

## **Briefing Paper on the Japan-Philippines Economic Partnership Agreement (JPEPA)**

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### **Introduction**

On December 11, 2003, Philippine President Gloria Macapagal-Arroyo and Japan Prime Minister Junichiro Koizumi agreed to formally start negotiations for a comprehensive bilateral agreement called the Japan-Philippines Economic Partnership Agreement (JPEPA). Negotiations were held in secrecy, with the text hidden from the public, with members of Congress even resorting to filing a case in the Supreme Court to no avail. After three years, on September 9, 2006, both heads of governments signed the deal in faraway Helsinki, Finland, away from the prying eyes of the Philippine and Japanese public. At present, the Philippine Senate is mandated to decide whether to ratify the said treaty.

**The JPEPA is the Philippines most comprehensive bilateral agreement to date since the Laurel-Langley agreement of 1954.** The basic agreement is 153 pages with eight annexes each ranging from 100 – 170 pages covering in detail specific commitments on various areas of trade and related aspects. The following general headings and chapters of the JPEPA exemplify the treaty's overarching scope:

- Preamble
- I. General Provisions
- II. Trade in Goods
- III. Rules of Origin
- IV. Customs Procedures
- V. Paperless Trading
- VI. Mutual Recognition
- VII. Trade in Services
- VIII. Investment
- IX. Movement of Natural Persons
- X. Intellectual Property
- XI. Government Procurement
- XII. Competition
- XIII. Improvement of the Business Environment
- XIV. Cooperation
- XV. Dispute Avoidance and Settlement
- XVI. Final Provisions

Provisions range from general principles to specific operational aspects like the creation of working committees and subcommittees, mechanisms for mediation of disagreements, timetables, procedures for reparation and expropriation, payment for investments lost or damaged due to armed conflict, revolution, national emergency or civil disturbance, lists of exempted products and the like.

**While JPEPA follows to the letter the GATT 1994 and subsequent WTO agreements, it seeks to go beyond those commitments.**

This bilateral agreement is better seen in the light of the recent collapse of the World Trade Organization's Doha Round. After having failed to liberalize the world economy on

their terms through the WTOs tedious, multilateral mode of negotiations, the United States, Japan, European Union have led the shift to bilateral, plurilateral or regional free trade agreements in order to get over and around the various stumbling blocks that have bogged down the WTO.

It is important to note, for example, that JPEPA includes provisions on investments (Chap. 8), government procurement (Chap. 11), competition (Chap. 12) and trade facilitation – the so-called Singapore issues – that were so contentious that it contributed to the collapse of the WTO Doha Round. Some analysts have described bilateral free trade and investment treaties like JPEPA as “WTO plus” agreements or, more graphically, like “WTO on steroids.”

While this is a first of its kind for the Philippines, such an agreement is not new to Japan which has already concluded EPAs with Singapore (2002), Mexico (2004), Malaysia (2005) and the Philippines (2006). It is negotiating similar trade deals with Thailand, Korea and the ASEAN and is engaged in exploratory talks with Indonesia, India and Chile.

This paper will attempt to discuss the JPEPA both in its relevance to the pursuance of the imperialist agenda inside and outside the WTO, and its specific provisions and its impact on the Philippine economy. Thanks are given to the Institute for Political Economy and the Ibon foundation for their inputs.

## **I. JPEPA in the context of unequal Philippine-Japan trade relations**

A chronic and structural deficit marks the country's trade relations with Japan. Statistics show that our major export to Japan are electronic parts, films used for care of semiconductors, semiconductors, and industrial manufactures (33% of total Philippine export to Japan from 1998 – 2002). However, a careful scrutiny of the Philippine semiconductor export industry reveal that it basically produces re-exports<sup>[1]</sup> – that is, imported materials that are locally assembled then exported as low value-added, semi-manufactures and/or finished goods.

