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of Commerce Abroad*

Technical Report

INVESTMENT CLIMATE IMPROVEMENT PROJECT (ICIP) Final Report for March 2006-February 2007

Appendices 16-42: Economic Law & Policy-related Letters

by John D. Forbes and Richard Umali

Prepared for

**The American Chamber of Commerce
of the Philippines**

Submitted for review to

USAID/Philippines OEDG

May 2007



**Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE)
Unit 2003, 139 Corporate Center, 139 Valero St., Salcedo Village, Makati City 1227, Philippines
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Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-03-00020-00 Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

The American Chamber of Commerce in the Philippines (AmCham) submitted an unsolicited proposal to EMERGE on January 25, 2006, for a grant to set up a mechanism to identify and communicate to the Philippine Government activities that will generate additional investments and jobs in the country. It was called the Investment Climate Improvement Project (ICIP), and the key actors were Mr. Robert M. Sears, AmCham Executive Director, Mr. John D. Forbes, AmCham Legislative Committee Chairman, and Mr. Robert W. Blume, AmCham Desk Officer at the Philippine Board of Investments (BOI). Mr. Richard Umali was added to the team as a Project Assistant. EMERGE subsequently hired Mr. Arlan Z. I. Brucal to help AmCham edit this and draft other summary reports.

Because of their cumulative size, most of the appendices to this report are published in separate volumes:

Appendix 7: Workshop on Anti-Red Tape & Corruption, August 23, 2006;

Appendix 9: Workshop on Foreign Direct Investment, October 5, 2006;

Appendix 10: Workshop on Infrastructure, February 2, 2007;

Appendices 16-42: Economic Law & Policy-related Letters;

Appendices 43-56: Economic Law & Policy-related Statements; and
Selected Press Clippings

The economic law and policy-related letters contained in these appendices were written and endorsed by the Joint Foreign Chambers of the Philippines (JFC) and/or AmCham.

The views expressed and opinions contained in this publication are those of the authors and are not necessarily those of USAID, the GRP, EMERGE or the latter's parent organizations.



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)

March 30, 2006

Hon. Jose de Venecia
Speaker
House of Representatives
Batasan Pambansa, Constitution Hills
Quezon City

Dear Speaker de Venecia:

The American Chamber of Commerce supports the Speaker's commitment to have HB 4900 and HB 4901 approved by the House of Representatives before the Easter recess.

AmCham welcomes the expeditious enactment of the Clark bills in order to support present and future investments and job creation at Clark and other economic zones. Your immediate action on these bills would be appreciated by the Clark locators, their employees and families. This will also send a strong positive signal to existing and future investors in the Philippines.

Thanks and regards,

Robert M. Sears
Executive Director

cc: Executive Secretary Eduardo Ermita



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)

April 19, 2006

Mr. Rodolfo B. Albano, Jr.
Chairman
Energy Regulatory Commission
Pacific Center Building
San Miguel Avenue, Ortigas Center
1600 Pasig City

Dear Chairman Albano:

AmCham welcomes the government's forward movement with the key energy players of EPIRA. The private sector supports all moves that will lower high power rates for manufacturing consumers in order to make the Philippines a more attractive investment site.

We are for open-access with a level and fair playing field, essential to both users and producers of energy and hope reforms in this regard will become operational in the very near future.

We also request to be added to your regular distribution list for ERC issues.

Thanks and regards,

Robert M. Sears
Executive Director



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)

May 29, 2006

Hon. Ralph Recto
Chairman, Ways and Means Committee
Senate of the Philippines
GSIS Financial Complex
Pasay City

Dear Sen. Recto:

Thank you for taking time from your intense schedule to meet with our group from the American and Japanese Chambers of Commerce on May 25.

We greatly welcome your initiative to seek to remedy the EVAT 70% input cap problem through legislation. As you are well aware, the sooner this happens the better for tax revenues and the business survival of small retailers.

We also are grateful for your support of remedial legislation for the Clark SEZ issue, either by passing the Senate versions of the two House bills or by inclusion in the Fiscal Incentives Rationalization bill which you expect to be passed by the end of the year.

As you know, AmCham supports the new legislation on the rationalization of fiscal incentives. We look forward to seeing a copy of your committee report and again encourage the Congress to allow the Executive Branch authority and flexibility to make Philippine incentives for major new foreign investments among the most competitive in Asia. AmCham advocates that the Philippines should receive over \$3 billion annually in Foreign Direct Investment. However, the incentives now available to your government investment promotion agencies are too weak to overcome the relatively poor investment climate created by other problems beyond the control of the Ways and Means Committee or the Congress. Accordingly, the maximum flexibility for incentives for major new investments, including ones that do not impact on revenue collection, is important.

With best regards,

Robert Sears

cc: Cong. Lapus



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)

June 2, 2006

Hon. Franklin Drilon
Senate President
Senate of the Philippines
GSIS Financial Complex
Pasay City

Dear Senator Drilon,

We are pleased that the House of Representatives has approved House Bills 4900 and 5064, which seek to expressly provide tax perks to locators at Clark and other special economic zones, and to extend a tax amnesty to Clark locators potentially harmed by the July 2005 Supreme Court decision.

AmCham looks forward to the expeditious passage by the Senate of the Clark bills in order to support present and future investments and job creation at Clark and other economic zones. The Senate's and your immediate action on these bills would be appreciated by the Clark locators, their employees and families. It will also send a positive signal to all Filipino and foreign investors that Clark remains competitive.

Thanks and regards,

Robert M. Sears
Executive Director

cc: Sen. Ralph Recto
Sen. Richard Gordon

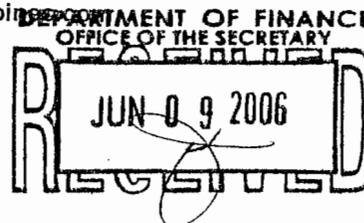


First American Chamber
of Commerce Abroad

June 9, 2006

THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

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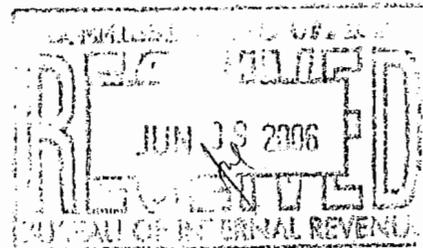


DEPARTMENT OF FINANCE

Manila

Attention: Secretary Gary B. Teves
Department of Finance

Commissioner Jose Mario C. Buñag
Bureau of Internal Revenue



RE: Application of the 70% input cap under RA 9337

Dear Sirs:

We would like to appeal for the immediate adoption of one or all of the following remedial measures to mitigate the effect of the 70% cap on the application of the input tax on the output tax under RA 9337 (the "Expanded Value-Added Tax Law" or EVAT Law), as follows:

1. Excess input VAT for purposes of imposition of 70% input cap to be defined as the "difference between output tax for the quarter and input tax relating to services paid and goods sold for the quarter"; or
2. The accumulated input taxes as of October 31, 2005, should not affect or be affected by the 70% input cap, and should not be considered in determining the application of the cap;
3. Annualized reconciliation of VAT; or
4. Buyback of unsold goods previously returned.

BACKGROUND: THE 70% CAP IMPEDES THE EFFICIENT USE OF CAPITAL.

While the E-VAT law has been effective for only seven months, we in the business sector already feel the destructive impact of the 70% cap. For big businesses, the application of the 70% VAT produced a tremendous drag on productivity. For a few, this meant scuttling

expansion plans, but for most, the cap resulted in a contraction of business activity and to losses. The effect of the 70% cap on small and medium scale businesses is even worse, since these enterprises do not have the wherewithal to adapt to its deleterious effects and it threatens to ultimately put them out of business.¹

There is already a sharp decline in sales reported by many retailers in the country and their suppliers/manufacturers are forced to give much higher support – support which are, at best, are temporary in scope and effect. We are already observing a trend of decline in sales every last month of the quarter. We believe wholesalers, distributors and retailers are holding back their purchases even if market or consumer demand is high due to fear of being hit by the 70% cap.

Furthermore, the 70% cap dampens entrepreneurial spirit and creates inefficiencies in the economy as it encourages businesses to attend to unnecessary activities like managing inventory and postponing improvements, repairs and capital investment. This translates to additional costs which the enterprises will eventually pass on to consumers. Understandably, those with thin margins are the ones most affected by the imposition of the cap. Since these entities are usually engaged in manufacture of basic necessities, then the increases in costs are immediately felt by the people.

The cap is also disruptive to the supply chain of manufacturers as the efforts to minimize the impact of the cap results, first, in sudden dips in demand at quarter end and then in surges in demand the following month as businesses/ retailers manage their inventory.

The 70% input cap is actually slowing down demand via higher prices, curtailing growth and expansion of the business and the economy. Thus, in the long run, the intended benefits of the 70% cap will not be attained.

We think that the increase in VAT collection reported in the first quarter of 2006 is momentary and we expect a decline in the VAT collection in the second and subsequent quarters. Our analysis shows that the increase in the VAT collection is not brought about by the 70% cap. Removing the cap or adopting the remedial measures as suggested below will have no negative effect on VAT collections. In fact, VAT collection will increase due to market forces and the renewed faith in the economy.

¹ This is borne out by experience but for some theoretical analysis why the VAT is especially burdensome to small and medium sized businesses even without the 70% cap, see generally, William J. Turner, Accommodating to the Small Business Problem Under the VAT, 47 Tax Law. 963 (1994.)

In this regard, we request for your immediate consideration of the following. You will note that these proposals allow us to free up capital that would otherwise have been tied up in input tax credits that accumulate every quarter. By adopting any of these proposals, government will be responsible for injecting more capital in the market and stimulating more economic activity.

EXCESS INPUT VAT FOR PURPOSES OF IMPOSITION OF 70% INPUT CAP TO BE DEFINED AS THE
"DIFFERENCE BETWEEN OUTPUT TAX FOR THE QUARTER AND INPUT TAX RELATING TO SERVICES PAID AND GOODS SOLD FOR THE QUARTER".

I. Summary of Argument

We believe that the words of RA 9337 should be followed strictly to the letter. Thus, under our reading of Section 8 of RA 9337, excess input VAT for purposes of imposition of 70% input cap should be defined as the "difference between output tax for the quarter and input tax relating to services paid and goods sold for the quarter".

II. Proposal

The BIR and the DOF have acknowledged through RR No. 16-2005 that the 70% input cap applies only when the input tax exceeds the output tax. Thus, Revenue Regulations 16-2005 provides:

"SECTION 4.110-7. *VAT Payable (Excess Output) or Excess Input Tax.* –

(a) *If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered persons.*

* * *

(b) *If the input tax inclusive of input tax carried over from the previous quarter exceeds the output tax, the input tax inclusive of input tax carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output tax...*"

The imposition of the cap only when the input tax exceeds the output tax under the above Section 4.110-7(b) is based on a close and faithful reading of the text of Section 110 of the Tax Code as amended by Section 8 of Republic Act No. 9337:

"Sec. 8. Section 110 of the same Code, as amended is hereby further amended to read as follows:

* * *

(B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112." (Emphasis ours)

However, in determining when the 70% cap becomes operative (i.e. determining if the input tax exceeds output tax), Revenue Regulations 16-2005 compares the "input tax inclusive of input tax carried over from the previous quarter" with the output tax. We believe that words of Section 8 of RA 9337 necessitate a different basis for comparison. We submit that in determining when the 70% cap becomes operative, only the input tax directly attributable to the services paid and goods sold for the quarter must be compared with the output tax of that same quarter.

This is based on a well-established rule that "where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to that its mandate is obeyed." ² If it were otherwise, then the Legislature would have expressly included the phrase "inclusive of input VAT carried over from the previous quarter" in the following provision: "If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters..."

Based on the foregoing we suggest that Section 4.110-7 of 16-2005 interprets the current Section 110 of the Tax Code in the following or similar tenor:

SECTION 4.110-7. *VAT Payable (Excess Output) or Excess Input Tax.* –

(a) *If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered persons.*

² Luzon Surety Co., Inc. v. De Garcia, 30 SCRA 111 (1969); Quijano v. Development Bank of the Phil., G.R. No. 26419, Oct. 19, 1970, 35 SCRA 270 (1970); Chartered Bank Employees Ass'n. v. Ople, 138 SCRA 273 (1985).

(b) *If the input tax for the quarter exceeds the output tax for the quarter, the input tax inclusive of input tax carried over from the previous quarter that may be credited in the current quarter shall not exceed seventy percent (70%) of the output tax..."*

Below is a sample computation which may be adopted:

Sample computation:

A. Output exceeds Input

Output	100	
Input for the quarter	(50)	
Carried over from previous quarter		<u>(55)</u>
Total excess input	(105)	

*Output exceeds input for the quarter, thus:

<i>VAT payable due to 70% cap</i>	0
<i>To be carried forward to next quarter</i>	(5)

B. Input exceeds Output (70% input cap applies)

Output	100	
Input	(150)	
Carried over from previous quarter		<u>(25)</u>
Total excess input	(175)	

* Input for the quarter exceeds Output, thus:

<i>VAT payable due to 70% cap</i>	30
<i>To be carried forward to next quarter</i>	(105)

Therefore, it is recommended that the provisions of the regulations on 70% cap on input tax credit should be clarified accordingly.

TREATMENT OF THE OCTOBER 31, 2005 INPUT VAT

I. Summary of Arguments

Under Article 4 of the Civil Code, Section 246 of the Tax Code and prevailing jurisprudence, there is no doubt that the Philippine legal system does not favor the retroactivity of laws and regulations. We note that Revenue Memorandum Circular No. ("RMC") 6-2006 acknowledged this and recognized, in principle, that the seventy percent (70%) cap in input tax crediting under Republic Act ("RA") No. 9337 should not be interpreted as having retroactive application. However the manner that the Bureau of Internal Revenue ("BIR") prescribes such principle to be implemented results in unwarranted and unintended consequences such that input taxes relating to the period not covered by the law (i.e. pre-November 2005) were used to cause a chain of events that prejudiced the taxpayers' use of the input taxes incurred during the periods covered by the law. Such effect violates the rationale of the prevailing legal policy against the retroactivity of laws. We therefore appeal to the Department of Finance ("DOF") and the BIR to allow the full crediting of input taxes accumulated as of October 31, 2005 against the thirty percent (30%) of the output taxes restricted from input tax crediting under the current rules.

