# FREE-TRADE AGREEMENT ADVOCACY PAPER 2018

EU - PHILIPPINES
BUSINESS NETWORK

# ABOUT EPBN

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**OUTREACH**

**SUPPORT SERVICES**

**ADVOCACY**

The EU-Philippines Business Network (EPBN) established in January 2014, is a project co-funded by the European Union and implemented by a consortium of European business organizations based in the Philippines. Led by the European Chamber of Commerce of the Philippines (ECCP), partner chambers include the Belgian-Filipino Business Club, British Chamber of Commerce Philippines, French Chamber of Commerce of the Philippines, German-Philippine Chamber of Commerce and Industry, Italian Chamber of Commerce of the Philippines, Nordic Chamber of the Philippines, and Spanish Chamber of Commerce of the Philippines.

The overarching objective of EPBN is to support European companies, especially small-medium enterprises, to increase exports to and investments in the Philippines by facilitating market access and ensuring a level playing field for all companies.

Adopting a threefold approach of outreach, support services and advocacy, EPBN provides a strong support system at every stage of entry to the Philippine market for European businesses. In delivering these services, EPBN cooperates closely with its partner organizations in other Association of South East Asian Nation (ASEAN) countries to provide information on ASEAN as a market, promoting the Philippines as a gateway to the region.

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ADVOCACY PAPER
2018

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Positions expressed in the advocacy papers are the result of the activities of the 14 Sector Committees working under the EU-Philippines Business Network.

# METHODOLOGY

The 2018 edition of the EPBN Advocacy Papers features issues and recommendations formed after extensive discussions between members of the EPBN sector committees, dialogues and meetings with representatives from the Philippine Government, the EU Delegation to the Philippines and other EU national chambers and embassies. The EPBN has also taken into consideration the information gathered from organizing different events, participating in numerous hearings and committee meetings in both chambers of the Philippine Congress, as well as in private sector consultations held by several executive and regulating agencies of the government.

Further, the recommendations stated in each paper were created based on the discussions during the quarterly sector committee meetings, most of which were conducted with a representative from a concerned government agency based on the issues to be discussed. In close cooperation with the sector committee leaders and members, the EPBN secretariat thoroughly analyzed every issue and advocacy recommendation to ensure that they are in line with EU business interests and priorities. Once the secretariat has finalized the first draft of each sector paper, it was then circulated to the Committee members, Market Access Team Meeting for consultation and subsequently, gathered inputs to be included in the final draft of the papers.

The assessment of the status of each recommendation included in 2017 EPBN Advocacy Papers were examined under the following criteria:

**Completed/Substantial Progress**: Recommended action has either been completed or there has been significant progress towards the realization of the recommendation.

**Some Progress**: Movement towards realizing the recommendation has been made, but substantial work still needs to be done to fully achieve and complete the proposed measure.

**No Progress/Retrogression**: Minimal progress or no movement towards attaining the recommended reforms were done, or the status of the issue has worsened and has evolve to an even bigger bottleneck for EU businesses in the former year.

# ABOUT THE THEME

## EU-PHILIPPINES BUSINESS SUMMIT

### EU AND THE PHILIPPINES: Jointly Pursuing Competitiveness for Inclusive Growth

Since its launch in January 2014, the EU-Philippines Business Network (EPBN) has strived to create an attractive investment and trade environment for EU businesses in the Philippines.

This 2018, we look at how the current administration's initiatives and programs in line with its Socioeconomic Agenda and priorities have substantially progressed – Build, Build, Build Program, tax reform, ease of doing business, labor protection furthered through the Executive Order on Contractualization, sustainable development and climate adaptation, and universal healthcare, among many others. In addition, the Philippines' economy is maintaining steady growth, the EU continues to be one of the top trading partner of the Philippines, and the EU-Philippines Partnership Cooperation Agreement has been put into force – a major milestone for the EU-Philippine relations.

With this, the EU-Philippines Business Network (EPBN) is organizing the EU-Philippines Business Summit 2018 with the theme "EU and the Philippines: Jointly Pursuing Competitiveness for Inclusive Growth" on 18 October 2018, at Solaire Resort Hotel, Paranaque. During the Summit, EPBN will hand over the 4th edition of the EPBN Advocacy Papers which contains a wish list of reforms towards a competitive, fair and more inclusive economic environment. We sincerely hope that the EU-Philippine economic ties will be deepened further. Rest assured that European business community will remain as the Philippine government's partner in achieving competitiveness and inclusive growth.