It is important to note that the electronic and industrial re-export industry itself is dominated by Japanese firms. BusinessWorld's top 1000 corporations for 2005 reveal that 6 of the top 20 exporters in the Philippine manufacturing sector are Japanese firms re-exporting basically imports from Japan. They are: Toshiba (4<sup>th</sup>); Fujitsu Computer Products Corp. (8<sup>th</sup>); Panasonic Communications (11<sup>th</sup>) and Panasonic Mobile Comm. Corp (18<sup>th</sup>); Hitachi Global Storage Technology Philippines (14<sup>th</sup>); and Toyota Motor Philippines (20<sup>th</sup>). The top 20 are all transnational corporations (TNCs) and multinational corporations (MNCs) with foreign owned majority shares with the sole exception of San Miguel Corporation (7<sup>th</sup>) whose combined majority shares are Filipino owned (owing to the Philippine government shares on the firm).

Close contenders to the top 20 exporters in the manufacturing sector are Japanese firms Honda Cars Philippines (27<sup>th</sup>); Sanyo semiconductors (33<sup>rd</sup>); and Fujitsu Ten Corp (35<sup>th</sup>).

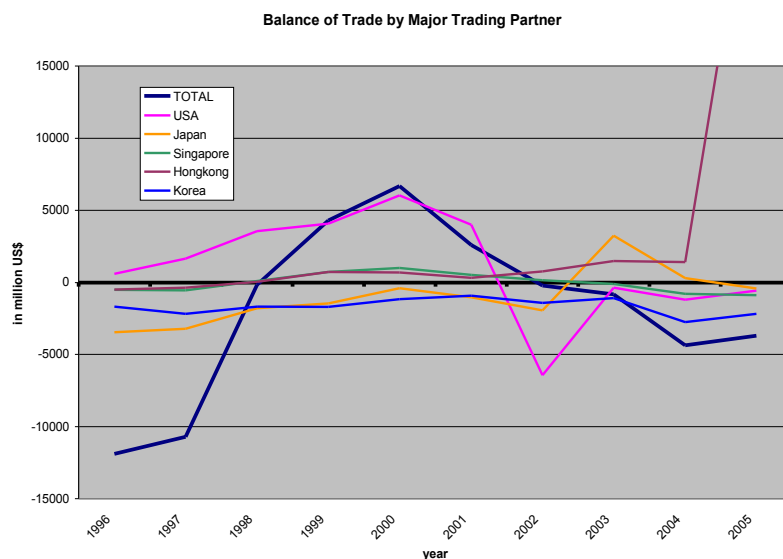
As a matter of fact, approximately 75% of the entire industrial manufacturing sector of the Philippines is foreign owned.

Meanwhile, in terms of agriculture, the Philippines exports 79% of its bananas to Japan (equivalent to 58% of Japan's total fruit imports); 98% of our pineapples (equal to 7% of Japan's imports); 61% of our mangoes (or 1% of Japan's imports); and, 48% of our papayas

(or 1% of Japan's imports).<sup>[2]</sup> Despite the seemingly big volume in terms of percentages, the reality is that our agricultural products comprise a mere 8% of total Philippine exports to Japan.

There is also a substantial Philippine export to Japan of marine products (mostly shrimps and prawns) which stood at 3% of total Japanese imports of marine commodities.

While the Philippines exports mainly re-exported electronics and electrical goods (produced mainly by Japanese firms importing Japanese parts), fruits and fruit juices to Japan, the Japanese dump costlier automobiles, auto-parts, electronics and appliances to the Philippines. In fact, Japan is consistently the second largest source of Philippine imports. In 2005, Philippine imports from Japan were at US\$7.646 billion while Philippine exports to Japan were at US\$7.204 billion.<sup>[3]</sup>



The Philippines, on the other hand, is ranked as the 14<sup>th</sup> source of imports for Japan. WTO figures show the Philippines has a 1.7% share in total Japanese imports. This amounts to US\$8.25 billion as of 2004. On the other hand, The Philippines receives 1.7% of Japan's exports pegged by the WTO to be at US\$9.6 billion as of 2004.

