile phones, watches and ready-made garments even when they are not imported in pre-packaged form. The refund-based exemption is also being retained for cases not covered by the new dispensation".

Basis the above it is submitted that it was always the intention of the Government to exempt goods from ACD. Prior to Notification No. 20/2010, the exemption was granted by way of refund and post 28 February 2010 an upfront exemption was granted. It is submitted that exemption from ACD was never in any way contingent upon the nature of valuation of goods (i.e. transaction value or MRP value).

Considering the pendencies and delays in refund process, the Hon'ble Finance Minister introduced an upfront exemption for the goods subjected to MRP. Hence, it can be observed from the speech of Finance Minister that Government always wanted to grant refund of ACD to the goods subjected to MRP and the same should not be denied to importers.

D. ACD has not been recovered from the Customers

The ACD claimed as refund has not been charged to 'Expenses' in the Company's Profit and Loss Account and therefore the same is not forming part /component of the cost of the

goods (i.e. Cost Structure of the Goods) and hence the burden of ACD has not been passed on to the ultimate customer .

Since the ACD claimed as refund is not forming part of the cost of the goods (i.e. Cost Structure of the Goods) , hence accordingly it has been shown in the Books of Accounts / Balance Sheet of the Company in sub-heading "Loans & Advances' under the major head, 'Current Assets'

The above fact is also confirmed independently by the Chartered Accountant (VAT Auditor) in the certificate furnished with the application.

A self declaration and Chartered Accountant certificate was submitted to the effect that amount of ACD refund has been shown as recoverable in the balance sheet of the company. Accordingly, the same has not been charged to profit and loss account.

E. The Certificate issued by the VAT /Statutory Auditor fulfills the requirement of the aforementioned notification/ Circulars completely, which is binding upon the Department Officials. Despite the Organizations submitting all the prescribed documents and fulfilling all the relevant conditions for grant of refund in terms of the Notification, Chennai Sea Customs is adamant on not granting further ACD refund and in fact have gone ahead by issuing the SCN for the recovery of the past ACD Refund granted by them.

PRAYER

We, seek your intervention in getting a suitable clarification/circular issued by CBEC on the issue highlighted that would resolve the bottlenecks being faced by the Industry in getting the ACD Refund.

2. At Chennai Air Customs, the SAD refund applications filed are not processed. The officials at the port of Chennai Air Customs are asking to produce the copy of the Bank Statements in order to evidence the payment of VAT/ CST due on the subsequent sale of goods imported into India for resale.

The Customs Authorities at the port of Chennai Air are insisting on the submission of Bank Statement of the Company, so as to substantiate the fact that the VAT/CST payment has actually been debited from the account of the Company.

SUBMISSION

A. The requirement of submission of Bank Statement to substantiate the VAT/CST payment has no-where been specified in the Notification or in the Circular No 6/2008 dated 28 April 2008 and Circular No. 16/2008 dated 13 October 2008.

Para 2(e)(iii) of the notification provides for submission of documents evidencing payment of appropriate sales tax or value added tax, on sale of the imported goods. Further, Circular No. 16/2008 dated 13 October 2008 clarified the said point and provided for the following:

(vi) ***Submission of original copy of ST/VAT Challan:*** *The difficulties expressed by the importers in submission of original Tax paid challans for evidencing payment of ST/VAT at more than one port was examined. Importers pay the appropriate ST/VAT to the concerned State Government where the sale of imported goods is effected. There is a genuine difficulty in case of importers selling the goods through various States or those importing goods at various ports and subsequently, selling in different States to obtain the original copy of ST/VAT challan evidencing payment of appropriate ST/VAT for the purpose of claiming 4% CVD refund with various Customs Commissionerates at different ports Further, payment of ST/VAT after adjusting input tax credit is made through different forms such as deposit of cash, cheque, demand draft or other authorised mode of payment through banking channel or payment directly to the ST/VAT Department. In some States, even e-payment is also accepted.*

The aforesaid request of the trade has been considered and keeping in view the difficulties faced in submitting original challans, it has been decided that alternatively, the importers may submit copies of ST/VAT challan or copies of ST/VAT payment document in different forms evidencing payment made to the bank or ST/VAT Department towards ST/VAT along with a certificate from the Chartered Accountant, who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, confirming the payment against the aforesaid documents. This would be considered sufficient to fulfill the requirement in terms of para 2(e)(iii) of the Notification No.102/2007-Customs dated 14.9.2007. Hence, the Customs field formations shall accept the copies of ST/VAT challans/documents along with the certificate of the said Chartered Accountant, while receiving the 4% CVD refund claim. However, the importers may be required to submit the original ST/VAT payment challans or other similar documents, in doubtful cases for verification by Customs authorities, which shall be returned to the importer after verification.

From the above, it is evident that submission of copies of VAT/ST challans is enough to substantiate the payment of VAT/CST on the sale of imported goods.

A certificate from the Statutory Auditor/ VAT Auditor in order to substantiate the validity of the claim filed is already submitted. In the certificate so submitted, the Statutory Auditor/ VAT Auditor has already stated therein the fact that all the relevant documents

have been scrutinized by it and that the conditions specified in the Notification and the Circulars have been complied with.

The Organisation deposits VAT either through E-Payment or Demand Draft. The deposit of VAT along with other payments is done on a centralized basis. Accordingly, many transactions are recorded daily in these bank accounts. Therefore, the monthly bank statement would run into thousands of pages and would become very voluminous. Also it would become a very time consuming task to identify the VAT /CST payment entries from such a voluminous document. Thus, it becomes practically very difficult for the Company to produce the bank statement for verification purposes.