# MESSAGE FROM THE AMBASSADOR

H.E. Franz Jessen
Head of Delegation,
Delegation of the European Union of the Philippines

The EU sees trade and investment as part of the answer to challenges faced in the country in terms of inclusive and pro-poor growth. Indeed, the EU and its industries have a positive agenda that is values-based and comes with an open dialogue to ensure nobody is left behind in strengthening its trade relations. It also recognizes the importance of opening new markets that contributes to growth on both ends. This is why the EU has even in times of economic turmoil led global efforts to fight protectionism, and promoted open trade and investment at home and abroad.

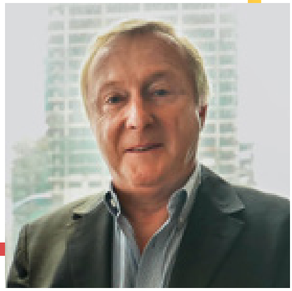
The EU economy grew at its fastest rate in 10 years in 2017 at 2.4%. For the first time since 2007, all EU member states saw their economies expand. Robust growth is facilitating further reduction in government deficit now at less than 1% of GDP as well as debt levels and an improvement in labour market conditions with unemployment rate of 7.6% falling to almost the pre-crisis level. More important to our trading partners is the fact that our trade continues to grow strongly resulting to an 8% growth in EU imports and exports of goods to the world.

This shows that the EU economy is competitive, yet open and it will remain so and continue to benefit Philippines' development agenda. Philippines total trade with the EU increased by 16% in 2017 due to the remarkable 32% growth of PH exports to the EU market partly thanks to the increasing utilisation of the GSP+ preferences. Strong growth is particularly seen in sectors benefiting from GSP+ trade preferences, such as agri-food products. On top of this, sizable portion of all newly reported approved investments in the Philippines were sourced from the EU – contributing to the creation of more quality jobs.

The economic expansion in Europe is set to continue at a solid pace in 2018 and next, supporting further job creation. However, the EU also recognizes risks on the horizon. That is why the EU is working hard to make its economy even more resilient through many useful and necessary reforms – necessary to further improve productivity and investment as well as a ensure a more inclusive growth model.

I look forward continuing to work together to the benefit of effective value chains and supply chains so that the Philippines can take advantage of its position in the region and of its competitive skills and people. I warmly welcome this advocacy book as a good basis of our continued collaboration in our pursuit of enhancing and strengthening EU-Philippine trade and commercial relations.

# MESSAGE FROM THE STEERING COMMITTEE CHAIRMAN



Mr. Guenter Taus
EPBN Steering Committee Chairman

The EU-Philippines Business Network (EPBN) is pleased to present to you the 4th edition of its Advocacy papers with the theme, "EU and the Philippines: Jointly Pursuing Competitiveness." Pursuing competitiveness and sustainable growth has been at the front and center of our agenda.

The European business community has always looked towards close cooperation with the Philippine Government to achieve mutually beneficial goals, which strengthen the country's investment and trade environment in support of increased competitiveness and long term, sustainable and inclusive growth.

Several positive reforms in 2018 were the Ease of Doing Business Act, the Build Build Build Program, the implementation of Universal Healthcare and the issuance of Memorandum Order No. 16, which eases restrictions on certain investment areas.

Despite these improvements, there are still several key barriers stifling EU-Philippine trade and investment. In particular, we look forward to passage of the Amendments to the Public Services Act of 1936 into law. These Amendments result in an open market coupled with stronger regulations which in turn will increase the quality of public services while lowering costs.

Moreover, we advocate for the reassessment of the licensing requirements from the Philippine Contractors Accreditation Board. A level playing field in infrastructure paves the path for the realization of the "Golden Age of Infrastructure" envisioned by President Duterte.

Finally, we strongly urge the government to consider the massive economic growth and job creation that fiscal incentives under the Philippine Export Zone Authority have brought about. An ambitious corporate income tax reduction in addition to other incentives will aid the Philippine in competing with other countries in the region.