In both estimates (Philippine government and WTO), the trade balance between Japan and the Philippines is at a deficit. Again, this is because we export mainly cheaper, low value-added re-exports and agricultural products to Japan while they dump more expensive, high value-added industrial goods (including used vehicles and spare parts considered not fit for trade a.k.a. chop-chops). As of 2005, the trade deficit of the Philippines with Japan was at US\$441.79 million. This trend has been ongoing since the second half of the 1990s

**II. JPEPA is a one-sided, onerous free trade treaty that will widen the trade imbalance and benefit mainly Japanese and other foreign investments to the detriment of local agriculture, industry and even the environment.**

The JPEPA's highly controversial and much-opposed provision that allows the dumping of Japanese toxic waste in the Philippines is a vivid symbol of the one-sided and onerous nature of the treaty. It is also just the tip of the iceberg. For clearly, more than mere waste, what Japan plans to dump on us are its surplus consumer and industrial goods – ranging from used cars and home appliances to hi-tech IT products.

We should remember that the chronic trade deficit with Japan is structural in nature – it is brought about by the fact that Japan is a highly-developed, industrialized economy while



ours is a maldeveloped, semifeudal and semicolonial one. A free trade agreement of JPEPA's nature will not change this condition but, on the contrary, will most certainly exacerbate the current trade imbalance.

What we got

On its face, Philippine negotiators reduced or removed tariffs on Japan's strategic, industrial exports; something that their Japanese counterparts did not reciprocate for our own strategic, agricultural products.

Philippine negotiators failed to negotiate appropriate deals for tariff reduction in the agricultural sector. It can be gleaned from the schedule of commitments that Japan was conscious of defending its domestic market – refusing to immediately reduce or eliminate tariffs on Philippine exports that have the largest share in the Japanese market.

**Annex 1, Part I, Paragraph 1(r):**  
*"The originating goods classified under the **tariff items indicated with "X"** shall be excluded from any commitment of reduction or elimination of customs duties and commitment of negotiation..."*

 <p><b><u>PHILIPPINE exclusions:</u></b></p> <ul style="list-style-type: none"> <li>• Rice</li> <li>• Salt</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Malt, wheat starch, wheat gluten</li> <li>• Extracts and juices of meat, fish or crustaceans, mollusks or other aquatic invertebrates</li> <li>• Crabs, shrimps, prawns, cuttlefish, squid and jellyfish containing rice</li> <li>• Certain preparations for infant use</li> <li>• Bread, communion wafers</li> <li>• Frozen or chilled pizza</li> <li>• Food preparations of flour, meal or starch,</li> <li>• Breakfast cereals</li> <li>• Tomato puree and tomato paste</li> <li>• Prepared or preserved leguminous vegetables</li> <li>• Preparations with basis in coffees and teas</li> <li>• Sparkling wine, sake</li> <li>• Cigarettes, smoking tobacco</li> <li>• Some leathers and leather products, ski boots, slippers or other house footwear, footwear made on base or platform of wood, footwear for gymnastics, athletics or similar activities</li> <li>• Etc...</li> </ul>	 <p><b><u>JAPANESE exclusions:</u></b></p> <ul style="list-style-type: none"> <li>• Rice</li> <li>• Salt</li> <li>• Fresh or chilled trout, salmon, herring, cod, sardines, mackerel, livers and roes</li> <li>• Frozen salmon, trout, flat fish, herring, cod, sardines, mackerel, hake, livers and roes</li> <li>• Fresh or chilled fillets of bluefin tuna...</li> <li>• Certain species of live fish</li> <li>• Live fresh or chilled mollusks, octopus, shellfish, cuttlefish, squid...</li> <li>• Smoked salmon, dried cod, salted herring, salted cod...</li> <li>• Prepared or preserved whole or in pieces: skipjack, eel...</li> <li>• Flours, meals and pellets of fish, fit for human consumption</li> <li>• Certain seaweeds</li> <li>• Live swine</li> <li>• Meat and boneless meat of bovine animals</li> <li>• Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen</li> <li>• Milk and cream, yogurt...</li> <li>• Butter and other fats and oils derived from milk; dairy spreads.</li> <li>• Shiitake mushrooms, peas, kidney beans</li> <li>• Fresh pineapples weighing more than 900 grams</li> <li>• Wheat, meslin, barley and wheat, meslin, barley or rice flour</li> </ul>
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In fact, in their list of goods excluded from tariff reduction/elimination, Philippine negotiators listed only two items: rice and salt. Their Japanese counterparts meanwhile listed 239 items to include rice, salt, a wide variety of marine products, meats, dairy products, vegetables, fruits, wine, cigarettes and tobacco, some leather goods, even bread, pizza and breakfast cereals! (refer to Annex 1, Par. 1)