II. Non-retroactivity of Tax Laws, Rules and Regulations

Article 4 of the Civil Code commands in no uncertain terms that "(l)aws shall have no retroactive effect, unless the contrary is provided." (emphasis supplied) The purpose of this provision, a legislative codification of an established rule in statutory construction, has been explained by the Supreme Court in a number of cases.³ In *Lopez and Lopez v. Crow*, 40 Phil. 997 (1919), for example, the Court stated:

"Article 3 of the old Civil Code (now Article 4 of the New Civil Code) provides that: "Laws shall not have a retroactive effect unless therein otherwise provided." According to this provision of law, in order that a law may have retroactive effect it is necessary that an express provision to this effect be made in the law, otherwise nothing should be understood which is not embodied in the law. Furthermore, it must be borne in mind that a law is a rule established to guide our actions with no binding effect until it is enacted, wherefore, it has no application to past times but only to future time, and that is why it is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions." (emphasis supplied)

³ In *Ansajas v. Jakosalem*, G.R. No. L-7832 January 29, 1913, the Supreme Court stressed that where a statute is susceptible of construction as both prospective and retrospective, the former construction will be adopted, but especially if the retrospective operation will work injustice to anyone (citing *Berdan v. Van Riper* (16 N.J.L., 7)).

Note that the retroactive effects of a law are not just confined to changing the legal nature of implications of previous actions. When a new law reaches into the period before its enactment and utilizes previous conduct or activity, which was differently regulated, so as to affect present conduct or activity, the new law can be said to have retroactive effects. As Tolentino explains, a retroactive law "changes or injuriously affects a present right by going behind it and giving efficacy to anterior circumstances to defeat it, which effect they did not have when the right accrued. It creates a new obligation and imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past."⁴

The above provision applies with no less force on tax statutes. In *Commissioner v. Marubeni*⁵ the Supreme Court stated that "where a statute amending a tax law is silent as to whether it operates retroactively, the amendment will not be given a retroactive effect so as to subject to tax past transactions not subject to tax under the original act. In an amendatory act, every case of doubt must be resolved against its retroactive effect." Indeed, the rationale enunciated in *Lopez and Lopez v. Crow* and the explanation given by Tolentino are especially applicable in the construction of tax laws.

Certainly, applying a law, which on its face only has prospective effect; in such a way that past conduct creates present or future economic costs gives the law retroactive effect.⁶ Businesses need to be reasonably able to predict the impact of their actions on their tax liabilities. Taxes constitute a large part of the friction costs of engaging in commercial transactions, thus taxpayers must be able to rely on the stability of tax laws and regulations in planning and undertaking their activities. The Supreme Court has therefore refused to apply tax laws retroactively in the absence of clear and convincing statutory language commanding such.⁷

It must also be noted that the legislature has recognized the importance of stability in the construction of tax laws in Section 246 of the Tax Code which generally prohibits the retroactive application of the revocation, modification and reversal of any rulings or circulars promulgated by the Commissioner of the BIR if such will be prejudicial to the taxpayers.

⁴ ARTURO TOLENTINO, *THE PHILIPPINE CIVIL CODE I*, 22 (1990) citing 50 Am. Jur. 492-493.

⁵ G.R. No. 137377. December 18, 2001.

⁶ For example of retroactive statutes that impose present burdens based on previous conduct, *see Pension Benefit Guaranty Corporation v. R.A. Gray & Co.*, 467 U.S. 717, 730, 104 S.Ct. 2709, 2718, 81 L.Ed.2d 601 (1984) (in which the US Supreme Court held that a law protecting employee pension funds may have limited retroactive application in consonance with legislative intention to protect the employees); *General Motors v. Romein* 503 U.S. 181, 112 S.Ct. 1105, 60 USLW 4203, 117 L.Ed.2d 328 (1992) (where the US Supreme Court held that it was proper for the legislature to mandate the coordination of workers benefits prior to the enactment of the law).

⁷ *PICOP v. Court of Appeals*, G.R. Nos. 106949-50, December 1, 1995; *Abello v. Court of Appeals*, G.R. No. 120721, February 23, 2005; *Umali v. Estanislao*, G.R. No. 104037, May 29, 1992.

III. RMC 6-2006

RA 9337 contains no language mandating retroactive application. Revenue Regulations ("RR") No. 16-2005 meanwhile expressly states that its provisions will take effect November 1, 2005.⁸ In support of the foregoing, the BIR through Revenue Memorandum Circular No. (RMC) 6-2006 sought to clarify the effect of the seventy percent (70%) cap under Section 4.110-7 of the aforementioned revenue regulations on the input taxes accumulated as of October 31, 2005.

In the A-1 of the RMC, the BIR enunciated the following general principle:

"Input tax accumulated as of October 31, 2005 shall not be subject to the seventy percent (70%) cap and shall be deductible in full from output tax until it is fully utilized. In determining whether the input tax for a quarter exceeds the output tax subject to the 70% cap, the accumulated input tax as of October 31, 2005 shall be excluded from the computation and shall be deductible in full from the output VAT." (emphasis ours)

This statement is followed by a number of hypothetical circumstances that illustrate the application of the above general principle.

One sample computation ("Computation A-2"), which we strongly believe should be reexamined, provides:

"ABC corporation has the following sales/ purchases for the quarter ending December 2005:

October		November and December 2005	
Sales	5,000	Sales	10,000
Purchases	4,000	Purchases	8,000

And carried over input tax from previous quarter of P 600.

How will the Value Added Tax for the quarter ending December 2005 be computed?

A-2 the Value Added Tax for the quarter ending December 2005 will be computed as follows:

⁸ RA 9337 states that it shall be effective July 1, 2005, but the implementation was delayed by the issuance by the Supreme Court of a Temporary Restraining Order.

October 2005

Output tax		P 500
Less: Carry over Input tax	P600	
Input tax	400	<u>1,000</u>
VAT Payable/ (Carry over)		P (500)

November and December 2005

Output tax		P 1,000
Less: Carry over Input tax (from Oct. 05)		<u>500</u>
Net Output tax for Nov. & Dec 2005		500
Less: Input tax for Nov. & Dec.	P800	
Apply 70% cap	350	<u>350</u>
Net VAT payable		150

Excess input tax to be carried over to the next quarter = P450.

IV. Anomalous Retroactive Effect of RA 9337 under RMC 6-2006 And the Effects Test

As presented in Part I., Article 4 of the Civil Code prohibits giving any "retroactive effect" to laws. Section 246 of the Tax Code meanwhile restricts the power of the Commissioner of Internal Revenue from implementing changes in administrative rules retroactively if these changes prejudice taxpayers. What is necessary then in determining whether the above-quoted hypothetical conforms to the rules on non-retroactivity of laws and rules is an analysis of whether such application of RA 9337 and RR 16-2005 causes prejudicial economic effects that are in some way rooted in a period not covered by the change in rules. Stated differently, are RA 9337 and RR 16-2005 (the "New Rules") being applied in such a way that the input taxes subject to the old rules (pre-RA 9337) are isolated from the effects of the New Rules?

In previous Supreme Court cases which tackled the non-retroactivity of tax laws, the Court found it fairly easy and mechanical to isolate and identify transactions subject to a previous tax regime from those subject to new laws or regulations. Thus in PICOP v. Court of Appeals⁹ in which the Court examined whether or not the petitioner is liable under the transaction tax on interest earnings imposed by Presidential Decree ("PD") No. 1154, the

⁹ G.R. Nos. 106949-50, December 1, 1995.

Supreme Court held that PICOP cannot be held to be liable for the earnings that accrued before the effective date of PD 1154. In *Abello v. Court of Appeals*,¹⁰ the Supreme Court refused to give a law exempting political contributions from the gift tax retroactive effect in the absence of clear legislative intention. Thus political contributions given before the effectivity of the law were deemed taxable while those granted after were exempt.¹¹ In *Umali v. Estanislao*,¹² the Supreme Court did not agree that RA 7167 which increased the amounts of personal exemption under the Tax Code should be applied retroactively. Thus, taxpayers were only allowed to enjoy the higher levels of exemption during the periods after the effectivity of the law.

Applying RA 9337's input VAT cap may be more complicated. In the above cases, the income or transactions during the period before the passage of the new or amendatory law do not have any impact on future tax liabilities of the taxpayers. It was easy to isolate the transactions not subject to the new rules since these transactions could already be deemed closed and terminated during a specific tax period. This is not the case with the VAT. The difficulty in isolating the pre-RA 9337 input VAT from the effects of the New Rules proceeds from the peculiar nature of input taxes - if they exceed the corresponding output taxes in a given tax period, they are carried over to the subsequent tax period. In Computation A-2, we find that the input taxes as of October 31, 2005 which theoretically should be unaffected by the New Rules are credited against the output taxes of November-December 2005. Thus, the only way that the underlying principles of the non-retroactivity of laws can be adhered to is by isolating the pre-RA 9337 input VAT from affecting or being affected by the 70% cap.

The solution given by Computation A-2 of RMC 6-2006 involves 4 distinct steps. First, the RMC determines the amount of input taxes that may be carried over from the month of October ("Step 1"). This amount of carry-over input taxes is then applied to the output tax pertaining to the months of November and December ("Step 2"). What is left over from the November-December output tax is then subjected to the 70% cap ("Step 3"). Finally, the November-December input taxes are credited to the amount available under the cap. ("Step 4").

¹⁰ G.R. No. 120721, February 23, 2005.

¹¹ The Supreme Court stated:

"Finally, this Court takes note of the fact that subsequent to the donations involved in this case, Congress approved Republic Act No. 7166 on November 25, 1991, providing in Section 13 thereof that political/electoral contributions, duly reported to the Commission on Elections, are not subject to the payment of any gift tax. These all the more shows that the political contributions herein made are subject to the payment of gift taxes, since the same were made prior to the exempting legislation, and Republic Act No. 7166 provides no retroactive effect on this point."

¹² G.R. No. 104037, May 29, 1992.

On the surface, Steps 1 and Steps 2 seem to have isolated the October 31, 2005 input taxes from the effect of the New Rules. Indeed, by the end of Step 2, the October 31, 2005 input taxes appear to have been fully utilized. However, as illustrated in Computation A-2 Steps 3 and 4, using the October 31, 2005 input VAT to offset the November and December 2005 output VAT triggers the application of the 70% cap. The November and December 2005 input taxes would not have exceeded the corresponding output VAT had the October 31, 2005 input taxes not reduced the output VAT available for set-off against the November-December 2005 input taxes.

True, the unutilized input taxes are booked as pertaining not to the October 31, 2005 period, but to the November-December, 2005 periods. However, the economic effects – the inability of the taxpayers to avail of the full or higher crediting of their input taxes against their output taxes – were caused by the use of the October 31, 2005 input taxes to decrease the November-December, 2005 output taxes. Note that the November-December, 2005 input taxes not credited to the output tax would then be carried over to the following months and quarters and would again potentially trigger the application of the 70% cap in such following taxable periods. The inequity in these circumstances is clear – the taxpayers' input VAT incurred during periods when the 70% cap was not effective is being used to cause a chain of events resulting in the imposition of the 70% cap. RMC 6-2006, A-2 thereby reaches into a past, not covered by the law, to affect the taxpayers' future liability.

This violates the very principle that animates the legal systems' traditional policy against retroactive application of laws – past conduct not covered by the law is used as a basis to determine liabilities under the new law. Applied in the manner illustrated by RMC 6-2006 A-2, the New Rules do not operate in a purely prospective manner. In the absence of an express provision in RA 9337 mandating retroactive effect, we do not believe that Congress intended these consequences.¹³

V. Proposal

To mitigate the inequity resulting from the above application of the New Rules, we propose the adoption of the following computation:

¹³ See *Kress v. United States* 141 Ct.Cl. 675, 159 F.Supp. 338, 58-1 USTC P 9334, 1 A.F.T.R.2d 1017 (1958) in which the United States Court of Claims pronounced it inequitable for the government to deprive a taxpayer of deductions granted to him under then prevailing laws. Even while the court in this case recognized the retroactive effect of the statute concerned, it held that Congress did not intend that the retroactive application deprive the taxpayer of benefits accruing to him due to past conduct which met the requirements of the prevailing law.

"ABC corporation has the following sales/ purchases for the quarter ending December 2005:

2005	October		November and December
Sales	5,000		Sales 10,000
Purchases	4,000		Purchases 8,000

And carried over input tax from previous quarter of P 600.

How will the Value Added Tax for the quarter ending December 2005 be computed?

A-2 the Value Added Tax for the quarter ending December 2005 will be computed as follows:

October 2005

Output tax		P 500
Less: Carry over Input tax	P600	
Input tax	<u>400</u>	<u>1,000</u>
VAT Payable/ (Carry over)		P. (500)

November and December 2005

Output tax		P 1,000
Less: Input tax for Nov. & Dec.		<u>800</u>
Net		200
Less: Carry over input tax for Oct.		<u>500</u>
Net VAT payable		<u>0</u>

To be carried forward to the next quarter (300)

**While output tax exceeds input tax, we should be allowed to apply 200 of the carry over input tax for October to offset the net amount. Thus, there is 300 to be carried over to next quarter and no VAT payable for the quarter.*

Under this proposed computation:

First, the taxpayer determines the amount of input taxes that may be carried over from the month of October ("Step 1"). The taxpayer then applies the November-December, 2005 input taxes to the November-December, 2005 output tax. It is in this Step when the taxpayer determines if the 70% cap will apply to this period's VAT liability. ("Step 2") The amount of carry-over input taxes from October 2005 is then applied to whatever is left of the output tax pertaining to the months of November and December ("Step 3"). In the event that the October 2005 input taxes are not exhausted by the crediting against the remaining November-December 2005 output tax, such will be applied against the output VAT of the succeeding month through the same process outlined here.

Note that in this proposed computation, the effects of the 70% output VAT does not reach into pre-November 2005 period. The input VAT accrued as of October 31, 2005 is isolated from the effects of or from affecting the 70% cap imposed by the new rules. RA 9337 and RR 16-2005 thus operate in a purely prospective manner, and any prejudicial retroactive effects of the law and the revenue regulations are avoided.