These amendments would be a game-changer for the Philippines and they assist in EU investments contributing to Philippine development. It is in this context that the EPBN presents its recommendations towards a competitive, fair and more inclusive economic environment for the benefit of the Philippines and the EU.

MALACAÑAN PALACE
MANILA

**MESSAGE**

My warmest greetings to the **EU-Philippines Business Network (EPBN)** as it publishes the newest edition of its **Advocacy Papers**.

The Philippine government welcomes this publication which contains the EPBN's wishlist of reforms in the areas of economic liberalization, global competitiveness and other topics. Rest assured that this administration and its team of economic managers will look closely into the suggestions of the network, especially if it will help us in shaping a much stronger and more resilient Philippine economy.

We also appreciate the European business community's recognition of this administration's strong resolve in ensuring ease of doing business, sustaining infrastructure development and uplifting Filipino lives. It is our hope that the network will remain our steadfast partner in achieving mutually beneficial goals, especially in strengthening the country's competitiveness, investment and trade environment, and long term, sustainable and inclusive growth.

I wish you success in your endeavors.

RODRIGO ROA DUTERTE

**MANILA**
August 2018

THE PRESIDENT OF THE PHILIPPINES

# WHERE ARE WE NOW?

## THE PHILIPPINES: A MACROECONOMIC OVERVIEW

The Philippines has been recently dubbed as one of the fastest growing economies in Southeast Asia. With a 6.7% GDP growth in 2017, it is among the highest in the region next to China (6.9%) and Vietnam (6.8%).[1] ADB, IMF and the World Bank maintain their bullish forecast on the Philippine economy for 2018 and 2019,[2,3,4] which is largely attributed to its strong economic performance in 2017 and its growth prospects. The current administration's commitment to increase public infrastructure spending as well as rising domestic demand, remittances, and employment are also expected to heavily fuel the economy.

On the local scene, Services remain to cover most of the GDP with 57.46%, followed by Industry at 34.01%, and Agriculture at 8.53%.[5] From a dip in last year's agriculture sector, 2017 has posted a 3.9% growth. Overseas Filipino Workers (OFW) remittances, household consumption, exports of goods and services, and manufacturing posted growth,[6] while unemployment rate increased to 5.7%.[7]

As for investments, the Bangko Sentral ng Pilipinas reports that foreign direct investment net inflows reached USD 10 billion in 2017, showing a 21.4% increase from the previous year.[8] On the other hand, 2017 posted a negative trade balance amounting to USD 27, 380 million.[9]

While global competitiveness, as evaluated by the World Economic Forum, improved by a notch in ranking,[10] it is imperative that the Philippines continuously builds on its current successes for competitiveness and inclusive growth.

Indeed, the Philippines has made great strides in various aspects; however, a lot of work still needs to be done. A number of important measures, including **amendments to the Public Services Act, Retail Trade Liberalization Act, and amendments to restrictive economic provisions of the Constitution**, have yet to materialize. Furthermore, boosting the Philippine manufacturing sector, deepening the ASEAN integration, and enhancing customs facilitation are all crucial for the Philippine economy to step up in the global arena.

1 WorldBank. (2018) *Philippines Economic Update: Investing In The Future April 2018*. Retrieved 5 September 2018 from http://pubdocs.worldbank.org/en/280741523838376587/Philippines-Economic-Update-April-15-2018-final.pdf.

2 ADB. (2018). *Philippine GDP expected to grow by 6.8% in 2018 and by 6.9% in 2019. ADB Report*. Retrieved 5 September 2018 from http://www.adb.org/countries/philippines/economy.

3 WorldBank. (2018). *Philippines Growth to Remain Strong Despite Global Uncertainties*. Retrieved 5 September 2018 from https://www.worldbank.org/en/news/press-release/2018/07/13/philippines-growth-to-remain-strong-despite-global-uncertainty.

4 Reuters. (2018). *IMF sees the Philippines' GDP growth at 6.7% percent in 2018 and 2019*. Retrieved 5 September 2018 from https://www.reuters.com/article/us-philippines-economy-imf/imf-sees-philippines-gdp-growth-at-67-percent-in-2018-2019-idUSKBN1KF0A2.

5 Philippine Statistical Authority. (2018). Retrieved from 3 September 2018 http://psa.gov.ph/regional-accounts/grdp/highlights.

