

Environmental Implications of the Japan-Philippines Economic Partnership Agreement

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Overview of the JPEPA

Last September 9, 2006 in Finland, President Gloria Macapagal-Arroyo and Japanese Prime Minister Junichiro Koizumi signed the Japan-Philippines Economic Partnership Agreement (JPEPA), a bilateral preferential trade treaty between Japan and the Philippines that seeks to remove barriers to investments and the trade of goods and services between the two countries. The JPEPA is the first bilateral trade agreement entered into by the Philippines since the 1946 Parity Amendment with the United States, and constitutes the Philippine component of the Initiative for Japan-ASEAN Comprehensive Economic Partnership, which seeks to strengthen economic integration between Japan and ASEAN.

The JPEPA is no ordinary treaty, but has in fact been described by international trade experts as a “mega-treaty.” According to Justice Florentino Feliciano and Prof. Meilou Sereno, the JPEPA is a combined Bilateral Investment Treaty and Bilateral Free Trade Agreement that adopts many key features of the North American Free Trade Agreement (NAFTA) that took all of ten (10) years to negotiate before finally being signed by the United States, Canada and Mexico.

While JPEPA negotiations were being undertaken by the executive branch, Justice Feliciano and Prof. Sereno warned Congress in a committee hearing of the Special Committee on Globalization that such a mega-treaty would have difficulties that are “twice as large, twice as formidable” than if they were negotiated separately, and thus, the Philippine government needs to be “twice as awake, twice as vigilant” in determining whether the country is indeed ready to undertake a treaty of this nature. Prof. Sereno likewise stated that the Philippine government should not be rushed into concluding and ratifying the JPEPA, as its implications are “very far-reaching” and may possibly require full-bodied legislation and/or amendments to existing legislation.

Despite these warnings, and with very little public consultation and information, the Philippine government proceeded to sign the JPEPA after just two (2) years of negotiations. Now that the full text of the agreement has finally been made public, it is becoming apparent that the JPEPA is going to be a bad deal for the Philippines, particularly as far as environmental protection is concerned.

The JPEPA: legalizing trade in hazardous and toxic waste

It is of common knowledge that the Philippines already has a serious problem with recycling and waste disposal. This problem stands to be aggravated even further with the projected importation of hazardous and toxic waste from Japan, which is being encouraged under the JPEPA.

Article 29 of the Basic Agreement of the JPEPA provides that the following products are to be considered as being wholly obtained or produced entirely in the

Philippines or in Japan and therefore entitled to preferential treatment granted under the JPEPA:

“(i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;

“(j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;

“(k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and

“(l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k) above.”

Such waste products are granted a preferential tariff rate of 0%, which will be implemented as soon as the JPEPA comes into force and effect (i.e., after it is approved by the Senate). These specific waste products are enumerated in the Philippine tariff schedule to the JPEPA, as follows:

Tariff Heading No.	Description	MFN rate ¹ (Tariff & Customs Code)	JPEPA tariff rate
2620.6000	Ash and residues (other than from the manufacture of iron or steel), containing arsenic, mercury, thallium or their mixtures, of a kind used for the extraction of arsenic or those metals or for the manufacture of their chemical compounds	3%	0%
2621.1000	Ash and residues from the incineration of municipal waste	3%	0%
3006.80 (3006.8010, 3006.8090)	Waste pharmaceuticals	20%	0%
38.25 (and its subheadings)	Residual products of the chemical or allied industries, not elsewhere specified or included; municipal waste; sewage sludge; other wastes specified in Note 6 to this Chapter	30%	0%
3825.1000	Municipal waste ²	30%	0%

¹ MFN stands for “most-favored-nation.” The MFN rate is the uniform tariff rate that is accorded by the Philippines to all its other trading partners.

² Examples of municipal waste would include used sanitary napkins and used adult diapers.