ANNUALIZED RECONCILIATION OF VAT

I. Proposal

We use the Tax Credit method in determining the VAT -- the tax is paid in advance at every stage of the production before it ultimately reaches the final consumers.¹⁴ We can consider that the VAT paid on inputs is in the nature of an advance payment to the government, which can be offset against output tax only when the produce is sold or when the payment is received for the service rendered. However, with the imposition of 70% input cap, the law effectively punishes taxpayers who pay taxes in advance. There is undue burden to the taxpayer because of the additional VAT to be paid with the application of the 70% input cap and also because the excess input tax (tax already paid in advance) can only be used as credit against output tax in the next quarter.

Our proposal is to allow taxpayers file VAT quarterly based on provisional reconciliations but with a final reconciliation at year-end, which removes the grossly unfair impact of the 70% cap. Business enterprises can now focus on the operations of the business for the most part of the year and no longer in managing the level of their input taxes on a quarterly basis. This is consistent with the basic principle of "*administrative feasibility*" where the tax system

¹⁴ See Alan Schenk, *The Plethora of Consumption Tax Proposals: Putting the Value Added Tax, Flat Tax and Retail Sales Tax and USA Tax into Perspective*, 33 San Diego L. Rev. 1281, 1306-1308 (1996).

should be capable of being properly and efficiently administered by the government and enforced with the least inconvenience to the taxpayer¹⁵. This also increases efficiency in tax examinations where the practice is for BIR to audit a taxpayer on a yearly basis and not quarterly.

Return of Unused Goods and Supplies

I. Summary of Arguments

The imposition of the 70% cap requires businesses to closely monitor their inventory levels and their purchase of input in order to keep their input VAT as low as possible. One way to control inventory is to insist that supply contracts include a provision for the return of goods and supplies within a specified period with the option to buyback these returned items if such have not been physically returned to the supplier.

II. 70% Cap Requires Businesses to Keep Inventory of Goods and Supplies Low

The cap's most basic and most devastating effect is that it unduly restricts the use of capital. The Philippine VAT law, like the prevailing worldwide model, uses the tax credit method in imposing the tax.¹⁶ Businesses pay the tax in advance when we purchase our input. The immediate recovery of taxes paid in advance is essential in managing the cost of capital. Indeed, the automatic crediting of the input VAT to the output VAT has been identified as an important element in designing a VAT system.¹⁷ Because we were previously able to quickly reclaim these advanced tax payments as input credits, we were able to immediately recover the cost of the advanced payment of taxes when a customer pays for our goods or services.

Before the implementation of the cap, the automatic and full crediting of our input tax to our output VAT allowed us to free up cash that we rechannel to the business through additional purchases of goods and equipment. The implementation of the cap tied up our cash in the form of input VAT credits which we are unable to use productively. The input VAT credits arising from the 70% cap, while theoretically an asset, is in practice a cost and an impairment of the use of capital. In some cases, businesses project that they will never be able to use these input VAT credits which will continue to accumulate and starve the business of much-needed cash.¹⁸

¹⁵ Vitug, Jose C., Tax Law and Jurisprudence, 1993.

¹⁶ See Schenk, *supra* note 14.

¹⁷ David Williams, Value Added Tax, Part VII (G) in Victor Thuronyi (ed.) I. TAX LAW DESIGN AND DRAFTING, Chapter 6 (1996).

¹⁸ See Peter Wallace, *The Cap Doesn't Fit*, Manila Standard Today, May 5, 2006 and http://www.manilastandardtoday.com/?page=peterWallace_may05_2006.

Now, more than ever, it has become necessary for businesses to keep inventory of goods and supplies down to prevent the accumulation of input VAT.

III. Proposal

One way to control inventory is to insist that supply contracts include a provision for the return of goods and supplies within a specified period with the option to buy back these returned items if such have not been physically returned to the supplier. Under this scenario, unsold good or unused supplies for the quarter will be returned by the customer to the supplier.¹⁹ In the succeeding quarter, the customer has the option to buy back the previously returned goods and supplies if they are still in their premises.

From this contractual relationship, the buyer is able to keep input VAT levels low by adjusting the input VAT levels appropriately as provided under Section 4.110-5 of RR 16-2005.²⁰ The seller on the other hand will be able to adjust his output tax due to the sales returns.²¹ In the event that the buyer decides to purchase the same goods before the goods or suppliers are physically transferred to the control of the seller, such transaction will be considered as new sales.

We believe that this transaction is valid because the Civil Code recognizes that delivery can either be (1) actual or (2) constructive.²² When the customer returns the goods and before it is picked up or physically returned to the supplier, the customer's control over the goods is limited (i.e. to hold them until the supplier picks them up). The buyback vests full control and possession over the thing resold to the customer and such is acknowledged by the Civil Code itself as constituting delivery.²³

¹⁹ Civil Code, Art. 1502. "When goods are delivered to the buyer *"on sale or return"* to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer of delivery, but he may re-vest the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time."

²⁰ Sec. 4.110-5 provides:

"The amount of input taxes creditable during a month or quarter shall be determined in the manner illustrated above by adding all creditable input taxes arising from the transactions enumerated under the preceding subsections of Sec. 4.110 during the month or quarter plus any amount of input tax carried-over from the preceding month or quarter, reduced by the amount of claim for VAT refund or tax credit certificate (whether filed with the BIR, the Department of Finance, the Board of Investments or the BOC) and other adjustments, such as purchases returns or allowances, input tax attributable to exempt sales and input tax attributable to sales subject to final VAT withholding."

See also VICTOR A. DEOFERIO, VICTORINO C. MAMALATEO, *the Value Added Tax in the Philippines*, 250-252 (2000).

²¹ Revenue Regulations 16-2005, Sec. 4.106-9; DEOFERIO & MAMALATEO, *supra* note 20.

²² Civil Code, Art. 1477 states "The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof."

²³ Civil Code Art. 1497 states: "The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee."

We believe that businesses will be amenable to submitting documents that support the resort to this commercial relationship such as return and refund notices and acknowledgments, itemized lists of refunded goods and supplies and other documentation that the BIR will require.

In the light of all the foregoing, we hope that the DOF and the BIR realize the merits of these proposals. We respectfully request that all these proposals will be allowed and can be implemented immediately.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Cirilo P. Noel', with a long horizontal line extending to the right.

CIRILO P. NOEL
Chairman, Tax & Tariff Committee

THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)



Hon. Jesli A. Lapus
Secretary-designate
Department of Education
2/F Rizal Building I
DepEd Complex, Meralco Avenue
Pasig City

Dear Rep. Lapus:

The American Chamber of Commerce and our Promoting English Proficiency (PEP) project congratulate you on accepting the daunting twin challenge of running the largest department in Government and working to slow and hopefully reverse the deterioration of public education.

Many of our member companies have located in the Philippines because of the excellence and availability of the nation's human resources, from seasoned top corporate executives to recent graduates of colleges and high schools. As the Philippine economy becomes increasingly linked to the world economy, the need for the educational system to train Philippine youth in global skills becomes all the more imperative.

As you may know, AmCham has promulgated a "Roadmap to More Foreign Investment" and is presently carrying out an Investment Climate Improvement Project. Improved education and better English are reforms we advocate and specifically we would like to:

- triple per capita spending on education by 2010; improve education quality;
- achieve better quality spoken English among high school/college graduates;
- improve engineering, math and science skills among graduates; and
- recommend that CHED approve a call center curriculum for colleges and universities.

Our PEP project, which now has some 80 partners, seeks to advocate better English, promote certification using internationally-credible tests and carry out refresher training for teachers and the entering workforce. In this connection, we have worked with Acting Secretary Fe Hidalgo and with the PEP co-directors Perla Intia and Alice Pañares of the National English Proficiency Program.

A folder with information on PEP is enclosed; we would be pleased to brief you on the project when your schedule permits.

Again, we extend our best wishes and assurance that our member companies will always provide jobs for quality graduates of Philippine education.

Sincerely,

Robert M. Sears
Executive Director

John D. Forbes
Co-Chairman, PEP



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

www.amchamphilippines.com



First American Chamber
of Commerce Abroad

17 August 2006

Hon. Romulo L. Neri
Director-General
National Economic and Development Authority
5/F NEDA sa Pasig Bldg.
12 St. J. Escrivá Drive
Pasig City

Re: Increased Competition in Foreign Port Operations

Dear Secretary Neri:

The American Chamber of Commerce strongly supports Philippine Government policy to increase competition in key sectors of the economy. In the last decade:

- we welcomed President Ramos opening of the telecom sector;
- we supported the opening of the banking and insurance sectors, also under President Ramos;
- we supported the Retail Trade Act of 2000, under President Estrada;
- we favor an aggressive open skies policy;
- we support the Ro-Ro initiative, under President Gloria Macapagal-Arroyo;
- we believe WESM will reduce power prices.

In her 2006 State of the Nation Address (SONA), the President outlined five strategies for greater competitiveness. One addresses the need to “modernize infrastructure at least cost to efficiently transport goods and people.”

In line with this strategy, we support the issuance of a permit to allow full competition in foreign containerized port operations in the ports of Manila by Philippine Ports Authority (PPA) granting Harbour Centre Port Terminal, Inc. (HCPTI) the permit to handle foreign containerized cargo. (See Attachment A). We note that PPA has permitted all three ports of Manila to compete in the foreign non-containerized cargo business, while only two of the three ports of Manila are allowed to compete for foreign containerized cargo (in which most of the imports and exports of our member companies is carried). Additional competition by permitting all three ports will improve competition and should increase business cost efficiency, a major concern of the president as expressed in the SONA.

With best regards,


ROBERT M. SEARS
Executive Director

Attachment: as stated

Member: Chamber of Commerce of the United States (COCUSA) • Asia-Pacific Council of American Chambers (APCAC)
Corinthian Plaza, 2nd Floor, Paseo de Roxas, Makati City, Philippines • P.O. Box 2562 CPO, Makati 1229, Philippines

Telephone: (632) 818-7911 • Fax: (632) 811-3081 • E-mail: amchamrp@mozcom.com

Attachment A**State of Competition in Manila Ports**

Port	Foreign Containerized Cargo	Foreign Non-Containerized Cargo
Manila International Container Terminal	With PPA permit Currently operating	With PPA Permit Not operating
South Harbor	With PPA permit Currently operating	With PPA permit Currently operating
Harbour Centre	No PPA permit Equipment available Not operating	With PPA permit Currently operating



First American Chamber
of Commerce Abroad

~~SECRET~~
THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC

John
www.amchamphilippines.com

Sxi *[Signature]* 28 August 2006

Hon. Domingo Panganiban
Secretary
Department of Agriculture
Elliptical Road, Diliman
Quezon City

Dear Secretary Panganiban:

I am writing on behalf of the American Chamber of Commerce of the Philippines to bring to your attention an issue raised by a member of the Agribusiness Committee. The AmCham respectfully requests your department's assistance to develop a strong position on the issue and help work with the relevant government agencies to rectify the matter. The issue, as detailed in the attached Case Brief prepared by our member, involves rulings by the Department of Labor and Employment and the courts that effectively requires a company to consider as 'employees' those workers / landowners who are participating in a contract growing or growership agreement with said company. As such, the company becomes responsible for the obligations that accompany a typical 'employer-employee' relationship under our Philippine labor laws.

I am sure you will appreciate our concern and the potential implications of these rulings on existing and future investments in the agriculture sector that rely on contract growing arrangements. The efforts of your department in promoting contract growing to help farmers improve farming technology, product quality, access to financing or inputs, and access to markets may be severely undermined going forward. I believe there is a need to act quickly to correct the error and stem the potential misuse of the ruling.

We are one with you and support your efforts to accelerate the development of the agriculture sector. We see these rulings as a hindrance to these development objectives and we hope to receive your department's support and guidance to make things right. I look forward to receiving feedback from you or a member of your staff on this matter and then an opportunity to dialogue further to develop an action plan.

Thank you very much.

Sincerely yours,

[Signature]
ROBERT M. SEARS
Executive Director

[Signature]
PHILIP G. SOLIVEN
Chairman, Agribusiness Committee

CASE BRIEF
MD Agri-Ventures, Inc. versus Lilla Caga, et al.
G.R. No. 170845
Supreme Court, First Division

In a one-page resolution, the First Division of the Supreme Court upheld a decision of the Court of Appeals, which not only disregarded Philippine laws and past decisions of the Supreme Court but also defeats the government's policies in the area of agriculture and foreign investment.

In *MD AGRI-VENTURES, INC vs. LILIA CAGA and 243 OTHER COMPLAINANTS* (G.R. No. 170845), the Supreme Court summarily dismissed MDAVI's petition and affirmed an erroneous ruling of the Court of Appeals, which declared MDAVI as the employer of some 244 workers employed by landowners in Polomolok, South Cotabato who entered into growership agreements with MDAVI.

A vital part of the Marsman-Drysdale group of companies, which has been investing and doing business in the Philippines since 1920, MDAVI is engaged in the processing and exporting of local asparagus. Sometime in 1994, it entered into various growership agreements with persons who owned contiguous farm lots situated in Polomolok. Under the agreements, the various landowners agreed to grow, produce, harvest and deliver asparagus spears/shoots, which MDAVI agreed to purchase for processing and eventual exportation. The landowners either performed the work personally or employed their own workers at their own expense.

However, with the Supreme Court resolution upholding the Court of Appeals' ruling that the landowners' workers are the employees of MDAVI, the business feasibility of its growership arrangements, is seriously undermined. Saddled with a huge liability to persons who were erroneously declared to be its employees, MDAVI now faces imminent bankruptcy and closure.

The gross value of agricultural production in the Philippines for the first quarter of 2006 alone amounted to P230 billion of which the crops subsector accounted for P126 billion. The industry has major players such as Dole, Del Monte, Chiquita, Sumitomo and many others. Like MDAVI, many of these companies primarily rely on growership agreements which not only modernized and increased the efficiency of the agricultural sector but also helped the local community in terms of generating income for thousands of small farmers and landowners. With the decision of the Supreme Court, the floodgates will be opened for complaints from thousands of farmers claiming that they are employees of these investors. Major business players would be discouraged from expanding their investments. Worse, they might consider pulling out their operations and transfer to other countries that are friendlier to foreign investors.