6 Ibid.

7 Philippine Statistics Authority. (2017). *2017 Annual Labor and Employment Status*. Retrieved 3 September 2018 from http://psa.gov.ph/content/2017-annual-labor-and-employment-status

8 BSP. (2018). *Full-Year 2017 FDI Hit All-Time High of US$10 Billion.* Bangko Sentral ng Pilipinas. Retrieved 4 September 2018 from http://www.bsp.gov.ph/publications/media.asp?id=4630.

9 BSP. (2018). *Selected Economic Indicators*. Retrieved 4 September 2018 from http://www.bsp.gov.ph/statistics/spei_new/tab48_sas.htm.

10 National Competitiveness Council. June 2018. *Global Competitiveness Report Card.* Retrieved 20 June 2018.

# FREE-TRADE AGREEMENT

# INTRODUCTION

With a young and dynamic population as well as a rapidly growing middle class, the Philippines constitutes a market of enormous potential for exporters from the European Union (EU). Yet, only 7% of EU exports to Association of Southeast Nations (ASEAN) go to the Philippines and the country is home to less than 4% of the total EU foreign direct investment (FDI) in the region. These low trade and investment figures indicate that considerable potential exists for a Free Trade Agreement (FTA) between the EU and the Philippines to help develop bilateral relations.

These challenges are the driving forces behind the launch of the EU-Philippines FTA negotiations in December 2015, the first round of the negotiations in May 2016, and the second round in February 2017. The aim is to conclude an agreement that covers relevant trade issues such as tariffs, non-barriers to trade, trade in services and investment as well as trade aspects of public procurement, intellectual property, competition and sustainable development at the level of ambition similar to the EU-Singapore and EU-Vietnam FTAs. An integral part of a successful world economy, the proposed Free Trade Agreement is also for the benefit of both European and Filipino producers, traders, employers, and consumers.

# RECENT REFORMS AND INDUSTRY DEVELOPMENTS

- Currently there are various initiatives from both the House of Representatives and the Senate that are in the process of removing these limitations on the efficiency of **public procurement. Senate Bill No. 274,[1] House Bill No. 4142,[2] House Bill No. 4306[3], House Bill No. 0921[4].**
- The Philippine Competition Commission has also begun the NATIONAL COMPETITION POLICY REVIEW to assess all extant laws in the Philippines for anticompetitive effect. Furthermore, the Commission is working on the identification of nine new 'Priority Sectors'[5] for competition review. These sectors have been the subject of various competition concerns even prior to the enactment of the present competition law.
- On **Public Services Act amendments**: The amendments to the Public Services Act has been treated with urgency by several legislators. House Bill No. 5828 has passed third and final reading in the House of Representatives while its Senate counterpart bill, SBN 1754, has been endorsed for plenary deliberations.
- On **customs**: In 2017, the government launched TradeNet, an online platform established as the operation system for all issuances of trade permits and other required documents related to trade facilitation. TradeNet also functions as the country's NSW. According to the DOF, 65 out of the required 75 regulatory offices have been engaged by the Department. As of writing, only 16 agencies were reported to be connected to the online platform.

1 SB No. 274 seeks to remove the exemption on the application of Philippine procurement laws on deals or purchases agreed through treaty or international or executive agreement as well as procurement paid for by foreign governments or international aid agencies.

2 HB No.4142 authorizes reference to brand names in the specifications for the procurement of goods by the government, with exemptions, and allows for the extension of a winning bidder's period to enter into contract with the procuring entity of certain types of procurement allowed by the GPPB

3 HB No. 4306 aims to require bidders and contractors to operate in the area or the region where the project is to be delivered in order to qualify for a local bid project

4 HB No. 0921 seeks to remove the exemption on the application of Philippine procurement laws on deals or purchases agreed through treaty or international or executive agreement as well as procurement paid for by foreign governments or international aid agencies.

5 The nine (9) sectors in question are the rice, meat and poultry, pharmaceuticals, land transportation, air transportation, agricultural credit, digital commerce, retail, and telecommunications sectors.