We would also like to bring to your notice that the Company has suo motu already produced the original VAT/ CST Challans for verification, even though there is no statutory requirement for submission of the same . Further, in accordance with the list of documents prescribed in the Circulars/ Notifications issued by the CBEC, VAT Auditors Certificate certifying deposit of VAT and the correlation of BOE with VAT deposited already submitted.

PRAYER

We, seek your intervention in getting a suitable clarification/circular issued by CBEC on the issue highlighted that would resolve the bottlenecks being faced by the Industry in getting the ACD Refund.

3. Submission Of Certificate From Commercial Tax Officer – Not In The List Of Documents Prescribed

The Customs Authorities at the port of Cochin have been insisting on the submission of a certificate from the State VAT Authorities certifying the VAT has been paid on the sale of items imported & correlation of the same with the bills of entry in relation to the refund claim.

SUBMISSION

The requirement of submission of certificate from the State VAT Authorities to substantiate the VAT/CST payment has no-where been specified in the Notification or in

the Circular No 6/2008 dated 28 April 2008 and Circular No. 16/2008 dated 13 October 2008.

Further, the State VAT Acts have no provisions under which the VAT Authorities are under an obligation to issue certificates in relation to quantity of goods sold and amount of VAT collected in respect of each sale invoice and also the organization which is registered across India , it is not practically possible to collect certificates from VAT authorities all states.

The Company has suo motu already produced the original VAT/ CST Challans for verification, even though there is no statutory requirement for submission of the same . Further, in accordance with the list of documents prescribed in the Circulars/ Notifications issued by the CBEC, VAT Auditors Certificate certifying deposit of VAT and the correlation of BOE with VAT deposited is already submitted.

PRAYER

We, seek your intervention in getting a suitable clarification/circular issued by CBEC on the issue highlighted that would resolve the bottlenecks being faced by the Industry in getting the ACD Refund.

Annex II

Suggestion No.1. Tax System (2) Transfer Price Taxation

Transfer Price audit made by tax authority

（Overview ）
Transfer Pricing regulations in India were introduced in 2001 to ensure that fair and equitable proportion of profits and tax arising from cross border transactions between related entities are duly received in India. The Indian transfer pricing regulations are broadly in tax law, based on the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration issued by Organization for Economic Co - Operation and Development (OECD Guidelines), and the regulations prescribe detailed mandatory documentation requirements along with disclosure of international transactions and impose steep penalties for non - compliance.
Transfer pricing matters are dealt with by specialized Transfer Pricing Officers duly guided by Directors of International Taxation, being part of the Indian tax administration.

(Issue for Japanese companies)
1. Transfer Pricing Assessment for Sogo Shosha for fiscal year 2006-07
Business profile of Sogo Shosha has been changed in their TP Assessment. Till fiscal year 2005-06 TP authorities have accepted Indian subsidiaries of Sogo Shosha were merely service provider. However from assessment for fiscal year 2006-07 it was not accepted and TP authorities have regarded Japanese Sogo Shosha as traders who facilitate businesses in India. As a result, TP authorities issued TP assessment orders which involves considerable adjustments.
There were not significant changes in Sogo Shosha's business model in fiacal year 2006-07. Those Sogo shosha have found difficulty to have confidence in TP assessment by the sudden change in TP authorities' recognition.

2. Advance Pricing Agreement ("APA")
In the previous Suggestion for Government India, JCCII had requested that APA should be introduced at early stage. New Direct Tax Code includes concept of APA, but practical definition and procedure have not yet been provided. JCCII further hopes such detailed rules are to be disclosed in advance of introduction of New Direct Tax Code. And further, the rules or practices regarding APA under New Direct Tax Code should be established in equitable basis in light of the rules or practices which have been already established in other countries

Annex III

Suggestion No.1. Tax System (4) MRP (Maximum Retail Price)

Executive Summary for Issue

Issue: Operational bottlenecks for the Industry – For Goods based upon RSP based Assessment i.e. on which CVD is levied based on Retail Sale Price ('MRP') and not on transactional value

Submissions: IT/Electronic goods should not be subjected to RSP based assessment for the imposition of CVD, as it leads to duty loss for the organization and in case these have to be RSP based, Abatement ratio needs to be re looked into.

Further, organizations should be allowed to affix MRP on the products after their import in to India but before the first sale, as it will facilitate the compliance under SW&M Act in a more smooth ways as well as it will be cost effective for the organization, as the cost of compliance i.e. affixation of MRP Stickers at abroad is quite high in comparison with India.

Operational bottlenecks for the Industry – For Goods based upon RSP based Assessment i.e. on which CVD is levied based on Retail Sale Price ('MRP') and not on transactional value.

A. In case of imported electronic /IT goods, the factories of the principal plans the production of the goods three months in advance based the demand forecast received by it. There is a specific DGFT requirement of compliances of the requirements of Standards Weights and Measures Act in India by the affixation of the MRP stickers on the products before it land at the customs ports of India. The companies in India in order to comply with the said requirements have to give the MRP of the products three months in advance to the factories so that necessary MRP stickers can be affixed at the shop floor, as this requirement is specific to India only and the factories abroad has to plan their activity accordingly which not only delays manufacturing process (which adds to cost) also the cost of putting MRP stickers in very high abroad which makes landed cost in India very uncompetitive.
B. As the MRP is fixed three months in advance, it leads to undue financial loss for the importers in case of the price drop of the product at the time of actual import , as the electronic goods industry is quite prone to price drop. Due to price drop, the excess CVD which is paid on actual

import based upon the MRP affixed three months in advance is not recoverable by the importers , leading to duty loss for the importers and in turn erosion of the profitability factor for the organizations. An example showing excess payment in case of reduction of MRP subsequent to import at higher MRP is attached for your perusal please.