The decision of the Supreme Court is also in complete dissonance with the agrarian reform program of the government where thousands of agrarian reform beneficiaries have formed cooperatives and entered into growership agreements with companies like MDAVI who have taken the role of providing support to the beneficiaries in the form of farm material inputs, technical advice, financing and a sure market for their produce – only to be put at risk of being declared as the employer of the workers, of the said beneficiaries.

At the end of the day, the government's efforts towards modernization of the agricultural sector and bringing in foreign investment will be rendered useless. Necessarily, the hundreds of thousands of families who rely on the agricultural sector for their livelihood will be left empty-handed. Even the national government will lose billions of dollars in export revenues, which it desperately needs during these times of economic uncertainty.

The Supreme Court should be made aware of these severe repercussions because it may have unwittingly upheld a wrong decision through a minute resolution and apparently without examining the arguments of MDAVI. Legally, MDAVI has a very strong case because the Secretary of Labor and Employment (who made a finding that the workers of the landowners are the employees of MDAVI, which the Court of Appeals affirmed) has no jurisdiction under the law to make such ruling. In fact, it goes against previous Supreme Court decisions on this issue. Furthermore, at the DOLE proceedings, MDAVI was never given the opportunity to present evidence that it is not the employer of the landowner's workers, thereby denying MDAVI its constitutional right to due process.

If given the opportunity to file another motion for reconsideration that the Supreme Court will carefully examine and assess on the basis of legal principles, MDAVI is confident the High Court will find that a grave injustice has been committed.

06-SEP-2006 21:53 FROM AMERICAN CHAMBER

TO

JOHN FORBES P.02/03



First American Chamber
of Commerce Abroad

THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

www.amchamphilippines.com

5 September 2006

Ms. Maria Salvacion Espina Varona
Editor-in-Chief
Philippine Graphic
2113 Chino Roces Avenue cor. Dela Rosa St.
Makati City

Dear Ms. Varona:

I would like to respond to certain points raised by Mr. Raul Valino in his article, "Providing employment for the foreigners," which appeared in the 21 August 2006 issue of your magazine.

Mr. Valino wrote that the problem with the Joint Foreign Chambers' call to allow foreign professionals to work in the country is the lack of reciprocity. I quote: "They want foreigners to be employed in these professions but their governments do not want Filipinos practicing in the same professions abroad."

I would like to point out that there are at least 8 million Filipinos working abroad, with 2.7 million of these in the United States alone. Certainly, among these millions are professionals in the field of engineering, accounting, teaching, medicine, interior design, architecture, marine, agriculture and fishery, social work, master plumbing, geology, criminology, forestry law, chemistry, customs brokerage, and environmental planning. Yet, these are fields in which foreigners are not allowed to work on the Philippines. Indeed, there is lack of reciprocity, but it is not in the part of our government.

Mr. Valino makes specific mention of the medical field, stating that the foreign chambers do not want Filipinos to practice medicine outside the Philippines. This is the reason why, he wrote, there are many Filipino doctors who end up as nurses in the US and elsewhere. He also wrote that Filipino doctors must first re-study in America and take federal examinations before they can practice. Yes, we agree that Filipino doctors have to take federal examinations to obtain a US license, but they are not banned from working in the US in the same way American doctors are banned from working in the Philippines. Again, the lack of reciprocity is not from our government's side.

I want to clarify that we are not calling for a removal of all restrictions. We are not saying that there should be no accompanying tariffs or provisions that will protect Filipino professionals. It is certainly not our desire to take away jobs from Filipinos. While it may seem funny to Mr. Valino, it is true that the development of the Philippines is the goal of all these. Filipino professionals are employed by hundreds of American and other foreign companies and their "death" – as Mr. Valino insinuates to be the goal of the foreign chambers – will benefit no one, least of all us.

In the same way that the Philippines' telecommunications sector experienced rapid growth after being liberalized, we believe the Philippine economy will also benefit from liberalizing restrictions on foreign professionals. Many countries in the Southeast Asian region have already benefited from opening their doors and are now enjoying rates of growth not seen in the Philippines, and we believe Filipinos will also benefit from the knowledge and technology that foreign professionals can bring into the country.

With best regards,

ROBERT M. SEARS
Executive Director

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Providing employment for the foreigners

Fastlane



The name of the game is reciprocity but it seems what the chambers want is a one-sided love affair

The call of the Joint Foreign Chambers of Commerce in the Philippines to allow foreigners to work in the country in areas reserved for Filipinos is nothing new.

It's an obsession first announced by the World Trade Organization (WTO) in the name of globalization. According to the WTO, all tariff barriers and other obstacles must be removed to attain free trade if poor countries intend to progress.

I do not believe the WTO and the foreign chambers. What the WTO and the foreign chambers want are to provide employment to their unemployed citizens and provide markets to their products.

There are 22 types of professions that are on the country's negative list, meaning foreigners are not supposed to seek employment in these areas.

The 22 no-no types are: engineering, accounting, teaching, medicine, interior design, architecture, marine officers, agriculture and fisheries, social worker, master plumbing, geology, criminology, forestry law, chemistry, customs brokerage and environmental planning.

No reciprocity

Trouble is, there is no reciprocity being offered by the foreign chambers and the WTO. They want foreigners to be employed in these professions but their governments do not want Filipinos practicing in the same professions abroad.

In particular, the foreign chambers want the country to open up medicine to foreigners but, at the same time, they do not want Filipinos to practice medicine outside the Philippines.

This is the reason why there are many Filipino doctors who end up as nurses in the US and elsewhere. Filipino doctors must first re-study in America and take federal examinations before they can practice.

The joint chambers recently wrote to Romulo Neri, the socio-economic planning secretary, that the country lacks any significant action to liberalize the services sector.

First World should also liberalize

But what about the US, Canada, Japan, the UK and the rest of Europe, Australia and New Zealand? The foreign chambers should also ask their respective countries to similarly liberalize these professions.

But the foreign chambers—could it be the death chambers that would kill Filipino professionals?—were adamant. "We recognize there are proposals being considered to remove from the Constitution restrictions on foreign equity investment in education, land, media, natural resources and utilities and in the future to set policy regarding such investments through legislation," the chambers insisted.

See what the proposed constitutional change could bring about? The foreigners want an open door policy without opening their own doors to the natives of the Philippines.

One-sided love affair

"There should be no fear that floodgates would be open," the chambers stated. "In today's world where Filipino professionals work in almost every country in the world, is it still a desirable policy to reserve engineering, interior design and teaching—among others—to Filipino citizens?" the chambers asked.

Well, Neri has not yet replied as of now to the appeal of the chambers. But Neri can also ask the same question to the foreigners. "Is it still desirable for America, Britain, Japan, Canada, etc. to ban Filipino doctors, engineers and lawyers from practicing their professions?"

The name of the game is reciprocity but it seems what the chambers want is a one-sided love affair. Anyway, the chambers justified, there is only a small number of foreigners who want to engage in these professions. If that is the case, why bother, the chambers should be told.

The foreign chambers also claimed that the government's campaign to develop the country as the hub for retirees would get a boost if it would allow foreign doctors to practice not only western but also non-traditional medicine in the Philippines.

If our *herbolarios* and witchdoctors do not watch out, their own profession may soon be declared "globalized" by the foreign chambers and the WTO.

And to keep matters funnier, the foreign chambers are even suggesting that the proposed law be declared urgent with the title: "The Foreign Professional Partners in National Development Act."



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)

September 6, 2006

Hon. Peter Favila
Secretary
Department of Trade and Industry
4/F BOI Building
385 Sen. Gil J. Puyat Avenue
Makati City

Dear Mr. Secretary:

Per your request, we are pleased to forward to you in your capacity as Chairman of the Anti-Red Tape Task Force established by E.O. 557 the results of a survey on worst red tape conducted among member companies of the American Chamber of Commerce of the Philippines. Forty companies took the time to provide detailed answers to our survey questionnaire, a copy of which is enclosed.

Among the responses, the three most burdensome bureaucratic paperwork procedures are (1) claiming of VAT refunds, (2) issuance of tax credit certificates (TCC) and (3) processing of work permits and visas.

The survey results reveal that respondents are heavily burdened by the great amount of time needed to prepare VAT refund claims and considerable “cost-of-money” especially when claimants often wait years to receive refunds. Compliance costs run to millions of pesos. The processing of requests for tax credit certificates also takes many months and involves unnecessary “cost-of-money” expense.* Both procedures are handled by the Bureau of Internal Revenue.

Respondents also cited as burdensome the process at the Bureau of Immigration for obtaining work permits for foreign national employees which require several days to apply and several months of waiting for release of permits. Several days are needed to process each permit by going from one office building to another, instead of accomplishing all requirements at one venue. The cost of the work permits and visa extensions and the cost of time involved for processing are considered to be high by respondents.

* The AmCham Roadmap II More Foreign Investment states on page 44: One consequence of the government’s poor revenue situation is that it has fallen in arrears in paying about \$500 million owed to American, Japanese, and other investors, much of which consists of VAT paid on imported equipment, largely in the power sector, for which there is no output VAT credit. A course of action for recouping this VAT is frustratingly unclear and burdensome, often leaving foreign investors working on a time-consuming and expensive legal and bureaucratic process, with little result but severely impacting on the return of their investments.

At the Bureau of Customs, many different procedures were cited as involving excessive red tape and delays. No single procedure stood out as most burdensome. However, the survey results clearly show that improvement in the efficiency of Customs would be greatly welcomed by our members.

Six respondents cited procedures at the Social Security System as creating burdens. We commend the initiative shown by Mr. Mario R. Sibucan, the SSS VP for Member Assistance Center Program Management, who contacted AmCham to enquire which procedures created problems. AmCham has written separately to SSS President and CEO Corazon de la Paz to forward to SSS the survey results (see attached).

It is also noteworthy to mention the unreasonable amount of time it takes to process a new application for or renewal of a business permit at some local government units. A number of our respondents identified this red tape as burdensome, particularly because they noted that the same procedure takes less than a day in the country's most competitive LGUs.

Aggressive action by the Anti-Red Tape Task Force will indeed reduce red tape and business costs, thereby improving national competitiveness. We will be very interested in the extent to which the government agencies concerned will cooperate to eliminate and make much more efficient and less costly the red tape issues identified in our survey.

Yours is a difficult task, and we assure you of the full cooperation of AmCham. We wish you well; success will surely raise the nation's rankings in international competitiveness surveys.

Sincerely,

Robert M. Sears
Executive Director

Attachment: AmCham Worst Red Tape Survey Results
AmCham Worst Red Tape Survey Questionnaire
AmCham letter to SSS President Corazon dela Paz

CC: Asian Development Bank
Bureau of Customs
Bureau of Immigration
Bureau of Internal Revenue
International Finance Corporation
Joint Foreign Chambers
Philippine Chamber of Commerce and Industry
The World Bank

AMCHAM WORST RED TAPE SURVEY

RESULTS



BUREAU OF INTERNAL REVENUE

Company	Procedure Description	Compliance Time	Compliance Cost
1.	VAT processing	1 fulltime employee	P1 million annually
2.	Audits	5 weeks per year + legal / accounting firm representation	US\$75,000 to \$100,000 annually
3.	conversion of business (from refinery to terminal)	on-going since 2003; 30 days	premium for bond (P250,000/annually); Allowance for BIR personnel (no more than P10,000 monthly)
4.	Claim for tax refund	months or more	no available data; the cost pertains mainly to employee's time in doing various audit requirements of BIR and follow-up cost of money had amount been invested or kept in bank
5.	Claim for Tax Credit Certificate (TCC) utilized input tax attributed to zero-rated sales	2 months for a quarterly claim to comply with BIR requirements	each instance: P400,000 for independent accountants annual: P1,600,000
6.	Claim for refund of excess creditable withholding tax	3 months to comply with BIR requirements	approx P100,000 for tax consultant
7.	Claim for VAT Refund	several months	At least P3.5M (excluding legal and consultant tax fees)
8.	Claim for VAT Refund	3 months to 1 year	each instance: P15M
9.	Tax Audits/Assessments	3 months to 1 year	each instance: P15M
10.	Request for BIR rulings	3 months to 1 year	each instance: P15M
11.	Unreasonable tax assessments	costs our business large sums of money for consultant fees to go back and research items that have no foundation; we feel like the BIR is fishing and hoping companies will find it easier to	

		pay than go through the research	
12.	Claim for tax refunds	1 year at least for paperwork processing	
13.	Preparing & filing of tax forms (VAT, w/tax, etc.)	24 hours per month	P86,400 per month
14.	Registration of already approved/registered accounting software every time there is an updated version	50-60 hours	P15,000 annually
15.	Processing of Certificates Authorizing (CAR) for transfer of ownership	at least 5 working days	
16.	Claim for tax refund on overpayments of tax liabilities	eight years	P639,744 since 1994/1995@10% yearly
17.	Obtaining rulings when availing of tax treaty	7 working days (excluding time lag between filing and receipt of required documents accompanying the application)	each instance: P10,000
18.	Obtaining clearances on BIR audit	10 working days over 6 months	each instance: P15,000
19.	Obtaining TINs for new employees	1 working day	each instance: P500 annual: P6,000
20.	Annual Tax Audit	160 days per year	P448,000 per year