# EPBN ADVOCACY

## 1. PUBLIC PROCUREMENT

- **REFORM THE GOVERNMENT PROCUREMENT REFORM ACT TO REMOVE PROVISIONS SUBJECTING THE PROCUREMENT OF GOODS AND SERVICES TO THE FLAG LAW OF 1936**

In an effort to safeguard transparency and to deter corruption and collusion in public biddings, the GOVERNMENT PROCUREMENT REFORM ACT or Republic Act No. 9184 was established in 2003 to create the parameters for a "uniform standard" for procuring entities.

However, despite the establishment of the GPRA, government procurement in the Philippines indicates a preference for domestic operators. Current Philippine laws on procurement limit free trade and foreign participation in Philippine markets through favoring local suppliers. This is most apparent in the government's preference for local construction and energy distribution companies. As a result of this, the Philippine government foregoes higher quality or more cost-efficient options because of the exclusion of foreign players—at the expense of the government, and ultimately, of taxpayers.

Compliance readiness with the proposed text of the EU-PH FTA requires progressive liberalization of procurement markets at national, regional, and local levels, as well as in the field of public utilities, and in particular, priority sectors. The objective is to achieve gradual market access on the basis of the principles of non-discrimination and national treatment.

## 2. TRADE IN SERVICES

- **AMEND LAWS RESTRICTING PRACTICE OF PROFESSIONS**

The Philippine Services Sector continues to thrive with strong contributions from Overseas Filipino Workers ("OFWs"). Nevertheless, the Philippine Services Sector, particularly on the domestic front, is in dire need of liberalization due to its continued adherence to outdated laws that unjustly hamper the ability of the Philippines to expand its local Services Sector.

Among the laws which need to be amended are those which expressly limit the practice of certain professions to Filipino citizens such as Republic Act No. 9297 or the CHEMICAL ENGINEERING LAW OF 2004 which prohibits Foreigners from practicing Chemical Engineering in the Philippines except as teachers or consultants, Republic Act No. 9298 or the PHILIPPINE ACCOUNTANCY ACT OF 2004 which prohibits Foreigners from practicing Accountancy in the Philippines, and RULE 138 OF THE RULES OF COURT which prohibits the practice of Law to Filipino citizens.

Additionally, there are also other laws that prohibit Foreigners from entering fully into particular industries in the Philippine Services Sector. Specifically, the impact of the PUBLIC SERVICES ACT OF 1936 on the Philippine Services Sector is that it classifies certain industries as Public Utilities therefore automatically placing them under the Constitutional restriction on Foreign Equity which limits Foreign involvement in such industries to Forty Percent Equity in a domestic Filipino corporation.

Considering that the Philippine Government is currently undergoing a massive infrastructure project which would effectively involve both Professional Services and Public Utility Projects, it appears that the time is right to repeal or amend the PUBLIC SERVICES ACT in order to stir competition in the Services Sector. Such a move could generate greater economic activity in the Philippines, particularly through foreign investments, without the Philippines needing to resort to Government Borrowings per se that could have a detrimental effect on the Philippine economy in the long run.

**3. COMPETITION**

- **STRICTLY MONITOR AND ENFORCE OF THE PHILIPPINE COMPETITION LAW**

Competition policy is an essential feature or chapter in international trade agreements. It has arisen in response to the recognition that international trade can provide both the rationale and the opportunities for firms to engage in anti-competitive behaviour.

THE PHILIPPINE COMPETITION ACT was enacted in 2015 with the objective of protecting consumer welfare and advancing domestic and international trade and economic development. Many larger and more concentrated industries have undertaken competition compliance strategies, particularly larger firms or trade associations. Hence, the EPBN supports the PhCC in strictly enforcing the Competition Law.

**4. INTELLECTUAL PROPERTY RIGHTS**

Through a harmonized Intellectual Property Rights regime between the EU and the Philippines, creation and innovation of both companies and the consumers are fueled resulting to technological advancement and improved quality of living. The protection that can be obtained from the laws can prevent the unauthorized use and can ensure a reward of the efforts and investments of both the individual and corporate stakeholders.

Generally, among the targets of the EU proposal are the approximation of both the EU and Philippine regulatory frameworks for the sake of greater predictability and to foster innovation, creativity, and production of high quality goods; provision for the direct protection of geographical indications for agricultural products to boost rural development and trade; and decrease counterfeiting and piracy via enforcement measures including border measures.