In bananas, which is the Philippines' top agricultural export to Japan, the Japanese refused to give immediate zero-tariff to this very strategic Philippine export. It pegged the base tariff rate at 10% - 20% (depending on the kind and form of the exported material) and offered to eliminate tariffs over a long span of 11 years (refer to annex1\_Japan\_Sched2 of the agreement, page 26).

The situation is worse for our pineapple exports, of which 98% go to Japan. Japan refused to lift its quantitative restrictions on pineapple exports. The Japanese will permit entry of Philippine unpeeled fresh pineapples weighing not more than 900 g., or of dried pineapples, for a total of only 1,000 metric tons for the first year. The volume increases by 200 metric tons annually until reaching a tariff rate quota of 1800 metric tons in the fifth year. Take note that quantitative restrictions are among the most restrictive forms of non-tariff barriers. Apart from fresh pineapples and dried pineapples, Japan did not commit to liberalizing trade on other forms of Philippine pineapples (processed pineapples, canned, etc., except citrus juices which falls under a different category).

The trend is noticeable for almost all forms of Philippine fruits except for guavas, mangoes, papayas, mangosteen, figs and dates, berries, apples, durian and grapes which will receive immediate tariff reductions/eliminations.

Sugar trade with Japan is the biggest disappointment. Aside from not committing to this very strategic Philippine export (Japan is most protective of its sugar industry), the Japanese tariff scheme even quantifies sugar contents in citrus juices, concentrates, essences, extracts and other solutions. Generally, Japan will only start negotiating tariff reductions/eliminations on these items (with sugar content of more than 30% or more) five years after the agreement is enforced.

Tuna is another disappointment. Japan is a huge potential market for Philippine tuna, cods and herrings. In 2000, 58% of Japan's tuna supply was imported. **However, Japan will only start negotiations on tariff reductions for tuna five years after the JPEPA comes in effect.** Japan is also not committed to raising quota restrictions and reducing tariffs on Philippine herrings (excluding their liver and roes), cods, sardines, and mackerel (*refer to Annex1\_JapanSchedule1 page 7*). As a matter of fact, the agreement's thrust is to protect the Japanese fishing industry – refusing to fully open up Japanese borders to Philippine fish exports.

In any case, it is important to note that while themselves not Japanese owned (in terms of company majority shares), the Philippine top exporters in agriculture and fishing are foreign-owned or practically controlled by foreign partners. Most of the top exporter-companies in agriculture are also contract growers for TNCs like Del Monte and Dole. This is despite the fact that most agricultural additives and other support products (such as insecticides) are non-Philippine purchased, marking the cost of importation for said sector very high.

In terms of electronics and industrial manufactured goods, almost all were zero-rated although these concessions are not really significant since Japan and Philippines tariffs on industrial manufactures and electronic components already generally range from 0-3%. Also considering the re-exporting nature and the dominance of Japanese firms in this sector, such concessions will end up still benefiting mostly Japanese firms.

#### What they got

**In contrast to the limited concessions given by Japan, the Philippines agreed to immediately reduce/eliminate of tariffs on key Japanese exports.**

Custom duties on some Japanese automobile parts including vehicle air-conditioners, pistons, engines (including completely knocked down engines) and the like (except for some

particular varieties of rubber used for tires and hoods), shall be eliminated immediately when the agreement comes into force. The trend is the same for home and industrial appliances, electronics and most industrial manufactures such as computers, etc. Most electro-mechanical appliances for industrial use shall be customs-free upon implementation of the JPEPA. Most other simple appliances ranging from hair curlers to television sets, refrigerators and air-conditioning units shall automatically be customs-free upon signing of the agreement (*Please see Annex1\_PhilippineSched2*).