BUREAU OF CUSTOMS

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Customs release	3 to 5 days	depends on import value
2.	Shipment clearance & donation outside E-zone	1 or 2 days	each instance: depends how much total cost of shipment
3.	Certificate of Origin Issuance (Exports)	The process should only take one day to complete, but it will be delayed by several days or even weeks if unofficial “processing fees” are not paid. There are 3 people required to sign in the process and “processing fees”	Unofficial “processing fees” could run anywhere from P1,000 – 5,000 per transaction to ensure timely release. The consequence of being ‘above board’ and accepting the potential delay could run to thousands of US\$ due to delayed payments or discharge of goods at the destination port
4.	Application for a Customs Bonded Warehouse	90 days	
5.	Tariff Classification		P81,110
6.	Cancellation of cash bond for returnable cylinders		P500,000
7.	Present De Minimis Level		annual: Low value shipments (from 0-US\$100) carried by air express companies is around 0.1% of BOC revenue. It can be said that the 0.1% is the estimated cost to comply, assuming that the De Minimis Threshold is raised to US100 as presently proposed in Congress
8.	Warehousing Procedures	days: minimum of 45 days	each instance: Difficult to estimate since we have to take into account loss of export opportunities, delays in delivery and processing

			of raw materials as well as in meeting export deadlines
9.	Valuation Procedures	at least 2 days	annual: Hard to quantify but cost involved is very significant and impacts business profitability since main problem lies on BOC unwarranted procedures in verification of values vis-à-vis WTO mandate
10.	Payment of taxes and duties where the export and import value is being disputed by Customs even if these values are supported by documents from previous exportation/importation	the maximum delay takes about a week	no available data; cost pertains mainly to employee's time in doing follow-ups, demurrage and storage charges, loss of business opportunities and delayed production activities
11.	Spot Checking of Cargo Before Releasing under CMO 15-2006 (Mandatory Submission of Written Clearance from Resident Collector of Customs)	1 - 3 hrs	Each instance: Php250 to 500 / clearance Annually: Min - P1,478,250 / Max- P2,956,500
12.	Payment of BOC Overtime for delivery of shipments to the company before 8 am and after 5pm daily		Each instance: P620 (Weekdays), P820 (Weekends) Annually: Min - P327,360
13.	Renewal of Customs Intelligence and Investigation Service (CIIS) permit		
14.	(1) claim for TCC and (2) application of TCC granted for payment of duties and taxes	3 months for claims for TCC; 2.5 months for application of TCC for payments of duties and taxes	Php2,000 per TCC plus P10,000 for lifting of abandonment
15.	new regulations for Customs	potential risks of segregating logistics servicing from customs brokerage is when your service-provider wants to give you total package	

		and achieve cost-efficiency, now you may have to deal with 2 suppliers	
16.	Importation of hospital and lab equipment	3 days from receipt of import documents	Depends on value of cargo
17.	Request for registration of importer prior to importation	2 weeks	P1,000 for processing fee
18.	Tax Credit Certificate	Minimum of 4 weeks	
19.	Import-export processing	hours: 36 hrs days: 1.5 days	each instance: Php 2,000+ annual: Php 70,000+
20.	New Brokers Act	4-5 per month	annual: P 1,000,000 (projected cost impact of additional man-hours and increased inventory)
21.	Annual Customs Intelligence and Investigation Service (CIIS) permit renewal	15 days	

BUREAU OF IMMIGRATION

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Entering and exiting country	1 hour	P2,000 each instance; P15,000-P20,0000 annually
2.	Work visa	At least 60 days	P8,000
3.	Visas for expat staff		P3,600 each instance; P65,000 annually
4.	Work Permit and Visa Processing	Man days spent in the BID office per work permit/visa: 2-3 days Waiting time for release of permits/visas: 3-4 months	each instance: P17,000 per quarter per visa (excluding visa extension fees which costs about P12,000) annual: P68,000 per annum per visa (excluding extension fees which can come up to P48,000 p.a. per visa)

LOCAL GOVERNMENT UNITS

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Securing of building permits / barangay endorsements	90 to 120 days	P100,000.00 each instance
2.	Renewal of business permits	5 to 7 days	
3.	Application for Business Permit	about 10 days	P500,000 annually
4.	Renewal of business permit	7 days	annually: ranges from P35,000 to P200,000 per company depending on gross sales
5.	Renewal of business permit	1 month or more	P10,000 or more
6.	Securing of transfer certificate of title of land and tax declarations	3 to 6 months	\$50,000
7.	Pay a traffic violation	12 hours	P2100
8.	Processing of tax declaration	at least 30 workings days	
9.	Payment of municipal sales tax and real estate tax	3 days per year	
10.	Renewal of business permit	5 months	
11.	Business permit from QC Fire and Safety Department	30 to 60 days	

SOCIAL SECURITY SYSTEM

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Manual posting of SSS contributions	about 1 to 2 months	
2.	Processing employees' benefits like maternity, sickness, etc.	ranges from 14 to 60 hrs	P1,800 to P7,800 each instance
3.	Getting new ID	can be forever since you need to be personally present	
4.	Securing SSS ID	depending on length of queue	lost man-hours for working individuals
5.	Submission of SSS Report	2 hours to 1 day	cost of man-hours and gasoline
6.	SSS ID Processing	16 hours to 2 days	P272.00 each instance

DEPT OF EDUCATION

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Signing of MOA for joint projects	3 months	Minimal fees

DEPT OF ENVIRONMENT AND NATURAL RESOURCES

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Self-Monitoring Report	2 days	P6,000 each instance P24,000 annually
2.	Environmental Performance Report and Management Plan	5 days	P15,000 each instance
3.	Approval of Exploration Permit Applications (EPA) (filed post Aug. 26, 2005) requiring clearance from DENR Secretary prior to the approval by MGB Regional Director pursuant to DENR MO 2005-020	30-180 days	
4.	Processing and Evaluation of Mining Rights Applications by MGB Regional Office and MGB Central Office which more often requires double compliance by the applicant over one document (ie. EWP & EXWP, Area Computation) depending on the standards and knowledge set by evaluators from different offices.	One month	each instance: Php20,000, depending on location of Regional Office
5.	Approval of Environmental Compliance Certificate and Permit to Transport		

DEPT OF FINANCE

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Clearance for customs purposes on tax exempt imported items to be donated to public hospitals	55 days	P229,000/40' container each instance
2.	Request for duty and tax exempt	3 days	P3,000 to P3,500 each instance

DEPT OF HEALTH

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Accreditation as a tertiary care facility is dependent on becoming a teaching hospital. We are classified as a secondary facility		

DTI-BUREAU OF PRODUCT STANDARDS

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Issuance of Import Commodity Clearance (ICC)	6 months	each instance: P1,000 annual: P100,000

BUREAU OF FOOD AND DRUGS

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Application for certificate of product registration	5 days	P10,000 per product each instance
2.	Application for certificate of product registration	90 to 120 working days	P25,000 per product registered
3.	Application for certificate of	4 weeks	Millions: opportunity cost for not

	product registration		being able to launch new products on time
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PHILIPPINE NATIONAL POLICE

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Filing of police reports		
2.	Import Permits for Chemicals. Each shipment requires approval for standard front-end semiconductor chemicals	1,300 / year	\$30,000 / year not including cost of delays

TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Getting a license to operate small non-degree training school		
2.	Submission of Report – Apprenticeship Program	2 hours to 1 day	Cost of man-hour, gasoline

PHILHEALTH

Company	Procedure Description	Compliance Time	Compliance Cost
1.	accreditation contingent on being in business for 3 years; as a result HMO's and insurance companies would not accredit us		
2.	Reimbursements/benefits redemption	3 months	

LAGUNA LAKE DEVELOPMENT AUTHORITY

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Application of LLDA Clearance		P360/million of capital

PHILIPPINE ECONOMIC ZONE AUTHORITY

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Issuance of certificate of annual inspection, electrical and mechanical		

LAND TRANSPORTATION OFFICE

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Licensing, vehicle registration and renewal	112hrs / 14 days	each instance: P500 and P5,000

OPTICAL MEDIA BOARD

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Licensing, import and export permit	16 hours / 2 days	each instance: P4,000 and P500 annual: P11,000

NATIONAL TELECOMMUNICATIONS COMMISSION

Company	Procedure Description	Compliance Time	Compliance Cost
1.	obtaining a radio license operator for our emergency nurse call system	Too many hours	

NATIONAL DISASTER COORDINATING COUNCIL

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Acceptance of donation of 3500 houses	No action since December 2004	

PASIG RIVER REHABILITATION COMMISSION

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Payments to contract	21 months	

RP CONSULATE IN DUBAI

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Visa application to visit RP	13 days	

BOARD OF INVESTMENTS

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Incorporating a company	At least 14 days	At least P100,000

HOUSING AND LAND USE REGULATORY BOARD

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Processing of license to sell	6 days or more	

ENERGY REGULATORY COMMISSION

Company	Procedure Description	Compliance Time	Compliance Cost
1.	Fair implantation of rates and taxes	3 weeks	US\$80K to \$100K



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)

27 September 2006

Hon. Margarito B. Teves
Secretary
DEPARTMENT OF FINANCE
Central Bank Bldg,
A. Mabini corner Vito Cruz St.
Malate, Manila, Philippines

Dear Secretary Teves:

EO 138 is an important cornerstone that has brought forth remarkable developments in the Philippine microfinance sector. Since its issuance in 1999, EO 138 has been instrumental in removing policy distortions, promoting a market-oriented environment, and establishing a policy environment that encouraged greater private sector participation in the financial market, especially that of small financial institutions that cater to micro- and small enterprises.

The set of policy reforms introduced by EO 138 and the introduction of best practice microfinance technology have been significant factors in the phenomenal growth of the rural and thrift banking industries.

It is also important to note that the efforts of the NCC, the DOF, the BSP and many other local organizations that have actively worked to implement the policy directions espoused by EO 138 have put the Philippines on the map as a leader in microfinance policy reform. As a result, the Philippines is now a frequent destination for those studying successful microfinance policy reform experience.

These remarkable achievements all flow from the basic roadmap laid out by EO 138. In our view, repeal of this EO carries the risk that the increase in credit to rural areas due to new government programs will be out-weighed by cuts in credit provided by the private sector, resulting in less credit in rural areas.

Now that the Philippines is recognized by the financial markets and rating institutions as being more fiscally responsible, it is not the time to repeal EO 138.

Consistency of policies and procedures are critical to all investors, whether domestic or foreign. EO 138 is taking hold and working.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. M. Sears", written in a cursive style.

ROBERT M. SEARS
Executive Director

Cc: Usec. Gaudencio Mendoza, DOF
Gov. Amando Detangco, Bangko Sentral ng Pilipinas
Peter L. Wallace, Wallace Business Forum
Atty. Cirilo Noel, SGV
Ramon Sy, Bankers Association of the Philippines



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)

November 9, 2006

Hon. Panfilo Lacson
Chairman, Committee on Civil Service
and Government Reorganization
Senate of the Philippines
GSIS Financial Complex
Pasay City

Dear Senator Lacson:

We are pleased that the House of Representatives has approved House Bill 3776 or the Anti-Red Tape Act of 2006, which seeks to promote integrity, accountability, proper management of public affairs and public property as well as to establish effective practices aimed at the prevention of graft and corruption in government.

AmCham looks forward to the expeditious passage of the Senate version of the Anti-Red Tape Act, Senate Bill 1934 authored by Senator Edgardo Angara, currently pending at committee level.

The Senate's and your timely action on this bill would certainly contribute to reducing the cost of doing business in the country. More importantly, the Anti-Red Tape Act would attract more foreign direct investment and improve Philippine competitiveness.

Thank you and best regards,

Robert M. Sears
Executive Director



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

(Website: <http://www.amchamphilippines.com>)

December 4, 2006

Speaker Jose De Venecia
House of Representatives
Batasan Hills, Quezon City

Dear Speaker de Venecia:

I write to encourage the passage at the earliest date of HB 5948 "An Act Establishing a Credit Information System and for Other Purposes."

In its broadest sense, this legislation is an important element of the economic reforms needed to modernize the Philippine economy and to reduce the cost of business in order to make the country more competitive. A centralized credit information system will promote economic growth, investment and job creation.

This legislation is urgently needed to reduce the cost of borrowing, improve access to credit by small borrowers and lower risks for lenders. Cheaper and more accessible credit will eventually help millions of SMEs, entrepreneurs and citizens to have greater access to credit.

The Senate passed its version SB 1936 of the legislation on June 7, 2006 and the House Banking Committee has thoroughly studied the House version and reported out HB 5948 on November 21, 2006.

The 13th Congress has little time remaining to pass important legislation and complete bicameral consideration. We urge passage by the House at the earliest possible time.

Sincerely,

ROGER J. DALLAS
President

cc: Rep. Jaime Lopez, Chairman, House Committee on Banks and Financial Intermediaries
Rep. Exequiel Javier, Chairman, House Committee on Economic Affairs
Rep. Junie Cua, Chairman, House Committee on Trade
Senate President Manuel Villar
Sen. Edgardo Angara, Chm., Senate Committee on Banks, Financial Institutions & Currencies
Executive Secretary Eduardo Ermita
Finance Secretary Margarito Teves
Presidential Advisor on Political Affairs Gabriel Claudio
Resident Representative Reza Baqir, International Monetary Fund
Country Director Thomas Crouch, Asian Development Bank
Country Director Joachim von Amsberg, World Bank



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

www.amchamphilippines.com

Appendix 29

First American Chamber
of Commerce Abroad

December 7, 2006

Mr. Arthur N. Aguilar
President and CEO
NATIONAL TRANSMISSION CORPORATION
Power Center, Quezon Avenue corner BIR Road
Diliman, Quezon City

Dear Mr. Aguilar:

Thank you for forwarding the materials on the PNCC Franchise Extension following your November 16 presentation at AmCham. We apologize for the delay in replying, as the issues raised needed some internal discussion.

We regret that we are not able to support PNCC Franchise Extension, in view of our long standing opposition to public sector corporations where private sector firms can perform more efficiently. Instead, we favor the privatization of PNCC and are not in a position to support a 25-year extension of the PNCC franchise.

In addition, Section 1 of H. No 5749 contains extremely broad language which in effect grants PNCC a monopoly of "all extension linkages, stretches and diversions" of the North and South Luzon expressways. Had we been consulted on this legislation in the House, we would have stated our preference that the PNCC franchise extension be limited only to the North and South Luzon expressways and that a privatization provision be included in the bill.

We recognize the excellent contributions that you personally, along with some key members of your staff have made and are making to public service in your career and have great confidence in your leadership at PNCC. However, PNCC has had a consistently poor track record since 1977, and none of us can know what the potential negative impact might be in future years of a public sector PNCC with a 25-year "megafranchise" for Luzon.

AmCham strongly supports the modernization of major road infrastructure on Luzon and welcomes the prioritization of the Subic-Clark-Tarlac, NLEX, SLEX rehab, STAR, SLEX extension and other badly-needed toll road projects developed by DPWH and PIC. At the same time, we believe these projects should be operated by several different franchise holders, preferably private companies, with contracts awarded through a process of transparent, competitive bidding.