Given EU standards, the Philippines is non-compliant with the provisions of the proposed EU-Philippines FTA due to the following factors: 1) the EU places its priority in utilizing the protection given by IPR laws to market its own services and products, leverage financing and protection of intangible assets, while the Philippines aim is to maximize technology transfer arrangements and to protect geographical indications and plant varieties; 2) for the pharmaceutical industry, there are data protection and exclusivity standards that are not imposed in the Philippines; 3) the EU is seeking for at least 20 years more than what is being granted by the Philippine copyright protections. Also, the IP Code should be further amended to allow registration of geographic indications and allow local government units to optimize product promotions and sales. Finally, the judicial process concerning IPR issues are not efficient and fast enough to be considered adequate.

Philippine compliance with protection objectives may be achieved through legislative amendments such as extension of copyright protection from fifty (50) years from the death of the author to seventy (70) years; reform on patent laws on medicines to grant pharmaceutical companies a total of eight (8) years of data exclusivity, and on the administrative side through stricter enforcement and expedited prosecution of traders of counterfeit goods and legislative amendment of the IP Code to allow for registration and recognition of geographical indicators and streamlining of priority trademark applications for marks already afforded protection in EU Member states, particularly with respect expediting requests for priority examination.

**5. CUSTOMS AND TRADE FACILITATION**

- **STRICTLY IMPLEMENT THE CUSTOMS MODERNIZATION AND TARIFF ACT. OPERATIONALIZE THE NATIONAL SINGLE WINDOW (NSW) IN ALL GOVERNMENT AGENCIES AND INTEGRATE IT WITH THE ASEAN SINGLE WINDOW (ASW)**

In order to build upon the success of the CUSTOMS MODERNIZATION AND TARIFF ACT (CMTA), the drafting of relevant rules and regulations in order to implement its provisions is a logical next step. Moreover, the **adoption of the National Single Window** as a vehicle to facilitate trade, is expected to heighten transparency in customs, and improve revenue collection.

It is likewise recommended that the Philippines push for the adoption of the ASEAN Single Window in order to fully streamline the cross-border trade in goods. Also, it is recommended that the Philippines follow established models of fighting corruption in customs, such as those in Singapore, wherein customs officials are paid more but are also given harsher penalties in the event that they engage in corruption.

Lastly, a study on the specific flash points where corruption during the cross-border trading of goods is likely to take place should be made. By studying the mechanics by which corrupt practices take place, remedies as to how to prevent such situations from happening could be enacted in order to eradicate such practices. By removing avenues for corruption in the cross-border trading of goods, the price of goods would generally be cheaper since the overall costs to be paid by importers and exporters would no longer include bribes or other forms of similar expenses.

**6. MARKET ACCESS**

- **EASE RESTRICTIONS ON FOREIGN OWNERSHIP BY AMENDING ECONOMIC PROVISIONS IN THE CONSTITUTION, THE CURRENT FOREIGN INVESTMENT NEGATIVE LIST, AND THE PUBLIC SERVICES ACT OF 1936.**

In spite of improvements over time, the Philippines remains a difficult place to do business. While understandably, the liberalization of foreign direct investment is one of the most difficult reforms to undertake, the benefits are vital for long term improvements in living standards. Foreign investors can bring in capital, technology and access to global markets as well as more competition to oligopolistic markets.

In order for the Philippines and the EU to have a deep and meaningful merging of markets, commitments in its FTA must provide for a positive-list modality whereby liberalization obligations only apply to the sectors listed, which themselves are subject to the limitations or conditions inscribed. Much of the foreign direct investment restrictions, *i.e. public utilities, property, mass media and advertising, educational institutions and development of natural resources*, are enshrined directly in THE PHILIPPINE

CONSTITUTION, rather than in an investment law or sectoral legislation, with the result that reforms have proved very difficult to enact.