C. We have to fix MRP much in advance due to requirement of affixation of MRP stickers at factory. In our IT related products, market dynamics are changing on real time basis and also exchange rate is very unpredictable. It becomes difficult for importers to adjust their prices upward due to exchange or other costs going up on real time basis. This situation leads to booking of losses and not being able to adjust prices as per market dynamics.

D. Since the CVD calculated on these products is based on MRP, that leads to higher payment of duties by importer due to lower rate of Abatement on these products. Abatement ratio needs to be fixed based on the cost incurred by importer post import rather than just fixed by government. Please find attached calculation showing how much abatement is required to ensure that there is no loss to importer due to lower abatement ratio

PRAYER

E. Accordingly, it is submitted that the IT/Electronic goods should not be subjected to RSP based assessment for the imposition of CVD, as it leads to duty loss for the organization and in case these have to be RSP based, Abatement ratio needs to be re looked into.

F. Further, organizations should be allowed to affix MRP on the products after their import in to India but before the first sale, as it will facilitate the compliance under SW&M Act in a more smooth ways as well as it will be cost effective for the organization, as the cost of compliance i.e. affixation of MRP Stickers at abroad is quite high in comparison with India.

Annex IV

Suggestion No.1. Tax System (5) DDT (Divident Distribution Tax)

Dividend Distribution Tax (DDT)

(Overview)
Dividends paid by an Indian company are currently exempt from income-tax in the hands of the recipient shareholders. However, the company paying the dividends is required to pay DDT on the amount of dividends declared. The rate of tax is 16.609 % (inclusive of surcharge and educational cess). DDT is a tax payable on the dividend declared, distributed or paid.

(Issue for Japanese companies)
DDT is a tax imposed on the Indian entity who paid dividend and the shareholders in Japan who receive the dividend, net of DDT tax, can not utilize in terms of group tax strategy the DDT tax paid in India by resorting to foreign tax credit. Therefore, the DDT tax paid in India side is totally cost for Japanese companies which they will never make use of.
Furthermore, in Japan-India tax treaty, preferred tax rate regarding dividend, which is 10% is determined. However, this preferred tax rate is set up on the basis of dividend tax which is withheld in India side when it is paid and which shareholders in Japan who receive the dividend. It means that the withhold tax in India side will be 10% rate and can be utilized by foreign tax credit on Japan side to avoid double taxation only on the condition that the dividend tax is imposed to the company which receive it. Therefore, the nature of this Indian DDT can not be applicable for this point of view.

(Request for improvement)
To abolish the present DDT and change it as seen in many countries internationally to the tax which will be made on the recipient side, not payer side.

Annex V

Suggestion No.3. Infrastructure
(1) Early Improvement of Access Road to Ennore Port

Necessity of Chennnai / Ennore Port access road improvement

A. Ennore

<Existing Road – Priority I >

1. Expedite SPV* four laning of Inner Ring Road (6-7)
2. Expedite SPV* four laning of TPP Road (7-8)
3. TN Govt to expedite improvement of NCTPS road (8-9)

** Special Purpose Vehicle – Tamil Nadu Government , NHAI, Chennai Port, Ennore Port*

<New Road – Priority II >

1. Implement project plan of Northern Port Access Road (3-4)
2. Expedite Outer Ring Road Phase- I construction (12 – 13), implement Phase-II (13- 15-19)

B. Chennai

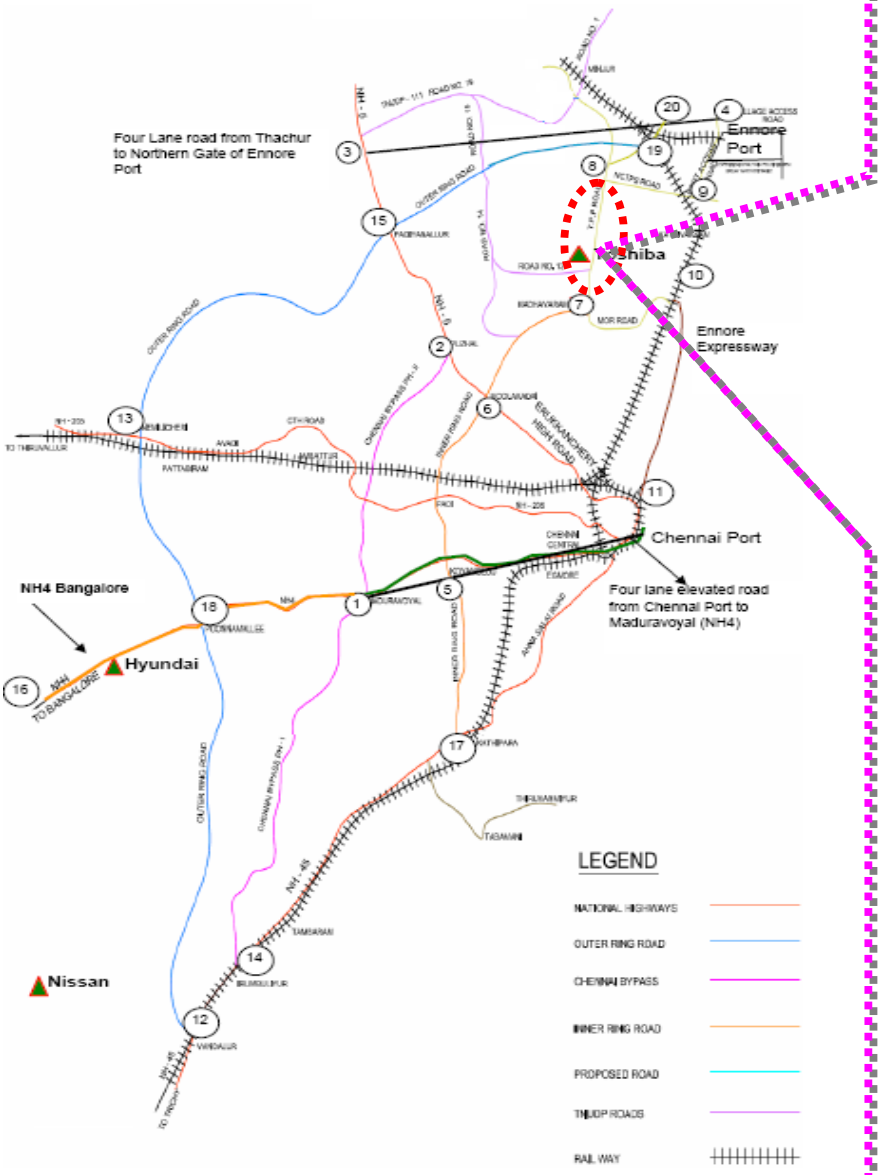
1. Expedite Construction of 4-lane elevated road from Chennai to Maduravoyal (1-5-11)