Sincerely yours,

ROBERT M. SEARS
Executive Director

Member: Chamber of Commerce of the United States (COCUSA) • Asia-Pacific Council of American Chambers (APCAC)
Corinthian Plaza, 2nd Floor, Paseo de Roxas, Makati City, Philippines • P.O. Box 2562 CPO, Makati 1229, Philippines

Telephone: (632) 818-7911 • Fax: (632) 811-3081 • E-mail: amchamrp@mozcom.com



First American Chamber
of Commerce Abroad

THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

www.amchamphilippines.com

Appendix 30

December 12, 2006

Hon. Peter B. Favila
Secretary
Department of Trade and Industry
4/F, BOI Building
385 Sen. Gil Puyat Ave, Makati City

Dear Secretary Favila:

The American Chamber of Commerce would like to meet with you regarding SB 2411 or the proposed "Consolidated Investments and Incentives Code of the Philippines" to discuss the extremely negative implications of the bill to the future of foreign investment in the Philippines.

Despite the statements of President Gloria Macapagal Arroyo at our FDI Workshop on October 5 and the SEIPI CEO Conference on October 17 that Philippine fiscal incentives will NOT become less competitive in the future, a climate of uncertainty still exists because of the continued press reporting and the preference of the Department of Finance to phase-out Income Tax Holidays.

If you approve this meeting, AmCham also proposes inviting representatives from the Joint Foreign Chambers, the Semiconductor and Electronics Industries in the Philippines, the Business Processing Association of the Philippines, the Chamber of Automotive Manufacturers of the Philippines, the Philippine Chamber of Commerce and Industry, PhilExport and the Confederation of Philippine Garments Exporters.

Please find enclosed positions of most of the above industry associations on SB 2411.

We look forward to meeting with you.

Thanks and regards,

ROBERT M. SEARS
Executive Director

Member: Chamber of Commerce of the United States (COCUSA) • Asia-Pacific Council of American Chambers (APCAC)
Corinthian Plaza, 2nd Floor, Paseo de Roxas, Makati City, Philippines • P.O. Box 2562 CPO, Makati 1229, Philippines

Telephone: (632) 818-7911 • Fax: (632) 811-3081 • E-mail: amchamrp@mozcom.com



THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC.

www.amchamphilippines.com

First American Chamber
of Commerce Abroad

January 3, 2007

Hon. Peter B. Favila
Secretary, Department of Trade and Industry
4F Industry and Investment Building
385 en Gil Puyat Avenue, Makati City

Dear Secretary Favila: *Peter*

The American Chamber of Commerce shares the concern of the Soap and Detergents Association of the Philippines, Inc. (SDAP) on the imposition of a provisional safeguard measure of P14.15/mt on STPP, a major detergent raw material.

We are seriously concerned that imposing this safeguard measure would raise the cost of local manufacturing of detergents, thus, making it more cost effective to import detergent finished products from, e.g., Vietnam. The measure, alone, would increase the cost of STPP by, at least, 45% and may result in price increases on finished products. This potential price increase is compounded by the entry of cheaper imported detergent products at 3 or 5% duty, making the competition unfair. Consequently, cessation of local manufacturing would translate into loss of many jobs and would have a negative impact on the country's economy.

Anti-dumping and safeguard measures have their place even in the liberalized trade of the WTO, but in this case, it would cause more harm than good to the general public.

Sincerely,

Robert M. Sears
Executive Director

Member: Chamber of Commerce of the United States (COCUSA) • Asia-Pacific Council of American Chambers (APCAC)
Corinthian Plaza, 2nd Floor, Paseo de Roxas, Makati City, Philippines • P.O. Box 2562 CPO, Makati 1229, Philippines

Telephone: (632) 818-7911 • Fax: (632) 811-3081 • E-mail: amchamrp@mozcom.com



First American Chamber
of Commerce Abroad

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26 January 2007

Hon. Jose A. Melo
Justice
THE MELO COMMISSION
c/o ACCRA Law
5F ACCRA Bldg.
122 Gamboa St. Legaspi Village
Makati City

THRU : Atty. Rogelio Vinluan
General Counsel

Dear Justice Melo:

I am pleased to attach for your interest and perusal the Joint Foreign Chambers of Commerce "Statement on Politically Mandated Killings".

In return, may we be furnished with a copy of the Melo Commission Report. ?

Thank you and best Regards,

ROBERT M. SEARS
Executive Director



American Chamber of Commerce of the Phils., Inc. ♦ Australian-New Zealand Chamber of Commerce (Phils.), Inc.
Canadian Chamber of Commerce of the Phils., Inc. ♦ European Chamber of Commerce of the Phils., Inc.
Japanese Chamber of Commerce & Industry of the Phils., Inc. ♦ Korean Chamber of Commerce of the Phils., Inc.
Philippine Association of Multinational Companies Regional Headquarters, Inc.

July 24, 2006



Honorable Romulo Neri
Director-General
National Economic and Development Authority
5/F NEDA sa Pasig Bldg.
12 St. J. Escrivá Drive
Pasig City

Dear Secretary Neri:



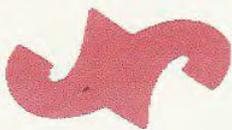
The 6th Regular Foreign Investment Negative List was promulgated by EO No. 389 dated November 30, 2004. The 7th Negative List is scheduled for promulgation later this year.

The Joint Foreign Chambers have noticed that there are few differences between successive Negative Lists. We believe that this reflects a passive rather than active approach by the Philippine Government to liberalizing the foreign investment regime. Indeed, we cannot recall any significant liberalization of laws regulating foreign investment since the Retail Trade Liberalization Act of 2000, whose minimum investment provisions are highly protectionist.



We recognize there are proposals currently being considered to remove from the Constitution restrictions on foreign equity investment in education, land, media, natural resources and utilities and in the future to set policy regarding such investments through legislation. These are reforms we support.

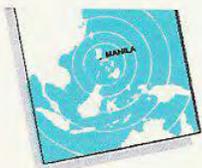
In the meantime, however, we encourage an effort to revise existing laws to remove restrictions on foreign equity and the practice of professions by foreign professionals.



The restrictions on professions are highly protectionist and are often worked around by both Philippine citizens and foreigners who are highly-trained, competent professionals but who do not meet all local requirements. In today's world where Filipino professionals work in almost every country in the world, is it still desirable policy to reserve engineering, interior design and teaching – among others – to Philippine citizens? Surely the small numbers of foreign professionals who might wish to engage in the 22 professions on the Negative List would enrich the Philippines and pose no threat to Filipinos in these fields. There should be no fear that floodgates would be open.



An essential reform for the success of the president's new campaign to develop retirement villages for foreigners will be allowing foreign national doctors to practice, not only Western but also non-traditional medicine, in the Philippines. We recommend

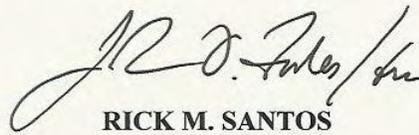


the Administration draft and certify as urgent a bill entitled The Foreign Professional Partners in National Development Act removing the entire list of 22 professions from the Negative List.

In the same spirit, we recommend that NEDA prepare a bill entitled The Rationalization of Foreign Investment Restrictions Act for the Administration to certify as urgent that will liberalize most restrictions on foreign equity contained in laws but not in the Constitution.

We hope these recommendations will be welcomed. All countries place some restrictions on foreign equity and professionals. However, the Philippines, facing serious challenges of poverty and unemployment, should welcome more foreign investment as well as foreign professionals who would assist with national development.

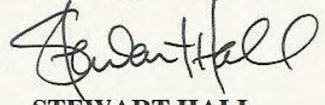
With best regards,



RICK M. SANTOS
President
American Chamber of Commerce
of the Philippines, Inc.



RICHARD BARCLAY
President
Australian-New Zealand Chamber of
Commerce of the Philippines, Inc.



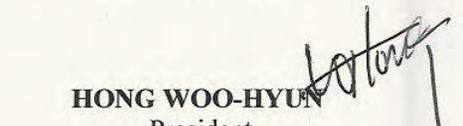
STEWART HALL
President
Canadian Chamber of Commerce
of the Philippines, Inc.



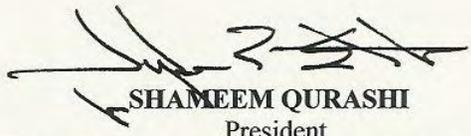
TERTIUS VERMEULEN
President
European Chamber of Commerce
of the Philippines, Inc.



SHINSUKE IKE
President
Japanese Chamber of Commerce
& Industry of the Philippines, Inc.



HONG WOO-HYUN
President
Korean Chamber of Commerce
of the Philippines, Inc.



SHAMEEM QURASHI
President
Philippine Association of Multinational Companies
Regional Headquarters, Inc.

The Foreign Chambers of the Philippines

American Chamber of Commerce of the Phils., Inc. ♦ Australian-New Zealand Chamber of Commerce (Phils.), Inc.
 Canadian Chamber of Commerce of the Phils., Inc. ♦ European Chamber of Commerce of the Phils., Inc.
 Japanese Chamber of Commerce & Industry of the Phils., Inc. ♦ Korean Chamber of Commerce of the Phils., Inc.
 Philippine Association of Multinational Companies Regional Headquarters, Inc.



Hon. Margarito B. Teves
 Secretary, Department of Finance
 DOF Bldg., BSP Complex
 Roxas Blvd.
 1004 Metro Manila

July 31, 2006



70% CAP ON INPUT TAX CREDITS

Dear Sec. Teves,



Further to our letter of November 14, 2005 and our discussions on June 9, 2006, the Bureau of Internal Revenue (BIR) has issued draft revenue regulations proposing to amend the interpretation of the 70% cap in Revenue Regulations No. 16-05. The credit-ordering rule is not addressed in the draft regulations and continues to be an issue.



As we outlined in our letter of November 14, 2005, the principle that it is not mandatory to apply excess input tax credits in the immediately succeeding quarter finds support in Sections 110(B) and 112(A) of the Tax Code. We would appreciate a written response to that letter. In our meeting on June 9, the Commissioner stated that our position could not be supported under the law. In the BIR ManCom meeting on June 13, however, the BIR was not able to explain why our interpretation was unsound, stating only that the solution would be “too difficult to implement and administer.”



We do not find this a satisfactory state of affairs. We also note that the main concern is not so much Revenue Regulations No. 16-05, but the position taken by the BIR in Revenue Memorandum Circular No. 6-06. The principles underpinning the Circular are straightforward. If taxpayers had excess input tax credits as of October 31, 2005, these credits should not be affected by the new law. For example:



- A taxpayer had accumulated excess credits at October 31 of P2.5 million.
- For November-December 2005, a taxpayer had output tax on sales of P4 million, input tax on purchases of P3 million, and net VAT payable of P1 million.
- On the principle that excess credits accumulated before the new rules are unaffected by the 70% cap, we would expect the taxpayer to apply P1 million of the accumulated excess to cover the November-December 2005 VAT liability, and to carry the balance of P1.5 million forward to apply in the March 2006 and subsequent quarters.



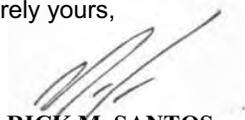
The problem is that the example in Q2 does not apply this principle.

If the BIR is looking for an option to administratively address the effects of the cap without explicitly dealing with the credit-ordering rule, the most expedient way to do this would be to amend Q2 in RMC No. 6-06 to reflect the example provided above. This would explicitly address the concerns of many investors that once the accumulated excess credits at October 31 are exhausted, the 3.6% minimum VAT would apply in every subsequent quarter.

For taxpayers facing the 3.6% minimum VAT other than because of accumulated excess input tax credits, it would be feasible to take a position based on the principles in Sections 110(B) and 112(A) that immediate application of excess credits is not required. The question would still be left open as to whether a revised RMC 6-06 interpretation is limited to excess credits arising before October 31 or will apply to excess input tax credits generally. However, this would still be preferable to the current situation, when Q2 in RMC No. 6-06 would give Examiners no option but to apply the BIR's explicit position on excess input tax credits.

We agree entirely that the only proper way to address the 70% cap is by way of legislative amendment. In the interim, however, we do not believe the BIR has yet exhausted the options open to it. We remain happy to discuss the 70% cap and other VAT-related issues further with you.

Sincerely yours,



RICK M. SANTOS
President

The American Chamber of Commerce
of the Philippines, Inc.



RICHARD BARCLAY
President

Australian-New Zealand Chamber of
Commerce of the Philippines, Inc.



STEWART HALL
President

Canadian Chamber of Commerce
of the Philippines, Inc.



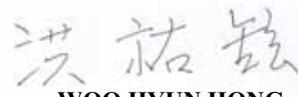
TERTIUS VERMEULEN
President

European Chamber of Commerce
of the Philippines, Inc.



SHINSUKE IKE
President

The Japanese Chamber of Commerce
& Industry of the Philippines, Inc.



WOO HYUN HONG
President

Korean Chamber of Commerce
of the Philippines, Inc.



SHAMEEM QURASHI
President

Philippine Association of Multinational Companies
Regional Headquarters, Inc.

The Foreign Chambers of the Philippines

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Philippine Association of Multinational Companies Regional Headquarters, Inc.



**The Honorable
Speaker Jose de Venecia**

House of Representatives



September 26, 2006

Eliminating the 70% cap on input VAT



Dear Speaker de Venecia,

The Joint Foreign Chambers have sought the elimination of the cap since the end of last year as the cap is a disincentive to investments and penalizes the capital-intensive industries by disallowing them to recover huge input VAT payments on their capital equipment and inventory purchases.



Additionally, consumers will be unduly disadvantaged whenever unrecovered input VAT is passed on to them in the form of higher prices.

We appreciate that the House Committee on Ways and Means has approved House Bill 5742 and are pleased that Finance Secretary Teves is supporting the elimination of the 70% cap on input VAT and that the President has certified House Bill 5742 as urgent.