The following reforms are proposed in order for the Philippines to comply with its obligations under the FTA:

- **Article XII of The 1987 Philippine Constitution** should be revised and the restriction on ownership must be stricken out, with the phrase "as otherwise provided by law". Movement should be initiated to delete references to preferential treatment of Filipino citizens in areas of concern like operation of a public utility, the practice of professions and occupations, among others. The objective is to maintain global competitiveness but with due regard for reciprocity. Restrictions may later be restored, if deemed necessary at that time, by Congress through ordinary legislation.
- The **11th Foreign Investment Negative List** should incorporate major changes and remove all professions except for pharmacy, radiologic and x-ray technology, criminology, law. Lending companies, financing companies, and investment houses should also be removed from the restriction.
- The **Public Service Act** should be amended for the definition of "public utility" to be updated. The new definition should only include services that actually cater to the public in the present context, i.e. water, electricity and exclude extraneous services such as broadband or internet service.

## 7. TECHNICAL BARRIERS TO TRADE

- **INSTITUTIONALIZE A SYSTEM FOR REGULATORY IMPACT ASSESSMENT OF TECHNICAL LAWS AND REGULATIONS. ENACT A LAW THAT WILL DEVELOP A SYSTEM FOR RECOGNIZING TESTING LABORATORIES AND CERTIFICATION BODIES**

A key component of the proposed agreement between the PH and European Union is the free flow of goods. Although the Philippines, while compliant with most of the technical regulation setting international standards as national standards, still plan to propose the following reforms or regulation such as a law mandating or institutionalizing a system for regulatory impact assessment of technical laws and regulations, and the enactment of a law that will develop a system for recognizing testing laboratories and certification bodies.

While the members of the trade delegations of the EU and PH have yet to convene and discuss the chapter of TBT, intention and mention was made of its inclusion in the FTA between the two (2) parties. Since a text has yet to be released and proposed by the EU, analysis is made on the TBT Chapter of the EU-Indonesia FTA. Should the text of the EU-Indonesia FTA be considered for the next round of negotiations for the EU-PH FTA negotiations, the Philippines' level of compliance to the proposed commitments are as follows:

- The Philippines is compliant with its obligation to use relevant international standards as a basis for its technical regulation, *i.e. WTO TBT Agreement, ASEAN AEC, ISO, etc.*. Good regulatory practices in the development of technical regulation are also followed. However, the Philippines does not have an <u>institutional mechanism for regulatory impact assessment of its technical regulations.</u>

- International standardization bodies, i.e. ISO, are allowed to participate and cooperate with the standardization bodies and technical regulators in the Philippines. There is free flow of information and exchange of best practices. However, the Philippines is not compliant with the proposed obligation to regularly review technical regulations for convergence with international standards. There is no known national system for regulatory impact assessment.

  Conformity assessment procedures in the Philippines follow generally accepted international standards; supplier's declaration of conformities from recognized bodies are accepted. The Philippines, however, has yet to consolidate and make efficient a list of third-party accreditation bodies.

- The Philippines is a party to and complies with its obligations under the WTO TBT Agreement on marking and labelling. The international minimum standard is followed in the mandatory marking or labelling of products. However, prior approval and certification of markings and labelling for some select products are required. There is also no known economic operator that issues unique identification numbers in the Philippines. Compared to other key areas of negotiation for the proposed EU-PH FTA, the Philippines is keen in reforming and improving on its legal and regulatory framework for standards and conformance. Much of this enthusiasm is the political and economic goal of increasing the Gross Domestic Product through outbound sales and export volume or local sales by tapping the consumer power of more than 100,000,000 Filipinos living in the Philippines.

## 8. INVESTMENT PROTECTION AND DISPUTE RESOLUTION

On 7 March 2016 and as a reaction to the litigious expropriation cases, the Philippines PASSED REPUBLIC ACT NO. 10752 or THE RIGHT OF WAY ACT which facilitates the acquisition of right-of-way sites for national government infrastructure projects. The law also outlines procedures on providing just compensation to owners of expropriated real properties to expedite implementation of government infrastructure programs.

The Philippines is also a signatory or participant in the following international agreements: GATT; GATS; TRIMs; ACIA; and other international commitments with APEC economies, Japan, EFTA, and ASEAN.

With regard to its FTA commitments, the Philippines is not compliant with Investment and Regulatory Measures commitments, particularly on the following sectors or investment areas: shipping, telecommunications, practice of profession, construction, and retail trade. With regard to the rest of its commitments, the Philippines is compliant. Under THE FOREIGN INVESTMENTS ACt, Philippine regulators are mandated to treat foreign investors like their domestic counterparts.