Critical Logistics Bottleneck

<u>TPP Road – (Thiruvottiyur-Ponneri-Pachetti)</u> (7 ➞ 8)

<Current Status>:

- Bumpy areas patch work done in July but severely damaged after heavy rain in August.
- Proposed 4 lane road, but no work in progress



Annex VI

Suggestion No.3. Infrastructure (2) Reduction of Ennore Port Charge

Port charge comparison (paid by shipping company)

	Assumption	**Capacity : 4,500 cars (GRT 47,000)** **Loading 3 days (72hrs)**					**(USD)**
	Amsterdam	**Laem Chabang**	**Singapore**	**Colombo**	**Chennai**	**Mumbai**	**Ennore (RORO Berth)**
Pilotage	29,348 (Draft 7.5m : US$8,300)	3,443 (Draft 8.5m LOA617ft)	4,290 (US$262.31 per hrs)	2,138	23,975 (US$0.507 per GRT)	23,975 (US$0.507 per GRT)	**38,130** **(US$0.82 per GRT)**
Port Due	8,618 (US$0.177 per GRT)	9,257 (US$0.1935 per GRT+USD259))	3,430 (US$6.98 per 100GRT)	3,736 (US$0.0795 per GRT)	10,695 (US$0.23 per GRT)	10,695 (US$0.23 per GRT)	**27,845** **(US$0.53 per GRT)**
Berth Hire (72hrs= 3days)	2,007 (US$669 per day)	8,100 (US$0.0024 per GRT/hr)	16,404 (US$5,468 per day)	7,444 (US$0.0022 per GRT/hrs)	9,676 (US$0.00289 per GRT/hrs)	9,676 (US$0.00289 per GRT/hrs)	**40,176** **(US$0.012 per GRT/hrs)**
Others	7,085	2,700	2,200	1,332	9,567 (Incld. Service Tax)	9,567 (Incld. Service Tax)	**16,148** **(Incld. Service Tax)**
Total	**47,058**	**23,500**	**26,324**	**14,650**	**53,913**	**53,913**	**122,299**

Annex VII

Suggestion No.4. Road Permit

States (as per attached list below) presently have requirement to obtain Movement Forms that must accompany goods. This causes impediments in smooth flow of commercial cargo and avoidable disruption of supply chain. 2 States namely Punjab & Karnataka have proactively approached the issue to ameliorate the hardship to Trade & Commerce and at the same time ensure that availability of Forms does not cause any delay whatsoever.

- Punjab – It is required to register the movement of goods on the Tax Department site and the check post at various locations have access to this information online. This causes minimum loss of time.
- West Bengal (Kolkata) – Waybill usage for every inward movement of the goods needs to be uploaded manually on the website on the basis of every transaction. No facility of upload of XLS File. Time Consuming.
- Karnataka – It is possible to apply for the Movement Forms online (subject to mention of each transaction which is time consuming) and generate the requisite Forms. The issue of applying for Forms and obtaining hard copies from Tax Department causes delay, because availability becomes an issue on holidays and after office hours. The situation becomes all the more acute during peak season when scores of Dealers have to face a harrowing time and the Tax Administration is over burdened and stretched.
- Karnataka – Online Issuance of Transit Form for every transaction needs manual entry uploads for every transaction. One Form online generation takes approx. 5 minutes per transaction , leading to much work involved towards online activity on the department's website, and the time tends to increase as and when the website link is slow, which is very frequent.
- Uttar Pradesh – Issuance of Transit Forms is always a problem. There is always a shortfall of stock of the Forms in the department. There is always shortage of Forms and each and every invoice needs to be countersigned by the Officer before dispatch. Even when the Forms are available, it is issued in bits and pieces. Due to this the movement of the goods gets adversely affected, which leads to affecting the business of the company.
- Uttar Pradesh (Noida) – The Transit Forms are required for every movement of the goods irrespective of the value of the goods , leading to seizure of Vehicles due to following reasons:
  - ✓ Transit Form includes 14 Nos. of fields to be filled in duplicate namely Description, Weight, Quantity, and Value in figure and words of the goods, Invoice No. & date, Name and address of consignor, Consignor's TIN No. and Transporter details containing Name and address of Transporter, Service Provider No., Vehicle No., and Name & Address of Driver, Driving License No. and Signature of Driver. Filling of these fields creates problem as sometimes due to clerical error any of the field may left blank which invites the department to seize the material.
  - ✓ In case of trans-shipment, Transporter details cannot be filled in as the goods need to be clubbed at Transporter's Office and during the movement of goods from assessee's

warehouse to Transporter's Office within municipal boundaries of Noida the vehicle got seized.