The purpose of this letter is to request the House to approve the bill without delay. As stated by Finance Secretary Teves, postponing the claim of input VAT is undesirable because it artificially bloats government revenues by the amount that should be refunded to VAT-registered enterprises. He added, that 'the elimination of the cap can be compensated through higher VAT collections with increasing sales as businesses positively respond to the measure with more investments and business expansions.'



We would appreciate your assistance.



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Sincerely Yours,



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President
Philippine Association of Multinational
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**The Honorable
 Congressman Herminio Teves**

Chairman, Committee on Ways and Means
 House of Representatives



September 26, 2006



Eliminating the 70% cap on input VAT

Dear Congressman Teves,

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of the Philippines



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**The Honorable
Senate President Manuel Villar**

Philippine Senate

September 27, 2006



Eliminating the 70% cap on input VAT



Dear Senate President Villar,

The Joint Foreign Chambers have sought the elimination of the cap since the end of last year as the cap is a disincentive to investments and penalizes the capital-intensive industries by disallowing them to recover huge input VAT payments on their capital equipment and inventory purchases.

Additionally, consumers will be unduly disadvantaged whenever unrecovered input VAT is passed on to them in the form of higher prices.



We are pleased that Finance Secretary Teves is supporting the elimination of the 70% cap on input VAT and that the House approved House Bill 5742 surprisingly fast yesterday.

The purpose of this letter is to request the Senate to come up with an equivalent bill to House Bill 5742 as early as possible and to have that Senate Bill approved without delay. As stated by Finance Secretary Teves, postponing the claim of input VAT is undesirable because it artificially bloats government revenues by the amount that should be refunded to VAT-registered enterprises. He added, that 'the elimination of the cap can be compensated through higher VAT collections with increasing sales as businesses positively respond to the measure with more investments and business expansions.'

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Sincerely Yours,



RICK M. SANTOS
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American Chamber of Commerce
of the Philippines

RICHARD BARCLAY
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Australia – New Zealand Chamber
of Commerce



STEWART HALL
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Philippine Association of Multinational
Companies Regional Headquarters, Inc. (PAMURI)



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**The Honorable
Senator Ralph Recto**

Philippine Senate

September 27, 2006



Eliminating the 70% cap on input VAT



Dear Senator Recto,

The Joint Foreign Chambers have sought the elimination of the cap since the end of last year as the cap is a disincentive to investments and penalizes the capital-intensive industries by disallowing them to recover huge input VAT payments on their capital equipment and inventory purchases.



Additionally, consumers will be unduly disadvantaged whenever unrecovered input VAT is passed on to them in the form of higher prices.

We are pleased that Finance Secretary Teves is supporting the elimination of the 70% cap on input VAT and that the House approved House Bill 5742 surprisingly fast yesterday.



The purpose of this letter is to request the Senate Ways and Means Committee to come up with an equivalent bill to House Bill 5742 as early as possible and to have that Senate Bill approved without delay. As stated by Finance Secretary Teves, postponing the claim of input VAT is undesirable because it artificially bloats government revenues by the amount that should be refunded to VAT-registered enterprises. He added, that 'the elimination of the cap can be compensated through higher VAT collections with increasing sales as businesses positively respond to the measure with more investments and business expansions.'



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Sincerely Yours,

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American Chamber of Commerce
of the Philippines



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**The Honorable
Speaker Jose de Venecia**

House of Representatives

September 27, 2006



Eliminating the 70% cap on input VAT



Dear Speaker de Venecia,

Further to our yesterday's letter, the Joint Foreign Chambers deeply appreciate the quick action of the House, approving House Bill 5742 yesterday afternoon.

It is trusted that the Senate will act as fast as the House on the elimination of the cap on VAT.



Sincerely Yours,

A handwritten signature in black ink, appearing to read "Rick M. Santos".

RICK M. SANTOS
President
American Chamber of Commerce
of the Philippines

A handwritten signature in black ink, appearing to read "Richard Barclay".

RICHARD BARCLAY
President
Australia – New Zealand Chamber
of Commerce



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TERTIUS VERMEUELEN
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**The Honorable
Congressman Herminio Teves**

Chairman, Committee on Ways and Means
House of Representatives



September 27, 2006

Eliminating the 70% cap on input VAT



Dear Congressman Teves,

Further to our yesterday's letter, the Joint Foreign Chambers thank you for the very quick approval of House Bill 5742 yesterday afternoon.



We trust that the Senate will act as fast as the House did on the elimination of the cap.

Sincerely Yours,

Handwritten signature of Rick M. Santos in black ink.

RICK M. SANTOS
President
American Chamber of Commerce
of the Philippines



Handwritten signature of Richard Barclay in black ink.

RICHARD BARCLAY
President
Australia – New Zealand Chamber of
Commerce



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October 2, 2006



H. E. Gloria Macapagal-Arroyo

President
 Republic of the Philippines
 Malacañan Palace
 Manila



Dear Madam President:

The Joint Foreign Chambers are deeply concerned about the developments surrounding the bidding and awarding process of the Camago Malampaya Oil Leg (CMOL) project and the apparent lack of continuity and transparency in processes.



Between March and May 2006, the CMOL project was tendered out by PNOC to local Philippine companies and companies based in China, Indonesia, Malaysia, Norway, Singapore, the United Kingdom and the U.S. Over 12 companies were invited to submit offers and 8 companies responded by submitting their proposals for development.



On May 31, 2006, PNOC advised Mitra Energy Limited of Malaysia that its proposal was successful and invited the company to start contract negotiations. During June and July Mitra officers worked with PNOC officials to negotiate a Farm-In Agreement, which is international oil industry standard practice.

On August 10, 2006, Malacañang released Executive Order No. 556 dated June 17, 2006 which resulted in a changed and superseded the bidding process that PNOC was using. On August 19, 2006, PNOC officially notified Mitra that CMOL negotiations were suspended pending clarification of E.O. 556.



We await the promised reports of Energy Secretary Lotilla and PNOC-EC on the CMOL project which are expected to provide more information than has been available on the bidding process and subsequent negotiations.



We hope the CMOL project is not further evidence of the challenges foreign companies face in doing business with the Philippine Government. There have been too many cases where business conditions were not transparent, rules and regulations were changed midstream, contracts signed by government were not honored or not implemented as agreed or were overturned by the judiciary.



If the Philippine Government cannot demonstrate by its actions, not just by rhetoric, that it means to be fair and transparent in its international business dealings, from the start of the bidding process to the selection of the winning bidder, from the contract negotiation and signing and the implementation of contracts during the agreed lifespan of the project, foreign business and investors will continue to lose interest in the Philippines.

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On October 4 the Makati Business Club is hosting an Infrastructure Summit with key government agencies. On October 5, the Foreign Chambers will hold a Workshop on Foreign Direct Investment (FDI) entitled “How the Philippines Can Attract \$3 Billion a Year in FDI.” Later this month, there will be a National Competitiveness Summit.

The issues of sanctity of contracts and policy consistency will undoubtedly arise in all of these meetings because they effect the ability of the Philippines to attract higher levels of foreign investment which everyone would like the country to receive.

Sincerely Yours,



RICK M. SANTOS
 President
 American Chamber of Commerce
 of the Philippines

RICHARD BARCLAY
 President
 Australia – New Zealand Chamber of
 Commerce



STEWART HALL
 President
 Canadian Chamber of Commerce
 of the Philippines

TERTIUS VERMEULEN
 President
 European Chamber of Commerce
 of the Philippines



SHINSUKE IKE
 President
 Japanese Chamber of Commerce and Industry
 of the Philippines

HONG WOO-HYUN
 President
 Korean Chamber of Commerce
 and Industry



SHAMEEM QURASHI
 President
 Philippine Association of Multinational
 Companies Regional Headquarters, Inc. (PAMURI)

Cc: Secretary Peter Favila, Department of Trade & Industry
 Secretary Raphael Lotilla, Department of Energy



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 Philippine Association of Multinational Companies Regional Headquarters, Inc.

October 23, 2006



H. E. Gloria Macapagal-Arroyo

President
 Republic of the Philippines
 Malacañan Palace
 Manila



Dear Madam President,

The Joint Foreign Chambers recognize the importance that mining and mineral development can play in the economic advancement of the Philippines especially in the rural areas. While we view the 1995 Mining Act and the implementing rules and regulations as equal to international best practice, we are concerned with the current state of affairs concerning the slow and uncertain processing of Exploration Permits (EP) and Mineral Processing Sharing Agreements (MPSA).



We welcome the recent EP and MPSA approvals granted by Secretary Reyes but we wonder how the backlog of over 1000 EPs and MPSAs can be approved over the short term utilizing the new screening procedures recently introduced by the Secretary. This has also created a somewhat uncertain environment for permitting requirements and the Joint Foreign Chambers are worried how this may affect investor sentiment in the future. As you may know exploration is only the first step in mineral development and continued delays will ultimately negatively impact economic development in the Philippines as a result of delayed or postponed mining investment and development.



The Joint Foreign Chambers welcome a continued dialogue with the Philippine Government on how the granting of mining permits can be accelerated while still maintaining the assurance of responsible mining development by well organized and financially qualified companies.



With Best Regards,



The Foreign Chambers of the Philippines

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ROGER J. DALLAS

President
 American Chamber of Commerce
 of the Philippines

RICHARD BARCLAY

President
 Australia – New Zealand Chamber of
 Commerce



STEWART HALL
 President
 Canadian Chamber of Commerce
 of the Philippines

TERTIUS VERMEULEN

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 of the Philippines

HONG WOO-HYUN
 President
 Korean Chamber of Commerce
 and Industry



SHAMEEM QURASHI
 President
 Philippine Association of Multinational
 Companies Regional Headquarters, Inc. (PAMURI)



Cc: Secretary Angelo Reyes, Department of Environment & Natural Resources
 Gen. Eduardo Ermita, Executive Secretary, Office of the President



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November 3, 2006



Hon. Junie E. Cua
 Chairman
 Trade and Industry Committee
 House of Representatives
 Republic of the Philippines
 Batasan Pambansa, Constitution Hills
 Quezon City



Dear Rep. Cua:

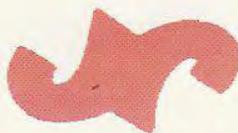
We write to follow-up an idea which was recently made during the preparations for the October 6 National Competitiveness Summit to establish a Competitiveness Caucus in the House which would advance legislation to increase the nation's competitive rankings.



During the recent Workshop on FDI sponsored by the Joint Foreign Chambers and held on October 5 in Makati a list of legislative actions was recommended to improve national competitiveness in order to attract more foreign investment. The list is attached for appropriate consideration in the 13th and 14th Congresses.



Also attached are estimates made by the Workshop of Total Annual FDI and Total Annual Jobs which participants concluded could occur under Pessimistic, Status Quo and Optimistic scenarios. Under the Optimistic scenario, an estimated total of \$9 billion FDI per year could be attracted creating a total of 750,000 thousand direct jobs and 2.2 million indirect jobs.



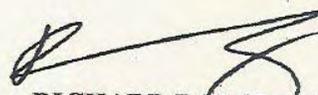
The results of the Workshop measure how much the Philippines is underperforming in terms of attracting investment (only \$1.1B in 2005) and how great the potential is for future investment and to create millions of new jobs but on condition of aggressive and steady reforms such as those identified in the Workshop, the National Competitive Summit and the Philippine Business Conference.

Implementing a Legislative Agenda for Competitiveness would be a vital, extremely important component of the actions recommended by the FDI Workshop.

Best regards,


 ROGER J. DALLAS

President
 American Chamber of Commerce
 of the Philippines, Inc.


 RICHARD BARCLAY

President
 Australian-New Zealand Chamber of
 Commerce of the Philippines, Inc.

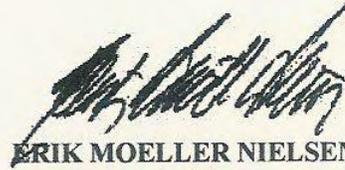




STEWART HALL

President

Canadian Chamber of Commerce
of the Philippines, Inc.



ERIK MOELLER NIELSEN

Vice President

European Chamber of Commerce
of the Philippines, Inc.



SHINSUKE IKE

President

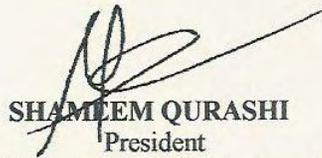
Japanese Chamber of Commerce
& Industry of the Philippines, Inc.



HONG WOO-HYUN

President

Korean Chamber of Commerce
of the Philippines, Inc.



SHAMEEM QURASHI

President

Philippine Association of Multinational Companies
Regional Headquarters, Inc.

Attachments: FDI Workshop Legislative Issues
Potential FDI 2007-2010
Potential New Jobs Created Per Annum, 2007-10

cc:

Senate President Manuel Villar
Speaker Jose De Venecia
Sec. Arthur Yap, Presidential Advisor on Job Creation
Presidential Advisor Gabriel Claudio
Dir. Gen. Rodolfo Vicera, Congressional Planning and Budget Division
Dir. Gen. Ma. Susana Bulan, Senate Economic Planning Office
Co-Chairmen Task Force on Competitiveness

	Legislative Issues	Comment	Frame
1	Anti-Red Tape	House-passed; pending Senate committee	ST
2	Anti-Smuggling	House-passed; many improvements needed in House & Senate bills	ST
3	Anti-Terrorism	House-passed; pending Senate 2nd reading	ST
4	Anti-Trust bill	early in legislative process	MT
5	Automated Elections	House-passed; pending Senate 2nd reading	ST
6	Biofuels	House-passed; pending Senate 2nd reading	ST
7	BOT amendments	early in legislative process	MT
8	Clark SEZ Tax Incentives	House-passed; pending Senate 2nd reading	X ST
9	Clean Air Act amendment to allow clean technology incineration	no legislation introduced	MT
10	Corporate Income Tax	early in legislative process; reduce CIT to 15%	MT
11	Corporate Recovery	pending Senate 2nd reading	MT
12	Credit Information Bureau	Senate-passed; pending House 2nd reading	X ST
13	Custom Brokers Act Amendment	pending House 2nd reading	X ST
14	DICT	pending House 2nd reading	MT
15	English as Medium of Instruction	House-passed	ST
16	EVAT, remove 70% input cap	House-passed; pending Senate Ways and Means Cmt	X ST
17	EVAT, remove 5-year recovery of input tax paid on capital equipment	no legislation introduced	ST
18	Farm Land as Collateral	early in legislative process	MT
19	Fiscal Incentives Rationalization	House-passed; pending Senate 2nd reading (important/controversial)	MT
20	Flag Law Amendment to create level playing field	no legislation introduced	MT
21	Foreign Investment Restrictions Rationalization Act	no legislation introduced	MT
22	Foreign Professional Partners in Development Act	no legislation introduced	MT
23	Immigration Code Reform	early in legislative process	MT
24	Labor Code Reform	early in legislative process	MT
25	Medical Tourism Act	early in legislative process	MT
26	Omnibus Reengineering	early in legislative process	MT
27	Personal Equity and Retirement Account (PERA)	pending Senate 2nd reading; pending House Cmt.	MT
28	Pre-Need Plan Code	pending House and Senate 2nd reading	X ST
29	Renewable Energy	House passed; pending Senate Energy Cmt	ST
30	Reproductive Health Act	pending House 2nd reading	MT
31	SNITS/Individual Income Tax	House-passed; pending Senate Ways and Means Cmt	ST
32	Tourism Policy Act	pending Senate 2nd reading	MT

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Philippine Association of Multinational Companies Regional Headquarters, Inc.



