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September 20, 2018

Sen. Aquilino Pimentel III
Chairman
Committee on Trade, Commerce and Entrepreneurship
Senate of the Philippines,
Pasay, Manila

JOINT FOREIGN CHAMBERS IN THE PHILIPPINES
POSITION PAPER ON RETAIL TRADE ACT AMENDMENTS
AT THE HEARING OF SENATE COMMITTEE TRADE, COMMERCE AND ENTREPRENEURSHIP JOINT WITH LOCAL GOVERNMENT

The Joint Foreign Chambers in the Philippines strongly support, S.B. 1639 an Act amending R.A. No 8762, otherwise known as the Retail Trade Liberalization Act enacted in 2000.

We very much welcome the commitment of the Duterte Administration to liberalize the foreign investment regime in order to increase foreign investment, create more jobs, and increase competition and technology transfer.

Retail Trade Act liberalization is a Duterte Administration priority. The third point of President Duterte's Ten-point Socioeconomic Agenda clearly states the government's policy direction in this regard:

> Point number 3. …pursue the relaxation of the Constitutional restrictions on foreign ownership, except as regards land ownership, in order to attract foreign direct investment.

Senior administration officials have made clear that, in addition to removing foreign equity restrictions in the Constitution, the administration is seeking to make the Foreign Investment Negative List less negative through administrative interpretations and amending laws that contain restrictions on foreign investment.

In this regard, the Philippine Development Plan (PDP) advocates to "align guidelines for foreign investments with the Foreign Investment Act and lower capital requirements for foreign enterprises and harmonize with those observed in Asian countries."[1] The PDP lists Retail Trade Liberalization as part of the legislative agenda under Chapter 9: Expanding Economic Opportunities in Industry and Services through Trabaho at Negosyo (see Figure 1).

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[1] Page 134 op cit

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Figure 1: Legislative agenda for industry and services, PDP, 2017-2020

LEGISLATIVE AGENDA	RATIONALE
Sector Outcome A: Economic opportunities in I&S expanded	
Subsector Outcome: Local and foreign investments increased	
Amend certain economic provisions of the Constitution	Relax restrictive foreign ownership provisions of the Constitution to attract more FDI.
Pass the Ease of Doing Business Act	Enhance market competition through improving ease of doing business. This legislation will sustain the intention of Project Repeal to review existing policies, statutes, and regulations, and eventually repeal unnecessary issuances.
Amend the Public Service Act	Define "public utility".
Amend the Retail Trade Liberalization Act	Align guidelines for foreign investments with the Foreign Investment Act and lower capital requirements for foreign enterprises and harmonize with those observed in Asian countries.
Repeal or amend the Flag Law (Commonwealth Act 138)	Create a level playing field for foreign firms in bidding for government procurement.
Adopt an open access policy	Adopt and enforce open access in various segments of the telecommunications market (e.g. backhaul and backbone facilities) on a non-discriminatory basis and publicize prices in order to introduce effective competition in the broadband or telecom market.
Subsector Outcome: Competitiveness, innovativeness, and resilience increased	
Set up a National Quality Infrastructure system	Integrate and coordinate standardization, metrology, testing analysis, quality management, certification, and accreditation.
Subsector Outcome: Consumer access to safe and quality goods and services ensured	
Amend the Consumer Act	Increase protection of consumers and harmonize existing law with current and future technological advancements.
Sector Outcome B: Access to economic opportunities in I&S for MSMEs, cooperatives, and OFs increased	
Subsector Outcome: Access to production networks improved	
Institutionalize the industry cluster approach	Pursue local economic development through inter-local cooperation among LGUs and strengthen people participation in community development.
Inclusive Business Bill	Provide for the establishment of a national strategy for the promotion of Inclusive Businesses to be implemented by the Inclusive Business Center. This also provides policies for accreditation, support, and incentives.

President Duterte issued Memorandum Order No. 16 instructing the NEDA Board to "exert utmost efforts" to lift restrictions on foreign investment in selected areas: (1) private recruitment, (2) practice of particular professions, (3) public services, (4) culture, production milling, processing and trading (retailing of rice and corn), (5) teaching at higher education levels, (6) domestic market enterprises, and **(7) retail trade enterprises**. In addition, the President directed the NEDA Board to inform him regarding restrictions which may be lifted or eased without legislation in order to amend the 10th FINL issued in May 2015.

The policy of the Retail Trade Act is to promote consumer welfare, create jobs, and make Philippine goods and services globally competitive. Section 2 of R. A. 8762 states that:

> Section 2. **Declaration of Policy**. – It is the policy of the State to promote consumer welfare in attracting, promoting and welcoming productive investments that will bring down prices for the Filipino consumer, create more jobs, promote tourism, assist small manufacturers, stimulate economic growth and enable Philippine goods and services to become globally competitive through the liberalization of the retail trade sector.