Japan is most interested in exporting its vehicles. In 1998, the Philippines was third in Southeast Asia with the most number of imported Japanese vehicles. As of 2000, Japanese exports constituted 80% of vehicles imported into the Philippine.

Perhaps in deference to the local automotive industry (which is dominated by Japanese carmakers anyway), Philippine negotiators generally maintained the status quo on imported vehicles but offered **steep concessions in some categories**. For example, buses will receive reduced tariff of 14% (current total charges on imported buses range from 10%-33%) immediately upon signing of the JPEPA (decreased significantly in five installments until 2010). Most kinds of tractors and other vehicles for industrial use will receive immediate tariff reductions/or zero-rate upon signing of the agreement.

*A dirty, toxic treaty*

**Perhaps the most onerous aspect of JPEPA is that the dumping of Japanese waste materials such as clinical wastes, chemical wastes, municipal sewage wastes and other toxic materials become customs-free upon ratification of the agreement (*please refer to Annex1\_PhilippineSched1 page 75*).** Such a provision, obviously detrimental to the national interest, directly violates the country's international commitments under the Basel Convention and under local laws yet is being tolerated and defended by Philippine negotiators.

**Table 1. JPEPA tariff adjustments on waste products**

Tariff Heading No.	Description	MFN rate (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	30%	0%
3825.2000	Sewage sludge	30%	0%
3825.3010	Clinical waste - adhesive dressings and other articles having adhesive layer; wadding gauze	30%	0%

	bandages, surgical gloves		
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 under RA 4653	0%
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		0%

True, the agreement contains specific provisions that neither party should relax labor and environmental measures in the hope of attracting investments. But all that is superseded by the lowering of tariffs on the trade of waste, hazardous toxic materials and others considered unfit for use (such as damaged automobile engines and the likes), making the Philippines a dumping ground for Japanese waste and junk in the guise of promoting the growing waste processing industry in the Philippines.

### III. The case of Filipino nurses and caregivers: a deceptive quid pro quo

The government has gone overboard in saying that what we lose in trade, we gain in services, particularly the deployment of Filipino nurses and caregivers in Japan. However, JPEPA's fine print shows otherwise.

Chapter 9 of the agreement outlines the provisions regarding the movement of natural persons. Without this chapter, entry of Filipino nurses and caregivers would not be possible because Japan did not commit to liberalize these sectors in the WTO-GATS – a deliberate move to send a signal that Japan is still not amenable to treating entry of natural persons for employment as part of “trade” but would rather deal on the matter as part of “immigration” and is thus covered by immigration laws.

Under JPEPA (Annex 8, Chapter 9), both countries will allow the movement of natural persons for short-term business visitors (minimum of 90 days); intra-corporate transferees, investors, natural persons who engage in Professional Services, and specialized/skilled workers (minimum of 1 or 3 years depending on the classification); and, nurses (minimum of 1 year) and caregivers (minimum of 3 years). For nurses and caregivers, they have to qualify for the requirements set forth by Philippine and Japanese laws on the practice of their specific professions.

The agreement is very explicit regarding the minimum requirements of nurses and caregivers, that is: **(1)** they should be qualified nurses and caregivers under Philippine laws; **(2)** graduate of an appropriate 4-year degree program (in the case of caregivers, must be graduate of any 4-year degree program and recognized professional caregivers by the Philippine government); **(3)** proficient in both written and spoken Japanese language; and, **(4)** qualified “kangoshi” (Japanese nurse) or “kaigofukushishi” (Japanese caregiver).

Note that the agreement does not restrict either party to regulate the entry of particular natural persons subject to immigration laws and procedures. Article 110 (Chapter 9) Section 3 specifically states that:

Neither Party shall impose or maintain any quantitative restriction on the number of natural persons to be granted entry and temporary stay under paragraph 1 above, **without prejudice to any right of either Party to regulate the entry and temporary stay of natural persons of the other Party** for the orderly implementation of the specific commitments under this Article.

In other words, while Filipino nurses and caregivers are now allowed to work in Japan, entry will still be restrictive (given the various technical requirements) and subject to regulation whenever Japan sees fit.