3825.2000	Sewage sludge	30%	0%
3825.3010	Clinical waste ³ - adhesive dressings and other articles having adhesive layer; wadding gauze bandages, surgical gloves	30%	0%
3825.3090	Other clinical waste	30%	0%
3825.4100, 3825.4900	Waste organic solvents – halogenated, and other	30%	0%
3825.6100, 2825.6900	Other wastes from other chemical or allied industries - containing organic constituents, other	30%	0%
3825.5000	Wastes of metal pickling liquors, hydraulic fluids, brake fluids and anti-freeze fluids	30%	0%
6309.00	Worn clothing and other worn articles	Prohibited importation under RA 4653	0%
6310.00	Used or new rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials	Prohibited importation under RA 4653	0%

These waste products – most of which constitute either hazardous or toxic waste⁴ - have been previously identified by the Tariff Commission as “goods of social and environmental concerns” whose importation is closely being monitored and controlled. These waste products have very little recyclable value, if at all, and are generally intended for disposal.⁵

Tariffs act as border measures that restrict or encourage the entry of goods: the higher the tariffs, the lesser the tendency to import, and vice-versa. The reduction of tariff rates on these products to 0% under the JPEPA operates as a blanket invitation to both Japanese and Filipino businessmen to engage in trade on such hazardous and toxic waste products.

The JPEPA: violating international and domestic environmental commitments

These provisions of the JPEPA not only allow but even encourage trade in toxic and hazardous waste. This directly conflicts with the mandate of the State to promote the

³ Examples of clinical waste would include used bandages and discarded intravenous syringes.

⁴ “Hazardous wastes” are defined under Section 5 (h) of Republic Act No. 6969 (the “Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990”) as “ substances that are without any safe commercial, industrial, agricultural or economic usage and are shipped, transported or brought from the country of origin for dumping or disposal into or in transit through ay part of the territory of the Philippines.” They also refer to “by-products, side-products, process residues, spent reaction media, contaminated plant or equipment or other substances from manufacturing operations, and as consumer discards of manufactured products.”

⁵ This was manifested by the DENR representative during the Tariff Commission hearing held on 22 February 2006.

people's right to health (Art. II, Sec. 15) and right to a balanced and healthful ecology (Art. II, Sec. 16) under the Philippine Constitution.

Moreover, these provisions of the JPEPA directly conflict with the country's commitments under the Basel Convention, as well as specific Philippine environmental laws.

Republic Act No. 6969 expressly prohibits the entry of hazardous wastes into and their disposal within the country, for whatever purpose. Even mere entry for purposes of transit is expressly prohibited.⁶ Violations of R.A. No. 6969 are subject to criminal penalties ranging from 12-20 years imprisonment.⁷

Also, under Republic Act No. 4653,⁸ goods under heading nos. 63.09 (worn clothing and other worn articles) and 63.10 (used or new rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials) are prohibited from being commercially imported into the Philippines. Violations of R.A. No. 4653 are subject to imprisonment between 2-5 years.⁹

An inexplicable policy turn-around

What is particularly alarming about the decision of the Philippine government to allow the trade of waste products under the JPEPA is the fact that initially, the Philippine government had actually proposed that such waste products be *excluded* from the coverage of the JPEPA. During the public hearing conducted by the Tariff Commission on May 31, 2005, it was revealed that the waste products enumerated above were given a tariff classification of "X", which meant that such products were not to be covered by the JPEPA.

Nine months later however, in an inexplicable policy turnaround, the Philippine government announced that it was proposing that the tariff rates on such waste products be slashed to 0%. Despite the vehement objections raised by both the Department of Environment and Natural Resources and members of civil society during the Tariff Commission hearing held in February 2006, these objectionable provisions still found their way into the final text of the JPEPA.