- ✓ If any of the field like Invoice No. & Date is left blank due to clerical error, with all other fields duly filled in and same is also verifiable from the Invoice and other supporting documents attached, the vehicle is still seized.
- ✓ In case of movement of goods on the subsequent date of Invoice, the Consignment Note will be issued on the date of physical movement of goods. The vehicle is also seized in this case with a view of the Authorities that the material is moved twice on the same Invoice document, which attracts concealment of sale and evasion of tax.
- ✓ Some of the details entered in the Transit Forms are meant for Transporter, who are not literate persons and do not have knowledge about the filling and usage details of the Transit Forms. Due to this inadvertent clerical mistake occurs due to which the vehicle got seized by the Authorities and acts as purely revenue minded.

State	Inward Form	Outward Form
Andhra Pradesh	Form X or Form 600 (for specified sensitive commodities only)	Form X or Form 600
Assam	Form 61	Tax Clearance Certificate in Form 63
Bihar	Form D-IX	Form D-X
Chandigarh	Not required	Not required
Chhattisgarh	Form 59	Form 59
Delhi	Form DVAT 34 (practically, no forms required)	Form DVAT 35 (practically, no forms required)
Goa	Form XX	Form XX
Gujrat	Form 403	Form 402
Haryana	Form VAT D3	Form VAT D3
Himachal Pradesh	Form 22B (practically not required but declaration to be provided at check post)	Form 22B (practically not required but declaration to be provided at check post)
Jammu and Kashmir	Form 58 & Form 65	Form 58
Jharkhand	Form JVAT 504 G	Form JVAT 504 B
Karnataka	New Notification (no physical forms required, but details need to be inserted electronically)	New Notification (no physical forms required, but details need to be inserted electronically) & Form 515
Kerala	Form 15 & Form 8F	Form 15 & Form 8F
Madhya Pradesh	Form 49	Form 49
Maharashtra	Not required	Not required
Orissa	Form 402	Form 402
Pondicherry	Form JJ & Form MM	Form JJ & Form MM
Punjab	Form 36 (practically not used)	Form 36 (practically not used)
Rajasthan	Form 47	Form 49
Tamil Nadu	Not required	Form JJ
Uttar Pradesh	Form 38	Not required
Uttaranchal	Form 16	Not required
West Bengal	Form 50	Form 51

Considering the overall facts and circumstances, it would be just expedient and pragmatic if an enlightened view is taken by the state Governments to systematize or to unify window works, and to simplify the documentation. This would reduce transaction time, reduce interface with Tax Department and provide easy solution to the Dealers.

Or it is desirable to abolish Road Permit.

Annex VIII

Suggestion No.5. e-Waste

Executive Summary for Issues

Issue : Import of Second Hand Photocopiers and Multifunction Devices in the country adding to E Waste and avoidance of duties by such importers

Submissions: Accordingly, it is submitted that the import of second hand goods should be completely banned and in case any one imports second hand goods without any license from DGFT , then that goods should be destroyed rather than clearing the same with penalty or through auction.

Import of Second Hand Photocopiers and Multifunction Devices

A. As per Para 2.1 of the Foreign Trade Policy (FTP) , Exports and Imports shall be free, except where regulated by FTP or any other law in force. As per para 2.17, All Second Hand goods , except second hand capital goods, shall be restricted for imports and may be imported only in accordance with provisions of FTP etc. Import of second hand capital goods, including refurbished / re conditioned spares shall be allowed freely. Import of Second Hand personal computers/ laptops , photocopiers machines etc will only be allowed against a license. Import of re manufactured goods shall be allowed only against a license.

B. As per draft Act issued on E Waste, it is the responsibility of Distributor in the country to make arrangement for the E Waste generated for the brand. However, second hand import of machines is not banned as a result of which there is lot of E Waste being dumped in India and also once the Act is notified, how the responsibility can be fixed on the importer of second hand machine of the same brand is yet not clarified in the draft rules.

C. Despite of the fact that the import of second hand copiers / Multifunction devices are restricted and need license from DGFT and the license for the same is generally not granted by DGFT to anyone , the import of such second hand goods are taking place by different organized Importers by adopting following modus operandi to bypass such regulatory mechanism

i. They declare the value of the product, which is very minimal (throw away price) , which is mentioned on the import invoice , with the customs authorities.

ii. Since the goods had been imported without any license , hence as per the legal process , Customs Authorities first of all seize the goods , start the adjudication proceedings;

iii. Department assess the value of such goods at per the old data available with them (some times they check with us also), and thereafter while reassessing the value of the goods they

enhance the value as per their discretion based upon data available with them. Duty is imposed on the enhanced value of the product

iv. Recently we had received a request from Directorate of Revenue Intelligence, Cochin Regional Unit for the technical evaluation help for assessing the working condition and approx. residual life of old and used Canon Multifunction Printers and copiers imported by certain persons at Cochin port.

v. Thereafter Customs Authority impose penalty on such goods for violation of law since the goods had been imported without any license.

