

SENATE

COMMITTEE REPORT NO. _____

Submitted jointly by the Committees on Foreign Relations; and Trade and Commerce on _____.

Re: P.S. Res. No. _____, prepared by the Committees.

Recommending its approval without amendment.

Sponsor: Senators Defensor Santiago and Roxas

MR. PRESIDENT:

The Committees on Foreign Relations and on Trade and Commerce, to which was referred the Treaty, entitled:

“JAPAN-PHILIPPINES ECONOMIC PARTNERSHIP AGREEMENT”

has considered the same and has the honor to report it back to the Senate with the recommendation that Proposed Senate Resolution No. _____, prepared by the Committees, entitled:

“RESOLUTION

RECOMMENDING CONDITIONAL CONCURRENCE IN THE RATIFICATION OF THE JAPAN-PHILIPPINES ECONOMIC PARTNERSHIP AGREEMENT SETTING OUT THE CONDITION PRECEDENT THAT THIS TREATY SHALL BE SUPPLEMENTED WITH: FIRST, ANNEX “A,” CLARIFYING AMONG OTHERS, CERTAIN RESERVATIONS AND EXCEPTIONS, NOW AND IN THE FUTURE, RELATING TO INVESTMENTS WHICH ARE NON-CONFORMING TO THE PROVISIONS OF ARTICLE 89 ON NATIONAL TREATMENT, ARTICLE 90 ON MOST FAVORED NATION TREATMENT, AND ARTICLE 93 ON PROHIBITION ON PERFORMANCE REQUIREMENTS; AND SECOND, ANNEX “B,” CONSTITUTING A RESERVATION TO ARTICLE 18, BOTH OF WHICH ANNEXES SHALL BECOME AN INTEGRAL PART OF THE TREATY.

be approved without amendment.

Respectfully submitted:

MAR A. ROXAS

Chair, Committee on Trade and Commerce

MIRIAM DEFENSOR SANTIAGO

Chair, Committee on Foreign Relations

M e m b e r s :

EDGARDO J. ANGARA

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President
Senate of the Philippines
Pasay City

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE
P.S. RES. No. _____

Prepared Jointly by the Committees on Foreign Relations; Trade and Commerce

RESOLUTION

RECOMMENDING CONDITIONAL CONCURRENCE WITH THE RATIFICATION OF THE JAPAN-PHILIPPINES ECONOMIC PARTNERSHIP AGREEMENT, SETTING OUT THE CONDITION PRECEDENT THAT THIS TREATY SHALL BE SUPPLEMENTED WITH: FIRST, ANNEX “A,” CLARIFYING AMONG OTHERS, CERTAIN RESERVATIONS AND EXCEPTIONS, NOW AND IN THE FUTURE, RELATING TO INVESTMENTS WHICH ARE NON-CONFORMING TO THE PROVISIONS OF ARTICLE 89 ON NATIONAL TREATMENT, ARTICLE 90 ON MOST FAVORED NATION TREATMENT, AND ARTICLE 93 ON PROHIBITION ON PERFORMANCE REQUIREMENTS; AND SECOND, ANNEX “B,” CONSTITUTING A RESERVATION TO ARTICLE 18; BOTH OF WHICH ANNEXES SHALL BECOME AN INTEGRAL PART OF THE TREATY.

WHEREAS, on 22 August 2007, the President transmitted the Japan-Philippines Economic Partnership Agreement to the Senate of the Republic of the Philippines for its concurrence as required by Article VII, Section 21 of the Constitution;

WHEREAS, the Philippines has enjoyed a long and mutually-beneficial relationship with Japan in the economic, political, scientific and cultural fields;

WHEREAS, the Senate is cognizant of the need to expand economic opportunities for Filipinos, and to develop new forms of economic engagement with the Philippines’ most important trading partners;

WHEREAS, the Senate received the April 2008 Joint Report of the Committee on Foreign Relations and the Committee on Trade and Commerce entitled, “Joint Committee Report on the JPEPA Part 1: Constitutional Aspects”, and “Part 2: Trade and Services Aspects,” both recommending conditional concurrence, as specified in Annexes “A” and “B”;