Furthermore, the agreement is reciprocal: while Filipino nurses and caregivers qualified to practice their profession in Japan are granted entry and pertinent visas, Japanese corporations engaged in business in the Philippines may also opt to hire Japanese, rather than Filipino, engineers or other professionals.

#### **IV. JPEPA fails to uphold constitutional limits on foreign ownership of public utilities and preferential treatment of Filipino producers.**

Under chapter 8, the Philippines and Japan agree not to impose performance requirements on investments, and to assure equal national treatment of their respective investors and investments except in cases where reservations of both parties on specific areas of investments were registered and entered into Annex 7 and 8 of the agreement.

Japan outlined numerous laws and statutes in force in its territory which would either prohibit Filipino ownership of specific kinds of lands, investments on plant breeding (foreigners cannot engage in plant breeding activities nor can they invest in such), marine cultivation and exploration (reserved only for Japanese nationals), banking and finance (the Japanese deposit insurance system covers only banks whose head offices are under Japan's jurisdiction), mining (reserved only for Japanese nationals), energy, etc. Japan also noted that despite the national treatment clause, it cannot extend to Philippine investments subsidies for research and development.

On the other hand, the Philippines outlined specific provisions in its Constitution that will limit or deter the application of either the ban on performance requirements, or the national treatment clause. Annex 7 outlined Philippine reservations on granting equal treatment to Japanese nationals investing in land; acquisition of agricultural lands and lands classified under the CARP; in forestry; fisheries; investments in firearms manufacture law enforcement, etc. **It however failed to register its reservation regarding franchising, and operation by aliens of public utilities.**

Such a limitation is clearly stated in Article 12 Section 11 of the Philippine constitution to wit:



No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty *per centum* of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

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Likewise, the constitutional provision on the preferential use of Filipino labor, goods and materials is violated by Chapter 11 of the agreement (and all other similar provisions dispersed in the agreement) that states:

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#### **Article 131 Procurement Principles**

The Parties recognize that it is important for a Party to accord national treatment and most-favored-nation treatment to goods, services and suppliers of the other Party with respect to the measures regarding government procurement, and that it is desirable to provide transparency of the measures regarding government procurement, with a view to achieving greater liberalization and expansion of trade between the Parties. The Parties also recognize the need to take into account the development, financial and trade needs of the Parties. Each Party shall ensure a fair and effective implementation of the measures regarding government procurement.

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Again, Article 12 Section 12 of the Philippine Constitution is clear:

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“The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.”

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Expert constitutionalist Fr. Joaquin Bernas, in explaining said article says: “the provision enshrines in the Constitution the Filipino-first policy enunciated in Commonwealth Act No. 138, dated November 7, 1936, giving native products and domestic entities preference in government purchases...the policy however can extend beyond Filipino-first in government transactions and into private entities.”[\[5\]](#)

In effect, JPEPA violates the Filipino-first policy **enshrined in the Constitution and enunciated in different Philippine laws**. Among the laws enumerated by Fr. Bernas in his book are acts defining government procurement to prefer Filipino capital.

Additionally, while the Filipino-first policy is not an automatic policy that regulates private sector trade and capital, the Philippine legislature has an option to enact laws to that effect. The agreement however impairs the capability of the legislature to enact Filipino-first policy legislation in the public and private sectors which the 1987 Constitution specifically provides as an option.

The fact that Philippine negotiators glossed over these provisions, and that the Arroyo government is hell-bent on amending the economic provisions of the Constitution precisely to institutionalize such neo-liberal, free-trade policies does not remove the truth that **articles 17, 73 and 89 of the agreement otherwise collectively known as the “national treatment clause” cannot be operative in Philippine law unless the Philippine charter is revised or amended.**

**V. The JPEPA impairs the Philippine government’s negotiating position in future trade negotiations and opens the country to pressures from other imperialist nations to equal treatment on similar commodities.**

There is an ongoing war between the imperialist nations to edge the other over the economic divisions of the world. This is made apparent in the recent outcomes of the WTO trade negotiations and further magnified with the collapse of the Doha round. In general, the failure of the Doha round is due to the failure of the imperialists (and their retinue of supporters/client-states) from reaching a consensus as each wants a larger piece of the pie.