Representatives from the Board of Investments have reasoned out that it does not matter if tariff rates on the subject waste products are reduced to 0%. They argue that since the issue is one of implementation, proper enforcement measures at the border will keep prohibited shipments out even if tariff rates are at 0%. However, this ignores the realities of enforcement measures at our ports. The provisions of R.A. No. 6969 and R.A. No. 4653 prohibiting the importation of the mentioned waste products are not reflected in the Tariff and Customs Code of the Philippines (TCCP), and businessmen will not

⁶ Section 13 (d), R.A. No. 6969; Section 24 (1), Title III, Chapter VII, Implementing Rules and Regulations of R.A. No. 6969.

⁷ Section 14 (b) (i), R.A. No. 6969.

⁸ This Act is entitled "An Act to Safeguard the Health of the People and Maintain the Dignity of the Nation by Declaring it a National Policy to Prohibit the Commercial Importation of Textile Articles Commonly Known as Used Clothes and Rags."

⁹ Section 2, R.A. No. 4653. It must be pointed out that while R.A. No. 4653 is still good law, it is being more honored in its breach than its observance.

usually go beyond the text of the TCCP to determine whether their proposed shipment is prohibited by law or not.

The same is true for customs authorities at the border. Customs collectors are generally only concerned with the tariff rates and classifications of the products entering the country, and other customs-related issuances. They cannot be expected to know environmental laws and regulations not relating to tariffs or customs matters such as R.A. No. 6969 or R.A. No. 4653, unless there are accompanying tariff or customs measures that will implement the provisions of such laws.

Moreover, the reduction of tariffs to 0% will make border enforcement measures more difficult. Shipments that are 0%-rated are generally simply waved through, as customs authorities will choose to focus their attention on other shipments that will have the potential to earn more revenue for the government, i.e. importations subject to tariffs greater than 0%.

Given all these – and without even mentioning the impunity on the part of unscrupulous businessmen to violate Philippine laws to make a quick buck – there is a great possibility that these waste products will find their way into the Philippines notwithstanding R.A. No. 6969 and R.A. No. 4653. Compounded with the economic considerations of such illegal transactions, the threat to become the dumpsite for Japan's trash is very real.

Déjà vu

This will not be the first time that Japanese trash has found its way to Philippine shores. Just 7 years ago, in July 1999, 122 40-foot container vans from Japan, reportedly carrying waste paper for recycling, arrived at the Port of Manila. However, when the container vans were opened, what government authorities found was *not* recyclable paper as stated in the customs declaration but *hazardous, infections and toxic trash*: intravenous injections, used adult and baby diapers, used sanitary napkins, discarded intravenous syringes used in blood letting, and dextrose, garments, and bandages. This shameless act of clear dumping of Japanese trash on Philippine soil resulted in public outrage so great that the Japanese government was forced to repatriate said waste shipments after formal, high-level representation between the Japanese and Philippine governments.

Shortly after that fiasco, environmentalists warned that this was not the first time that toxic waste from Japan had been brought to the Philippines under the guise of “recycling.” And judging from the provisions of the JPEPA, this is probably not going to be the last, since the Philippine government already seems to have forgotten the lessons of the 1999 Japanese toxic waste fiasco.

Should the Philippine government allow the trade of hazardous and toxic waste under the JPEPA, then it will be repudiating its sworn mandate under the Philippine Constitution to protect and promote the Filipino people's right to health and right to a balanced and healthful ecology, and will be violating not just express provisions of Philippine law, but Philippine commitments under the Basel Convention as well.

What next?

Even though the JPEPA has already been signed, it is far from being a done deal as far as the Philippines is concerned. The JPEPA is not yet in force and effect; approval by 2/3 of the Senate is necessary before it can be fully implemented.

The challenge then for civil society, particularly Philippine environmental groups, is to convince at least 9 senators to repudiate the JPEPA on the ground that the environmental costs involved in the trade of toxic wastes will outweigh whatever economic benefits there may be under the treaty.

No matter how poor the Philippines may be economically, we are entitled to our health, safety, dignity and pride as a people. Let us demand of our government that the Philippines should never become the dumpsite of any country's waste other than our own.