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Pursuant to this policy, the Philippine retail industry is hereby liberalized to encourage Filipino and foreign investors to forge an efficient and competitive retail trade section in the interest of empowering the Filipino consumer through lower prices, higher quality goods, better services and wider choices.

Prior to RA 8762 foreign investment in retail business was not allowed. A careful reading of each element of the policy intent of the law shows that the law was intended to benefit the consumer by allowing foreign investors to compete alongside Philippine retailers, to create jobs, and to make Philippine goods and services globally competitive.

The Retail Trade Act of 2000 has not realized its objectives. The expectations of legislators who authored the law in 2000 have not been realized. Over the last 17 years, only a small number of foreign retailers have invested in the country. Few large foreign retailers invested in the Philippines. Expected job generation did not materialize, and Philippine goods and services did not become globally competitive as a result of the law.

As of 2017, a total of 22 foreign retail investments were recorded by the DTI, creating only around 22,000 jobs. That is a little more than one investor per year who met the $2.5 million minimum capital investment requirement. Had the capital requirement been the same as in the Foreign Investment Act for other domestic enterprises, we believe hundreds of foreign investors would have invested in the Philippines, creating many tens of thousands of jobs.

By contrast, the ASEAN region as a whole during the five year period 2012-2016 received an average of US$17 billion, according to data from the ASEAN Secretariat. The Philippine total during the same period averaged $107 million or 0.006% of the total for ASEAN.

In 2016, when the Philippines received only US$101 million in foreign retail sector investment, Thailand received $3.2 billion, Malaysia received $2.5 billion, Indonesia received $2 billion, and Vietnam received $2 billion in retail sector investment. Singapore received over $8 billion, almost more than all other ASEAN economies combined. Although a small country, Singapore has no restrictions on foreign investment in retail and enjoys a per capita income of US$82,500 PPP as of 2017.

In other words, by welcoming foreign investment in retailing our ASEAN neighbors, did more to create jobs for their citizens. Meanwhile, the Philippines, a country that sends 15% of its workforce abroad because they cannot find jobs at home, failed to gain similar employment benefits from foreign investment. We commend the Duterte Administration for seeking to open the retail sector to more foreign investment, which potentially will create more jobs for Filipinos at home.

The current law contains many restrictive provisions that are not in the Foreign Investment Act. RA 8762 contains several requirements that a foreign investor in retail must meet. These are unique to this law and not present in the

Foreign Investment Act. To the greatest extent they should be removed, as partially proposed in SB 1639.

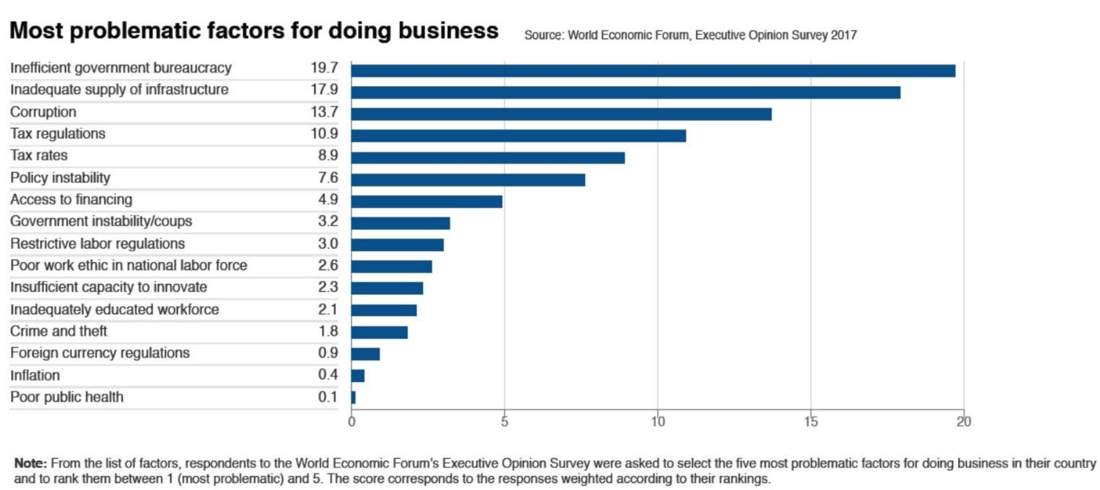
However, we ask the committee to consider also removing the following:

Section 5. The three paragraphs quoted below place restrictions on the foreign investor that are not in the Foreign Investor Act.