vi. Once the importer pay the duty on the enhanced value of the goods as well as the penalty to the Govt, then the goods are released by the Customs Authorities.

vii. Despite paying the penalty and duty on such second hand goods , the value declared by such importer is such low , that goods i. e which is an e waste from the European Countries finally lands into an Indian Market at a throw away price leading to the loss to Govt Exchequer as well as bonafide Importer like us in the following way.

   a. Proper customs duty and Applicable VAT/CST is avoided to be paid by the Importer.
   b. India becomes a dumping ground for such an E Waste imported from abroad.
   c. Increase in the Consumer Litigations against the Bonafide Importers of such Brand Product , as the second hand goods imported goods are end of life product , while the customers in India market expects the Original Companies representing such Brand to support such second hand goods imported by such organized second hand dealers, which is not possible and in turn leads to un warranted consumer litigations. In one such litigation, the Hon'ble Delhi High Court took an undertaking/affidavit from such organized Importer of the second hand copiers that while selling such second hand goods he will declare on its invoice and inform to its customers that the goods are second hand good and the bonafide Importer of such Brand has no liability towards such second hand sale of the copiers.

PRAYER

Accordingly, it is submitted that the import of second hand goods should be completely banned and in case any one imports second hand goods without any license from DGFT , then the heavy penalty should be imposed as well as the goods should be destroyed, rather than clearing the same with penalty or through auction.

Annex IX

Suggestion No.6. Land Aquisition

- **Point of the Issue**

  The many invested enterprises in Bawal are facing the payment requirement against unreasonable enhancement of their purchased land for their new business in India.

- **The background of the land enhancement**

  HSIIDC Growth Centre, Bawal was developed by HSIIDC, and the land of the area had been acquired from the farmers. Because of the rapid increase of the land price, the farmers provided their land with dissatisfaction to their compensation, sued the district court for the enhancement.

- **Outline of the history of the land enhancement in HSIIDC, Bawal**

  Dec.,2007

  HSIIDC dispatched the enhancement notices to RCCI members, it showed the unit enhancement price was @Rp.304/㎡.
  And RCCI requested to reveal the evidences and a copy of complaint.

  Jan.,2008

  After Japan and German Embassies supported to us by sending their opinions about this to HSIIDC and further an agent of the governor tried to mediate with us, then RCCI members made a petition for enhancement details to High Court in Haryana.

  Dec.,2008

  HSIIDC provided the details followed by the court order but the details was not satisfied by RCCI members.

  Jan.,2009

  High Court order passed against the first group of 5 companies of RCCI members to pay the amount as per calculation to be provided by HSIIDC.

  Feb.,2009

  The first group companies filled the undertaking on the court as per the court order and speaking order, and other member companies also furnished undertakings.

  Dec.,2009

  At the meeting among a senior officer of Haryana government and RCCI representatives,
  the officer gave a very positive response and requested to wait another 4-5 months.

- **Up-dated**

  Aug.,2010

  High Court ordered HSIIDC to limit the enhance amount and area.

  Dec.,2010

  Japanese companies under RCCI had a meeting and got the recent information about High Court's limitation order of the enhancement to HSIIDC.
  Then HSIIDC has started to calculate individual revised enhancements, and RCCI requested HSIIDC to have a personal meeting with RCCI members before finalizing the amount and details. And also RCCI is preparing to apply RTI for the correct information about the compensation to farmers in the area.

Annex X

Suggestion No.10. Financial Sector

(1) EASING OF RESTRICTIONS ON BORROWING FROM HEAD OFFICE

In terms of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulation 2000 Notification No FEMA 3/2000 – RB dt. 3rd May 2000 as last amended by Notification No FEMA 182/2009 – RB dt. 13th January, 2009, and in terms of Clause 4 (2) (i) of the said notification:

'an Authorised dealer may borrow from his Head Office or branch or correspondent outside India upto 50% of his unimpaired Tier I capital or US $ 10 million, whichever is more, subject to such conditions as the Reserve Bank of India may direct.'

As per the last amendment made on 13th January 2009, the limit was increased to 50% of the unimpaired Tier I Capital. The change has however been made effective with retrospective effect i.e. 15th October, 2008. In view of the limit being increased in October, 2008 and since then due to several changes and tremendous progress made by the Banking Industry, we feel that the said limit should be increased from 50% unimpaired Tier I capital or US $ 10 million to 100 % of unimpaired Tier capital of US $ 20 Million, whichever is higher.

Such an increase will help bring more liquidity to the Indian economy and the Foreign Banks would be able to borrow more from their Head Office to meet the rising need of its borrowers.

AUTHORITIES INVOLVED

Regulatory Body: **RBI through Foreign Exchange Department**
Name of the Statute: **Foreign Exchange Management Act.**

Regulations:

1) Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, Notification No FEMA 3/2000-RB dated 03rd May'2000.
2) Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, Amendment in year 2009; Notification No FEMA 182/RB-2009 of dated 13th Jan'2009.

(2) OPENING OF BRANCHES IN METROPOLITAN AREAS

In terms of Master Circular No DBOD No BL.BC 20/22.02.001/2009-10 Dt 1st July, 2009 on Branch Authorization issued by the Reserve Bank of India and in particular, Clause 6 of the said Circular, whereby all Foreign Banks, including Japanese Banks, operating in India are required to submit an 'Annual Branch Expansion Plan', to the Reserve Bank of India which would also include opening of branches in the Cities and Metropolitan areas. The opening of branches in Cities and Metros at the discretion of RBI and is devoid of specific guidelines, such as:

a) How many branches can a foreign bank open in Cities and Metropolitan areas?
b) How many branches can a bank open in the under banked or Rural areas?
c) No list of under banked areas is given where a foreign bank can open branches. Only a list of under banked Districts is given, by which it is very difficult to locate under banked areas where we are allowed to open branches.
d) It is very difficult to find out the District Headquarters of a City and get hold of maps showing municipal limits. This is one of the criteria prescribed by RBI to open branches in under banked areas.