The following reforms are proposed in order for the Philippines to comply with its obligations under the FTA:

- The Foreign Investment Negative List should be expanded to further increase the number of business which allow full foreign ownership. Reduction in mandatory equity split between foreign and local partners may likewise aid in simplifying corporate functions and reduce the incidence of intra-corporate disputes.

- The allowance of foreign ownership of Corporations engaged in the practice of Professions should be advocated with the National Economic Development Authority and the Professional Regulatory Commission. Notably, most professions and industries already allow conditional foreign practice, which is conditioned upon foreign nations issuing reciprocal treatment to Philippine foreign nationals, but the same has yet to be reflected in the latest negative list due to absence of accreditation rules for reciprocity. Hence, we recommend the passage and implantation of administrative rules and regulations governing reciprocity arrangements for professions already subject to conditional liberalization, as well as the passage of bills already pending with the Congress to liberalize the last remaining professions in the negative list (these would be X-Ray Technology and Radiology, Pharmacy, and Forestry, as Criminology is already the subject of a Bill granting reciprocal rights which has been approved on third reading in the House). The removal of absolutely 'restricted' professions will do much to advance Philippine compliance with global standards in services, and will require some degree of political will to see them through the legislative agenda into actual implementation by administrative agencies, which is a prime area for technical support.
- Given that the Philippines has a slow pace when it comes to dispute resolution, the institution of reforms geared towards the unclogging of dockets and the speedy resolution of cases would be a welcome reform. Particularly, the institution of specialized arbitration or mediation proceedings for intra-corporate disputes, thus preventing them from reaching the judicial stage, will produce more favourable outcomes for investors and avoid tying up corporate resources in litigation.
- Likewise, the training of more lawyers and arbitrators, as well as the raising of awareness to the availability of arbitration and the processes needed to be undergone to avail of such remedies, could yield faster dispute resolution that would benefit foreign investors. A new law providing for compensation owing to losses to war or other armed conflict, revolution, state of national emergency, revolt, insurrection or riot should be enacted.

## EPBN INTERVENTIONS

- On Government Procurement: EPBN was represented in meetings with DBM Secretary Benjamin Diokno, reiterating its position on government procurement.
- On Customs: Over the past year, EPBN engaged with officials at the Bureau of Customs regarding its customs facilitation concerns. In June 2017, the EPBN and ECCP held the Customs Advocacy Forum and circulated its Customs Advocacy Brief to stakeholders.
- On PSA: EPBN released a series of position papers and media statements, and wrote to the office of Executive Secretary Salvador Medialdea, urgently calling for the amendments to PSA. Moreover, EPBN was represented in several hearings on the said topic.
- On Competition: EPBN organized a Philippine Competition Forum in February 2018 to discuss and monitor the recent developments in the implementation of the Philippine Competition Law.

# ASSESSMENT OF RECOMMENDATIONS

| Advocacy Recommendations | Completed Substantial Progress |
|---|---|
| **Public Procurement** | |
| **Services and Public Utilities** | House Bill No. 5828 has passed third and final reading in the House of Representatives while its Senate counterpart bill, SBN 1754, has been endorsed for plenary deliberations |
| **Sanitary Phytosanitary Measures** | |
| **Competition** | |
| **Non-tariff barriers** | |
| **Intellectual property rights** | |
| **Customs and trade facilitation** | |
| **Taxation and trade-related assistance** | |
| **Dispute resolution and trade remedies** | |

| Some Progress | No Progress<br>Retrogression |
|---|---|
| There are various initiatives in Congress to eliminate these limitations on the efficiency of public procurement. This effort is reflected in the following bills: Senate Bill No. 274; House Bill No. 4142. House Bill No. 4306. House Bill No. 0921 | |
| | |
| | Ø |
| The Philippine Competition Commission has also begun the NATIONAL COMPETITION POLICY REVIEW to assess all extant laws in the Philippines for anticompetitive effect. Furthermore, the Commission is working on the identification of nine new 'Priority Sectors' for competition review by the antitrust body. | |
| | Ø |
| | Ø |
| As of writing, only 16 agencies were reported to be connected to the TradeNet. | |
| | TRAIN 2 has created uncertainty and instability for potential businesses and existing investors. |
| | Ø |

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