> The foreign investor shall be required to maintain in the Philippines the full amount of the prescribed minimum capital unless the foreign investor has notified the SEC and the DTI of its intention to repatriate its capital and cease operations in the Philippines. The actual use in Philippine operations of the inwardly remitted minimum capital requirement shall be monitored by the SEC.
>
> Failure to maintain the full amount of the prescribed minimum capital prior to notification of the SEC and the DTI, shall subject the foreign investor to penalties or restrictions on any future trading activities/business in the Philippines.
>
> Foreign retail stores shall secure a certification from the Bangko Sentral ng Pilipinas (BSP) and the DTI, which will verify or confirm inward remittance of the minimum required capital investments.

The 2017 Global Competitiveness Index of the World Economic Forum cited bureaucratic red tape as the major concern of doing business in the Philippines (see Figure 2). The sections above add to red tape and contradict the spirit of minimizing red tape and creating a level playing field for foreign investment.

Figure 2: Most problematic factors for doing business in the Philippines, 2017



The Retail Trade Act should be consistent with the basic law on foreign investment. RA 7042, the Foreign Investment Act of 1991, as amended by RA 8179

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is the basic law governing foreign investment in the country. Retail trade should be treated in a similar fashion to other foreign investments regulated by this basic law.

Keep in mind new Free Trade Agreements (FTAs). The Philippines many engage in negotiations for a FTA with the European Union and a separate FTA with the United States. On March 5, 2018 the Philippine Senate ratified the Free Trade Agreement between the European Free Trade Association States and the Philippines (PH-EFTA FTA). On March 8, 2018 11 countries signed the Comprehensive and Progressive Trans-Pacific Partnership (EDTPP) in Santiago, Chile (without the United States). The Philippines has been mentioned as a leading candidate along with Korea, Indonesia, and Thailand to join the CPTPP.

Under Chapter IX Investment of the PH-EFTA Article 24 states:

> (a) Member States shall grant treatment no less favourable than that accorded to their own companies or firms;
>
> (b) each Member State may regulate the establishment and operation of companies or firms on its territory, in so far as these regulations do not discriminate against companies or firms of the other Member States in comparison to its own companies or firms. "

Article 9.4 of the CPTPP entitled "National Treatment" concerns foreign investment and states that:

> Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

As legislators consider amending current laws concerning policies included in such future agreements, we recommend that legislators anticipate the obligations the Philippines is likely to have made in order to enjoy the benefits of greater access to the markets of Europe and the United States, restrictions on foreign investment may make the Philippines less attractive to the country members of these treaties.

Conclusions. The Philippines is reaching a stage of sustained high and inclusive growth. But continuation of such growth is not guaranteed. One of the important factors to sustain such growth and to support even higher levels in future years is liberalization of restrictions on foreign investment. The proposed bill on retail trade is among reforms to encourage more foreign investment that will support higher growth and investment and result in more jobs for Filipinos in the Philippines.

The entry of more foreign retail investors will create direct jobs at every stage of the retail process and indirectly in those who service the retail sector. One new retail job is not just the sales clerk or the cashier that the customer sees in a store. These are the tip of the retail iceberg, the hidden part of which includes jobs

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in advertising, agriculture, construction, design, logistics, media, telecommunications, and wholesale retail, among others. In other words, investment in retail cascades throughout the economy creating jobs.

Retail trade sector reform will support the more rapid growth of the tourism sector, which is a major priority of the government. Many foreign tourists travel to shop, for example, to Bangkok, Hong Kong, or Singapore. This is especially true of the growing number of Chinese tourists, who go as far as Paris and London to spend their money at full retail prices. Famous brand names and famous department stores operating in major cities attract foreign shoppers and on Orchard Road in Singapore or the Bund and Nathan Road in Shanghai. Why not also in Makati, Cebu, Clark, and Davao?

More foreign retail players create more competition, which is good for the Filipino consumer, especially the growing middle class, who can purchase higher quality and more variety of goods at lower costs. Foreign retailers may introduce better technologies for their logistics, inventory management, sales, accounting, and other business operations.

Foreign retailers will often source their goods locally if they are given quality and pricing comparable to foreign sources of supply. This can lead to orders from local suppliers to supply not just retail outlets in the Philippines but for export to outlets in other countries.

The JFC is a coalition of the American, Australian-New Zealand, Canadian, European, Japanese, Korean chambers, and PAMURI. We represent over 3,000 member companies engaged in over $100 billion worth of trade in goods and services and some $30 billion in investment in the Philippines. The JFC supports and promotes open international trade, increased foreign investment, and improved conditions for business to benefit both the Philippines and the countries the JFC members represent.