November 6, 2006

Hon. Ralph Recto
Chairman
Ways and Means Committee
Senate of the Republic of the Philippines
GSIS Financial Complex
Pasay City



Dear Sen. Recto:

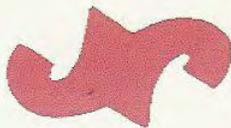
We write to share with you comments on the proposed “Anti-Smuggling Act of 2005” as approved by the House in H. B. 4069 and various bills introduced in the Senate which are being consolidated in the Ways and Means Committee.



Ending smuggling is one of the most serious - as well as long-standing – challenges the Philippines faces. Smuggling undermines local manufacturers and reduces local employment. Smuggling corrupts both the public and private sectors. Smuggling reduces the international competitiveness of the Philippines.

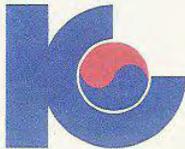


Unfortunately, in our view the draft legislation in its current form will do little to end smuggling, could harm the overwhelming majority of law-abiding exporters who are not in any way involved in smuggling, would add to the cost of doing business and reduce national competitiveness and in several respects be non-compliant with Philippine obligations under the WTO.



Considerable work has gone into preparing the attached comments by a number of our member firms and committees with extensive experience in international trade best practices.

We hope these comments will be carefully considered and the several recommendations to change language in the Senate version (as of May 29, 2006) accepted and incorporated into the bill reported out by the Senate Ways and Means Committee.

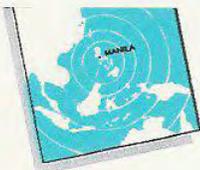


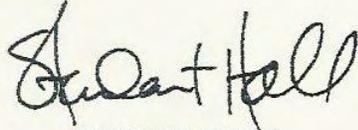
Roger J. Dallas
ROGER J. DALLAS

President
American Chamber of Commerce
of the Philippines, Inc.

Richard Barclay
RICHARD BARCLAY

President
Australian-New Zealand Chamber of
Commerce of the Philippines, Inc.





STEWART HALL
President
Canadian Chamber of Commerce
of the Philippines, Inc.



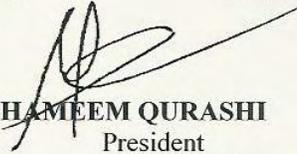
TERTIUS VERMEULEN
President
European Chamber of Commerce
of the Philippines, Inc.



SHINSUKE IKE
President
Japanese Chamber of Commerce
& Industry of the Philippines, Inc.



HONG WOO-HYUN
President
Korean Chamber of Commerce
of the Philippines, Inc.



SHAMEEM QURASHI
President
Philippine Association of Multinational Companies
Regional Headquarters, Inc.

cc:

Senate President Manuel Villar
Speaker Jose De Venecia
Rep. Herminio Teves, House Ways and Means Committee
Sec. Gary Teves, Department of Finance
Sec. Peter Favila, Department of Trade and Industry
Commissioner Napoleon Morales, Bureau of Customs

The Foreign Chambers of the Philippines

Appendix 40

American Chamber of Commerce of the Phils., Inc. ♦ Australian-New Zealand Chamber of Commerce (Phils.), Inc.
Canadian Chamber of Commerce of the Phils., Inc. ♦ European Chamber of Commerce of the Phils., Inc.
Japanese Chamber of Commerce & Industry of the Phils., Inc. ♦ Korean Chamber of Commerce of the Phils., Inc.
Philippine Association of Multinational Companies Regional Headquarters, Inc.



December 12, 2006

Senator Manuel Villar
President
Senate
GSIS Financial Complex, Pasay City



Dear Senator Villar:

We respectfully urge the Senate to complete passage of two important capital market development reform laws now being considered by the Congress, the bills establishing PERA and a Pre-Need Code, i.e.

S. B. 2169, establishing the Pre-Need Code of the Philippines, and
S. B. 2233 establishing the Personal Equity and Retirement Account (PERA).

Each bill is important to the hundreds of thousands of Filipinos employed by our member companies.

A large number of our employees have invested their modest savings in pre-need plans, especially for the future education of their children, and some have been victimized by the inability of plan providers to meet contractual obligations to provide benefits when plans mature. These abuses must be prevented in the future, which the Pre-Need Code of the Philippines bill will seek to achieve through improved industry regulation and increased penalties.

The PERA will allow individual Philippine taxpayers, who already are subject to the highest personal income tax rates in Asia, to save small amounts tax free. The Philippines has a low savings rate, and this law will encourage Filipinos to save for their future, similar to the Individual Retirement Account (IRA) in the United States. While the law will result in some tax revenue loss for the national government, the loss will not be immediate but will grow gradually as Filipinos open PERAs to save more.

We understand the Capital Market Development Council and the Department of Finance support the reforms that the bills before Congress for the Pre-Need Plan Code and the PERA will achieve.

These two reforms will benefit millions of employees in the formal sector of the economy who also are among the most heavily-taxed groups in the country and will not be of any significant detriment to the fiscal reforms currently being pursued and implemented by the Congress and the Executive.



We strongly encourage the House to pass these bills at the earliest opportunity and not to wait until the next Congress. We are also writing to House Speaker de Venecia to encourage the House to complete action on its parallel bills, so that the legislation will move to Bicameral Committee and final passage.

Sincerely,



ROGER J. DALLAS

President
American Chamber of Commerce
of the Philippines, Inc.



RICHARD BARCLAY

President
Australian-New Zealand Chamber of
Commerce of the Philippines, Inc.



STEWART HALL

President
Canadian Chamber of Commerce
of the Philippines, Inc.



ERIK MOELLER NIELSEN

Vice President
European Chamber of Commerce
of the Philippines, Inc.



SHINSUKE IKE

President
Japanese Chamber of Commerce
& Industry of the Philippines, Inc.



HONG WOO-HYUN

President
Korean Chamber of Commerce
of the Philippines, Inc.



SHAMEEM QURASHI
President

Philippine Association of Multinational Companies
Regional Headquarters, Inc.

December 12, 2006

American Chamber of Commerce of the Phils., Inc. ♦ Australian-New Zealand Chamber of Commerce (Phils.), Inc.
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Philippine Association of Multinational Companies Regional Headquarters, Inc.



January 23, 2007



Her Excellency Gloria Macapagal-Arroyo
President
Republic of the Philippines
Malacanan

Dear President Arroyo:



The Joint Foreign Chambers of the Philippines (JFC) supports the position of the National Competitiveness Council and its Private Sector Infrastructure Team headed by Mr. Meneleo J. Carlos, Jr. in endorsing the list of priority infrastructure projects in their letter to your office on January 5, 2007 (copy attached).

In the letter, the Team identified the top 9 infrastructure projects from a list of 20 high-impact projects, which will significantly improve the country's competitiveness when completed.



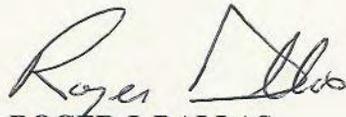
In the efforts of your Administration to implement the top 9 projects with urgency, the JFC hopes that the LRT-1 Extension to Bacoor and MRT-7 projects will be given equally high priority. These are projects that have been in advanced stages of preparation for quite a few years and for which funds are available from private investors and commercial banks if contract terms are properly structured.



No major BOT project has been financed and completed since the NLEX project. (The SLEX rehabilitation project is ongoing with an experienced Malaysian private toll road operator leading the project, but is several years from completion.) We encourage the addition of the LRT-1 Extension to Bacoor and MRT-7 to the top priority category. When light rail moves large numbers of people efficiently and cleanly, it reduces congestion, pollution, and business costs and increases the competitiveness of the NCR and the country. These are the two light rail projects needed most urgently, in addition to the connection between MRT-3 and LRT (or the LRTA North Transit Extension, already on the list of the top 9 projects), which will make the NCR light rail system the second largest in ASEAN after Bangkok's 90-km rail rapid transit system.



Sincerely,



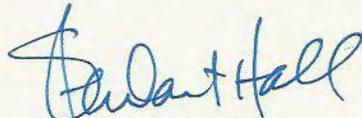
ROGER J. DALLAS

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American Chamber of Commerce
of the Philippines, Inc.



RICHARD BARCLAY

President
Australian-New Zealand Chamber of
Commerce of the Philippines, Inc.



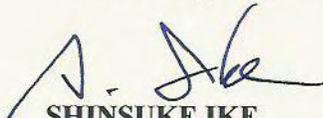
STEWART HALL

President
Canadian Chamber of Commerce
of the Philippines, Inc.



TERTIUS VERMEULEN

President
European Chamber of Commerce
of the Philippines, Inc.



SHINSUKE IKE

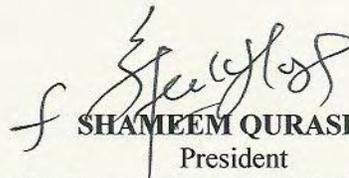
President
Japanese Chamber of Commerce
& Industry of the Philippines, Inc.



Youn J. Baek

HONG WOO-HYUN

President
Korean Chamber of Commerce
of the Philippines, Inc.



SHAMEEM QURASHI

President
Philippine Association of Multinational Companies
Regional Headquarters, Inc.

CC: Sec. Peter Favila, National Competitiveness Council Chair
Amb. Cesar Bautista, National Competitiveness Council Co-Chair
Mr. Meneleo Carlos, Jr., Private Sector Development Champion -
Infrastructure



American Chamber of Commerce of the Phils., Inc. ♦ Australian-New Zealand Chamber of Commerce (Phils.), Inc.
Canadian Chamber of Commerce of the Phils., Inc. ♦ European Chamber of Commerce of the Phils., Inc.
Japanese Chamber of Commerce & Industry of the Phils., Inc. ♦ Korean Chamber of Commerce of the Phils., Inc.
Philippine Association of Multinational Companies Regional Headquarters, Inc.

February 13, 2007



Her Excellency Gloria Macapagal-Arroyo
President
Republic of the Philippines
Malacañan Palace, Manila

Dear President Arroyo:



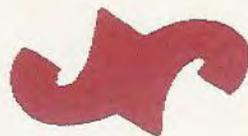
The Joint Foreign Chambers wish to congratulate you for the passage of legislative reforms needed to improve the investment climate in the Philippines.

In the 13th Congress, we supported the enactment of the following laws which we believe contribute to the continued growth and to the restoration of international confidence in the macroeconomic management of the Philippine economy under your administration:

- RA 9334, Alcohol - Tobacco Excise Tax Law
- RA 9335, Lateral Attrition Law
- RA 9337, Expanded VAT Law
- RA 9343, Special Purpose Vehicle Act Extension Law
- RA 9361, EVAT Amendments, removing 70% cap on input VAT



In recent months, Congress also enacted RA 9367, the Biofuels Act, and ratified the Bicameral Conference committee report on amendments to the BCDA Act and the One-Time Tax Amnesty to Locators in Special Economic Zones and submitted these for your signature.



In addition, other pieces of legislation have progressed significantly in Congress, including the following:

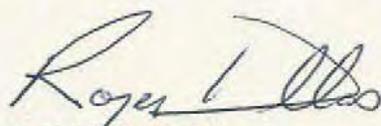
- Anti-Red Tape Act
- Credit Information System Act
- Customs Brokers Act Amendment
- Human Security Act of 2007
- Lending Company Regulation Act



- National Tourism Act
- Personal Equity and Retirement Account (PERA) Act

These bills represent part of a "Second Reform Wave." We commend your call of a Special Session of Congress on February 19 to 20 through Proclamation 1235 and urge the final passage of these bills by both the Senate and the House.

Sincerely,



ROGER J. DALLAS

President

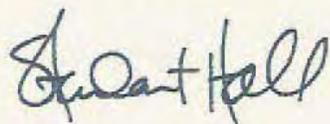
American Chamber of Commerce
of the Philippines, Inc.



RICHARD BARCLAY

President

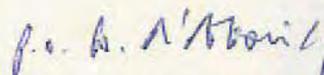
Australian-New Zealand Chamber
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STEWART HALL

President

Canadian Chamber of Commerce
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TERTIUS VERMEULEN

President

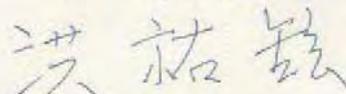
European Chamber of Commerce
of the Philippines, Inc.



SHINSUKE IKE

President

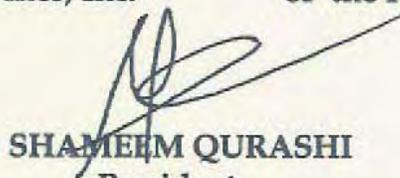
Japanese Chamber of Commerce
& Industry of the Philippines, Inc.



HONG WOO-HYUN

President

Korean Chamber of Commerce
of the Philippines, Inc.



SHAMEEM QURASHI

President

Philippine Association of Multinational Companies
Regional Headquarters, Inc.

CC: Senate President Manuel Villar
House Speaker Jose de Venecia, Jr.