WHEREAS, pursuant to Article VII, Section 21 of the Philippine Constitution, *“No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all members of the Senate”*;

NOW THEREFORE, BE IT RESOLVED, that the Senate of the Philippines adopt the Joint Report of the Committee on Foreign Relations and the Committee on Trade and Commerce, entitled, “Joint Committee Report on the JPEPA Part 1: Constitutional Aspects”, and “Part 2: Trade and Services Aspects,” both recommending conditional concurrence, as specified in Annexes “A” and “B”;

BE IT FURTHER RESOLVED, that the Senate of the Republic of the Philippines, hereby concurs in the attached Japan-Philippines Economic Partnership Agreement (JPEPA), subject to:

A.) The condition precedent that (a) the JPEPA shall have been modified or supplemented, so that the provisions set out in Annex “A” of this Resolution become integral parts of the JPEPA; and (b) the instrument (e.g. exchange of notes between the Republic of the Philippines and Japan) setting out the modification and supplementation embodied in Annex “A” of this Resolution shall take effect as of the same date that the main body of the JPEPA takes effect; and

B.) The Reservation to Article 18 “Elimination of Customs Duties” of JPEPA set out in Annex “B” to this Resolution.

BE IT FINALLY RESOLVED, that the Senate of the Republic of the Philippines earnestly recommends to the Executive Department of the Government of the Republic of the Philippines the following:

That an agreement between the Governments of the Republic of the Philippines and Japan be executed and signed between authorized officials of the said governments to the effect that Chapter 8 (Investment) of the JPEPA shall be interpreted in accordance with the common understanding of Japan and the Republic of the Philippines that no investor of either Party shall be entitled to any right or preference under the JPEPA,

unless such investment shall have been made in accordance with the requirements of the laws of the other Party.

Adopted,

MAR ROXAS
Chairperson
Committee on Trade and Commerce

MIRIAM DEFENSOR SANTIAGO
Chairperson
Committee on Foreign Relations

ANNEX “A” to P.S. Res. No. _____ on JPEPA

- I. Article 94, JPEPA “Reservations and Exceptions” shall be modified by inserting therein as new paragraph 3, with subsequent paragraphs thereof being renumbered, the following:

“3. The Philippines reserves the right, within one (1) year from the date of entry into force of this Agreement in accordance with the provisions of Article 164 hereof, to revise the Philippine Schedule to Part 1 of Annex 7 of this Agreement, by setting forth therein the complete listing of all Philippine constitutional and statutory provisions and implementing rules and regulations, as well as all issuances of provincial, city, municipal and autonomous regional government units and agencies of the Philippines, existing and maintained on or as of the date of entry into force of this Agreement, relating to investment and which are, in whole or in part, non-conforming to the provisions of Article 89 (National Treatment), 90 (Most Favored Nation Treatment) and 93 (Prohibition of Performance Requirements of this Agreement.”

- II. Article 94, JPEPA, “Reservations and Exceptions” shall be modified by inserting therein as new paragraph 5, with subsequent paragraphs thereof being renumbered, the following:

“5 (a). The Philippines reserves the right, within one (1) year from the date of entry into force of this Agreement in accordance with the provisions of Article 164 hereof, to revise the Philippines Schedule to Part 2 of Annex 7 of this Agreement, by setting forth therein the complete and comprehensive reservations of the Philippines of its right to adopt and maintain in the future measures, of any level of government – national, provincial, city, municipal or autonomous regional – relating to investment and which may, in whole or in part be non-

conforming to the provisions of Article 89 (National Treatment), 90 (Most-Favored Nation Treatment) and 93 (Prohibition of Performance Requirements) of this Agreement. The Philippines shall notify Japan of the adoption of such future measures within six (6) months of the coming into force of such future measure. During the period from entry into force of this Agreement and the submission of the revised Philippine Schedule to Part 2 of Annex 7 of this Agreement, to the Government of Japan, the Philippines shall be entitled to adopt and maintain any such future non-conforming measure.”

