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JOINT FOREIGN CHAMBERS (JFC) POSITION PAPER REGARDING THE ADDITIONAL TAXES ON THE MINING INDUSTRY TO BE IMPOSED BY HOUSE BILLS 00288, 00560, 01867, 02557, 04541, 04874, AND 05022,

The Philippine government has set its priorities and key action plans to help further the country's development in future years. Through the 10-Point Socioeconomic Agenda, the current administration aims to, among others, further its macroeconomic policies, improve tax collection and implement tax reform policies, accelerate infrastructure spending, and improve social services. With this, several reforms and programs have already been put in place.

The mining bills currently introduced to date in the 18th Congress as specified above proposes to establish various fiscal regimes for the mining industry by imposing several sliding scale royalty rates on both metallic and non-metallic mining operations whether large scale or small scale. In some cases, they propose sliding scale government share based on margins with most adding additional shares on windfall profits.

While the measures aim to increase government share from the revenues of mining operations, the JFC believes that the imposition of an additional tax burden will be unnecessarily costly to the mining industry and in the long run will decrease rather than increase government revenues from mining.

As of 2018, TRAIN 1 increased the excise tax rate on all minerals by 100%. In addition, mining companies are already subject to a whole host of taxes from income tax, value added tax, local business taxes and various permit fees. The enabling legislation, the Philippine Mining Act, also requires mining companies to allot a minimum of 1.5% of their operating costs to fund and implement Social Development and Management Programs as well as a 1% royalty on gross sales for indigenous cultural communities if present.

The imposition of additional taxes will be an added burden to the mining industry and will serve to decrease total mining revenues (and employment) rather than increase them and in the long-term mining investments will go elsewhere to more attractive regimes. Indeed, without the recent doubling of the excise tax, the IMF found in their 2012 report to the Philippine Government, that existing mining taxes were uncompetitive internationally and the JFC believes that extending the royalty rates of existing mines outside the Mineral Reservations by any margin would make the fiscal regime unattractive for new mining investments and may cause the shutdown of existing mines with low profitability.

The JFC notes the calculations of the Chamber of Mines of the Philippines that show that with the recent doubling of excise tax the Average Effective Tax Rate or AETR is already over 73 %, which is higher than tax regimes of major mineral producing countries such as Canada and Australia among others.

Moreover, some of the bills treat metallic and non-metallic mining equally, without distinction. However, it is important to note that metallic and non-metallic products, as well as the mining operations conducted to extract and/or produce them, are entirely different from each other as to the nature, use, importance and end-consumers of minerals produced.

Non-metallic mining involves the extraction of minerals, such as limestone shale, silica, basalt and phosphorous. Non-metallic minerals generally require no further processing other than crushing or grinding to make them useful. The raw material is generally the final product itself. Non-metallic mining creates much less waste and causes less disturbance to the environment although progressive rehabilitation of current and legacy quarrying sites should be required to the same environmental standards as for metallic mining.

Furthermore, almost all the non-metallic mineral products are sold locally and are used in the manufacture of various basic domestic products or commodities. Applying uniform taxation for both will adversely affect the competitiveness of other closely related industries such as the domestic cement industry (i.e. inflation of local cement prices, and an influx of cheap imported cement) that plays a large role in the government's flagship Build, Build, Build program.

JFC's position on mining, drafted for the incoming administration in 2016, was outlined in a Policy Brief that should be considered as an addendum to this submission. As you will note there are recommendations aligned with some of the proposals contained in the various bills such as the creation of a Mineral Wealth Fund.

To reiterate JFC's position. While we appreciate the need for the Administration to fund the many bold and innovative programs outlined in the 10-Point Socioeconomic Agenda, we also believe that additional taxes over and above the current levels would not accomplish the goals of raising governments share of mining revenues but rather reduce them. In our view the result would likely be; curtailment of mine expansions, closing of low profit mines and limited or no new mining investments due to regional competition. The result would lead to falling employment and income in remote rural areas where it is needed the most.

Some of the concepts contained in draft laws are not without merit. Indeed, the concept of a mineral wealth fund is worth exploring perhaps in conjunction with a windfall tax regime, although the definition of a windfall needs careful thought and agreement by all stakeholders. In addition should a wealth fund be established, following other models elsewhere, we recommend the use of the income only, allowing the generation of a fund that can be used in perpetuity; with the caveat that the AETR in the generation of such a fund not exceed current limits as noted above.

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We note that all the House Bills contain a "vested rights" clause that excludes those agreements that have no amending clauses relating to terms and conditions but include those that do. The JFC believes that all existing mineral agreements in good standing should be excluded as well to avoid premature reduction in operations or outright closure of current mining operations.

In previous draft mining revenue bills the concept of an output-based tax regime was proposed and although not contained within the current House draft bills, the JFC believes that among lesser evils, margin-based concepts are more acceptable in the industry, than output-based models.

The JFC is a coalition of the American, Australian-New Zealand, Canadian, European, Japanese, and Korean chambers and PAMURI. We represent over 3,000 member companies engaged in over US$100 billion worth of trade and some US$ 30 billion worth of investments 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.

Sincerely,

JAMES WILKINS
President
American Chamber of Commerce of the Philippines

DANIEL ALEXANDER
President
Australia-New Zealand Chamber of Commerce of the Philippines, Inc.

JULIAN PAYNE
President
Canadian Chamber of Commerce of the Philippines

NABIL FRANCIS
President
European Chamber of Commerce of the Philippines

KEIICHI MATSUNAGA
President
Japanese Chamber of Commerce & Industry of the Philippines Inc.

HO-IK LEE
President
Korean Chamber of Commerce of the Philippines, Inc.

EVELYN NG
President
Philippine Association of Multinational Companies Regional Headquarters, Inc.