Hence, through bilateral agreements, every imperialist country wants to advance its own economic foothold in a particular trade area. JPEPA, as a bilateral agreement between one of the established world economic powers is not exempt from such geopolitical dynamics.

**The concessions we gave Japan sets a precedent that will put us on a very difficult position when negotiating similar bilateral agreements with, say, the US, China, and even other developing countries like Malaysia, Singapore and Hongkong. They will try rapaciously to get an equal, if not better deal, using every known kind of intimidation.**

One of the weapons they can use is the Most Favored Nation (MFN) rule embodied in the WTO (GATT 1994 Article I Section 1). While Article 24 of the GATT explicitly states that regional and bilateral FTAs are exempted from the MFN rule under strict criteria, there is nothing to stop vested nations from lodging a complaint against the Philippines if we refuse to negotiate a similarly advantageous deal.

Article I.1 of GATT 1994 otherwise known as the MFN provision reads:

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*Article I*

General Most-Favored-Nation Treatment

*1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importa-*

*tion and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,\* any advantage, favour, privilege or immunity granted by any [Member] to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other [Members]*

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## **VI. Conclusion**

The Japan-Philippines Economic Partnership Agreement is supposed to improve trade between the two countries under the framework of neo-liberal, free trade globalization. A critical analysis of the treaty, however, shows that given the existing, long-standing unequal trade relations between the Philippines and Japan, such an agreement will worsen the existing structural imbalance.

For one, the agreement facilitates the entry of even more Japanese exports to the Philippine market by: (1) further reducing or eliminating our already ridiculously low tariffs and quantitative restrictions; (2) expanding the scope of liberalization by including investments, government procurement, competition policy, services and other highly sensitive areas; (3) allowing the zero-tariff entry of toxic wastes.

On the other hand, any theoretical gain brought about by more trade liberalization is eroded by the fact that Philippine exports to Japan are mostly low value-added re-exports of a manufacturing sector effectively dominated and controlled by Japanese and other foreign firms.

In terms of agriculture products, which was most crucial for the Philippines, not only did Philippine negotiators fail to get substantial concessions. Worse, concessions on our most strategic exports are not immediately applicable and still subject to future negotiations. Lastly, such export products are produced mainly by foreign multinational firms who will be the ones to reap whatever little benefit the treaty will bring.

Moreover, the net effect of a worsening trade deficit can never be compensated by the still hypothetical entry of droves of Filipino nurses, caregivers and other professionals to Japan. Besides, such a labor export policy leads to a hastening of the brain drain, not to mention dire social consequences for families affected by labor migration.

**But JPEPA's effects go beyond issues of trade, migrant workers and the environment.** By deepening the process of neo-liberal globalization in the Philippines, JPEPA in fact undermines the progressive provisions of the Philippine Constitution and **limits the country's options to pursue other models of development that puts a premium on self-reliance and sustainability, national industrialization, genuine agrarian reform and social justice.**

In lieu of the foregoing, it is Bayan Muna's position that the JPEPA is inimical to the national interest and should outrightly be rejected by the Senate and the Filipino people. ###

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[1] In simple terms, **export** is the export of domestic goods while **re-export** is the export of foreign goods. Definition culled from the United Nations Trade Statistics Division at url: <http://unstats.un.org/unsd/comtradekb/article.aspx?id=10152&cNode=3U8N3M>

[2] Palance-Tan, Rosalina. *Can the Japan Philippines economic partnership agreement (JPEPA) benefit Philippine consumer goods exporters?* Philippine Institute for Development Studies (PIDS) Policy Notes No. 2005-02. April, 2005.

[3] Source: Philippine National Statistics Office ([www.census.gov.ph](http://www.census.gov.ph)), Foreign Trade Statistics.

[4] Bernas, Fr. Joaquin G., S.J. *The 1987 Constitution of the Republic of the Philippines: A Commentary* 2003 edition