However having regard to the following factors i.e.:
1) Japanese Banks have limited retail operations and are catering to the Corporate Sector. These corporate customers have their presence mainly in Cities and Metropolitan areas and therefore asking us to go to rural areas would not suit our business.

2) In view of the time limit of one year for opening of branches is very less and would make it very difficult to complete our yearly business targets/ budget exercise..

We therefore feel that the policy/ approach towards opening of branches by Japanese/Foreign Banks in Cities and Metropolitan areas should be more liberal and clear.

AGENCIES INVOLVED
Regulatory Body: **RBI**
Regulations:
Master Circular No DBOD No BL.BC 20/22.02.001/2009-10 DT 1st July, 2009 on Branch Authorization issued by the Reserve Bank of India.

(3) RAISING OF UPPER LIMIT OF FOREIGN DIRECT INVESTMENT IN INSURANCE SECTOR

In terms of consolidated FDI Policy issued by the Department of Industrial Policy and Promotion (FC Section), Ministry of Commerce and Industry, Government of India vide Circular No 1 of 2010 and provision contained in Clause 5.29 of the said policy, Foreign Direct Investment upto 26 % is allowed in the Insurance Sector prescribed in the Insurance Act 1999 under the Automatic route subject to obtaining the necessary license from the Insurance Regulatory & Development Authority for undertaking Insurance activity.

However we feel that the present limit of 26% should be increased to 49% having regard to the following factors :

- The Indian Insurance sector has over the years, fairly matured and is competitive enough to allow for survival of only the most customer friendly companies.
- The regulatory framework in India is fairly equipped and strong to address any issues of any malpractices by any Insurer.

We may add that additional regulatory requirement/ safeguards, so as to ensure the protection of the interest of the insured entities can be added, to address the concerns, if any, of the Government of India.

AGENCIES INVOLVED

Regulatory Body: **IRDA**

Name of the Statute: **IRDA Act 1999**

The first schedule (see Section 30) Amendments to the Insurance Act, 1988 under 3) Section 2 C) 7A) the definition of Indian Insurance Company means any Insurer being a Company Which is formed and registered under the Companies Act 1956 (1 of 1956) In which the aggregate holding of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees, do not exceed twenty six percent paid up equity capital of such Indian Insurance Company.

Note: This act (IRDA Act 1999) including Amendments to the Insurance Act 1938 was passed by Parliament. Therefore, even though IRDA is regulator of insurance business in India, but increase in Foreign Direct Investment in Insurance Sector from 26% to higher percentage limit can only be done by Parliament by further amending this Act.

Regulations:

Consolidated FDI Policy w.e.f. 1st April, 2010 issued vide Circular no 1 of 2010 by the Department of Industrial Policy and Promotion (FC Section), Ministry of Commerce and Industry, Government of India.

(4) EASING OR ABOLISHMENT OF MOTOR POOL SYSTEM

The Motor Pool System was introduced from 1st April 2007 whereby all insurance companies were required to share the Third Party premium and claims in respect of Commercial Vehicles in proportion to their Marker Share of total Gross Premium. This has resulted in losses to insurance company. The main reason behind this is the following:-

Premium increase in Jan 2007 was not matching with claim ratio. The claim ratio for Third party for Commercial Vehicle was almost 250% in the year 2005-06, where as the premium increase was only about 70%, thereby a gap was there. Therefore it is essential that there should be consistent increase in Motor Third party premium rates because of following factors.

The minimum wages for Accidental Compensation is now Rs. 8000/-, twice the earlier limit of Rs. 4000/-. No fault liability limits were increase to Rs. 50000/- from Rs. 20000/- in case of Death, Rs.25000/- from Rs. 12500/- in case of grievous injury.

c. Claim costs are increasing due to
   ------ Medical Inflation
   ------ Rising Income level in India
   ------ Higher claim frequency
   ------ Increased Awareness.

Since the premium and claim are shared in accordance with market share of Gross Premium of Insurance Company, there is no distinction between companies with good underwriting controls and better claim management practice and those companies with no control. In fact the good companies are subsidising losses of the companies with no control.
However we would also like to mention that there is Pooling Arrangement in Japan for third party injury and death claim. However the premium levels are increased whenever the claim ratio goes beyond 60%. Due to this reason, the system is working absolutely fine.

In view of this, it is requested that the pricing for third party premium should be detarrifed as being done in many areas including recent decontrol of fuel prices and Motor Pool Arrangement should be abolished, otherwise the purpose of liberalisation will not be achieved as envisaged. Further if the Pool System has to be continue, then the premium should be increased on regular basis based on claim ratio, so that Insurance Companies do not make losses.

AGENCIES INVOLVED
Regulatory Body: **Regulatory and Development Authority's (IRDA)**
Rule: Indian Motor Third Party Insurance Pool (IMTPIP), under Insurance Act, 1938
Regulations: Insurance Regulatory and Development Authority (IRDA), after consultation with the Committee constituted under Section 110G of the Insurance Act, has directed that all general insurers registered to carry on general insurance business (including motor insurance business) or general reinsurance business shall collectively, mandatory and automatically participate in a Pooling Arrangement to share in all Motor Third Party Insurance business underwritten in respect of Commercial Vehicles by any of the registered general insurers. As per IRDA directive Motor Pool is in operation from 1st April 2007 and an agreement to this effect was signed among all insurers on 20th Dec, 2006.