“(b). For the avoidance of doubt, such comprehensive reservations shall include, without limitation, the right to adopt and maintain in the future any measure, action or decision pursuant to or in implementation of the following provisions of the 1987 Constitution of the Philippines:

“(i) Article II, Section 15 – the protection and promotion of the right to health of the people;

“(ii) Article XII, Section 1, second paragraph – protection of Filipino enterprises against unfair competition and trade practices;

“(iii) Article XII, Section 2 – ownership of all lands of the public domain; utilization of or exploitation of all waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources;

“(iv) Article XII, Section 3 – lease and ownership of alienable public lands;

“(v) Article XII, Sections 7 and 8 – ownership and transfer of private lands;

“(vi) Article XII, Section 10, first paragraph – authorizing the Congress of the Philippines to reserve to Philippine citizens and corporations or

associations with a prescribed minimum local equity content, certain areas of investments;

“(vii) Article XII, Section 10, second paragraph – providing that in the grant of rights, privileges and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos;

“(viii) Article XII, Section 10, third paragraph – regulation of foreign investments;

“(ix) Article XII, Section 11 – operation of public utilities;

“(x) Article XII, Section 13 – mandating that the State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods;

“(xi) Article XII, Section 14 – practice of all professions save in cases prescribed by law;

“(xii) Article XIV, Section 4 (2) – ownership, control and administration of educational institutions;

“(xiii) Article XIV, Section 12 – state regulation of the transfer and promotion of technology;

“(xiv) Article XVI, Section 11 (1) – ownership and management of mass media; and

“(xv) Article XVI, Section 11 (2) – ownership of corporations and associations engaged in the advertising industry.”

- III. (a) That a modification to Reservation Number 8 of the Philippine List of Existing Reservations be made such that the Phase-Out of Reservation Number 8 should read as “None”.

ANNEX “B” to P.S. Res. No. ____ on JPEPA

Philippines reservation to Chapter 2, Article 18, JPEPA, “Elimination of Customs Duties”:

“(a) The Philippines reserves the right to suspend the applicability, in whole or in part, of its Schedule to Annex 1 of this Agreement, in case the Supreme Court of the Philippines renders a final decisions(s), or the Congress of the Republic of the Philippines enacts legislation pursuant to and in implementation of Article VI, Section 28 (2) of the 1987 Constitution of the Philippines, which decision or legislation adversely affects the obligations of the Philippines or the ability of the Philippines, conformably with its Constitution and other laws, to comply with its obligations, under Article 18 of this Agreement and the Schedule of the Philippines in Annex 1 of this Agreement.

“(b) The Philippines shall exercise the right reserved in Paragraph (a) above by formally notifying Japan and transmitting a certified true copy of the relevant final decision(s) of the Supreme Court of the Philippines, or the relevant statute(s) enacted by the Congress of the Republic of the Philippines and the implementing rules and regulations if any, within six (6) months from the entry of judgment of the relevant Supreme Court decision(s) or from the entry into force of the relevant statute and implementing regulations, if any.

“(c) In the formal notification of suspension of applicability, in whole or in part, of the Philippines Schedule in Annex 1 of this Agreement, the Philippines shall specify (i) the portion or portions of its Schedule in Annex 1 modification of which has become necessary by reason of the decision(s) of the Philippines Supreme Court, or by reason of the statute(s) and implementing regulations if any referred to above; and (ii) the consequential modifications of its Schedule in Annex 1 proposed by the Philippines. Thereupon, the Parties shall promptly enter into good faith consultations with each other with a view to mutually adjusting

their respective commitments so as to achieve a prompt, fair and balanced resolution of the matter.

“(d) The resulting revisions of the Parties’ respective Schedules in Annex 1 of this Agreement shall take effect upon the completion of the Parties’ respective constitutional requirements”.