(5) FOREIGN INWARD REMITTANCE CERTIFICATE (FIRC)

In terms of notification no F.E.R.A 215/2000 RB Dt. 22nd March, 2000 issued by the Exchange Control Department (ECD) of the Reserve Bank of India as amended by AD (MA Series) Circular No 3 Dt. 31st March, 2000 every Company issuing shares to Non Resident Indians is required to submit a return with the Reserve Bank of India along with Foreign Inward Remittance Certificate (FIRC) to be issued by the Authorised Dealer, who collected Foreign Exchange towards the amounts payable for issue of shares.

We feel that the procedure for issue of FIRC should be further systematized and also needs to be simplified wherever Re issue of FIRC is involved, in view of the following operational reasons:

- Other regulation in respect of Foreign Exchange, over the years have been fairly liberalised resulting into easy availability of foreign exchange.
- The foreign exchange position of India is fairly comfortable and certainly the conditions do not exist when these guidelines were brought in force in 2000 and as such these are not likely to be misused, especially having regard to the consequences.

AGENCIES INVOLVED

Regulatory Body: **RBI through Exchange Control Department**

Name of the Statute: **Foreign Exchange Management Act.**

Regulations:

1) Notification No F.E.R.A 215/2000 RB Dt. 22nd March, 2000 issued by the Exchange Control Department (ECD) of the Reserve Bank of India as amended by AD (MA Series) Circular No 3 Dt. 31st March, 2000 issued by ECD.

(6) TO INCREASE THE NUMBER OF EXPATRIATE WORKING IN JAPANESE BANKS

In terms of Do No DBOD bearing Reference no 1315/C, 31-70 Dt. 31st August, 1970 i.e. RBI Circular on Indianisation of post held by Expatriate read with DBOC No 1033/23.07.001/94 Dt March 11th, 1994 w.r.t. engagement / extension of Services of Expatriate Officers in Indian offices of Foreign Banks, Foreign Banks operating in India are allowed to engage services of not more then 2 Expatriate Officers for the parent branch or Head Office and 1 expatriate officer for every other branch in the Indian Offices of Foreign Banks. Any additional expatriate officers if required would be at the discretion of RBI.

To keep pace with the rapid growth of Indian economy, Japanese Banks in India has been aggressively increasing number of national staff. However, we believe that certain level of expatriate staff is necessary especially when servicing the specific needs of Japanese Corporate investing in India.

Thus, allowing more flexibility to Japanese banks in increasing number of expatriate staff will further enhance investment environment of Japanese Corporate.

Regulatory Body: RBI

Regulations: a) DO No DBOD ref 1315/C 319-70 of dated Aug 31st, 1970-RBI Circular on Indianisation of Post Held by Expatriate.

B) DBOD No 1033/23.07.001/94 dated March 11th, 1994, Engagement / Extension of Services of Expatriate Officers in Indian Offices of Foreign Banks.

(7) ENABLING USE OF ECB FOR WORKING CAPITAL REQUIREMENTS AND TRADE CREDITS

In terms of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange Regulations, 2000 i.e. FEMA 3/2000 – RB Dt. 3rd May 2000(GSR 386 (E)), as amended from time to time, read with Master Circular, the Reserve Bank of India has prescribed the above rules whereby Borrowing in Foreign Exchange under the Automatic Route are permitted. In terms of the Schedule I to the said Rules, the purpose for which the borrowing can be utilized have also been specified. The said schedule also provides that other than the purpose specified in the said

schedule, the borrowing shall not be utilized for any other purpose including, amongst others, for working capital requirement.

However we feel that although the other restrictions with regard to the purposes for which the External Commercial Borrowings may continue, the same should be allowed to be utilized for the purposes of Working capital, in view of the following factors:

- Such relaxation will significantly enhance the financial alternative for corporate borrowers.
- Other regulation in respect of Foreign Exchange, over the years has been fairly liberalized resulting into easy availability of foreign exchange.
- The foreign exchange position of India is fairly comfortable and certainly the conditions do not exist when these guidelines were brought in force in 2000 and as such, these are not likely to be misused specially having regard to the consequences.

AGENCIES INVOLVED

Regulatory Body: **RBI through Foreign Exchange Department**
Name of the Statute; **Foreign Exchange Management Act**

Regulations: Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, Notification No FEMA 3/2000-RB dated 03rd May'2000.

Annex XI

Suggestion No.11. Press Note No.1

We have experienced and observed a few serious problems to this practice.

(1) The definition of the "same field" is not clear therefore FIPB tend to instruct foreign investors to obtain NOC even from the "different field". (According to our experience, FIPB requested to obtain NOC from manufacturing/processing industries when we intended to establish a trading company. FIPB also requested to obtain NOC from forging industry when we intended to set up steel cutting company.)

(2) The joint venture partner who was requested to issue NOC took the chance and demanded to revise the joint venture agreement in a way which is advantageous for them. The partner threatened that they will not issue NOC unless the joint venture agreement is revised as per their request. This shows that Press Note No.1 is sometime misused for the negotiation of completely different issue.

As above, Press Note No.1 is disturbing the sound inflow of foreign investment due to inappropriate exercises, which is against the interest of Indian economy.
The interest of existing partnership must be protected by some other means such as the non-competition clause in the joint venture agreement.