Joint Foreign Chambers of the Philippines

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Canadian Chamber of Commerce of the Phils., Inc. ◆ European Chamber of Commerce of the Phils., Inc.
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Philippine Association of Multinational Companies Regional Headquarters, Inc.

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December 4, 2018

Rep. Ferjenel G. Biron
Chairman
Committee on Trade and Industry
House of Representatives
Quezon City

Thru: Rep. Xavier Jesus Romualdo
Chairman, Sub-Committee on HB 4595

ADDITIONAL POSITION STATEMENT ON
HB 4595 RETAIL TRADE ACT AMENDMENTS

Dear Chairman Biron:

The Joint Foreign Chambers in the Philippines (JFC) reiterate our support for HB 4595 or the Retail Trade Act amendments under consideration in the Technical Working Group of the House Committee on Trade and Industry. Four of the undersigned members of the JFC attended the TWG meeting on November 26 to demonstrate our strong interest in this legislation and its importance to the future Philippine economy and job creation.

HB 4595 removes the $2,500,000 capitalization requirement in the current law enacted in 2000. Since HB 4595 did not specify a minimum paid-up capital requirement, the bill would have defaulted to that contained in RA 7042, as amended, or the Foreign Investment Act (US$200,000 or $100,000 for an investor with new technology or hiring 50 employees).

While we have supported the current draft that would default to $200,000/100,000, in the November 26 TWG we agreed to the minimum capitalization level of US$200,000 as a substitute for the language in HB 4595 authored by Deputy Speaker Arthur Yap.

In light of this, we would like to submit the following information and arguments for your consideration. Some points may overlap with or repeat our past position papers.

- **President Duterte's policy is to reduce restrictions on foreign ownership.** In **Memorandum Order 16 signed November 21, 2017**, the president himself instructed the government bureaucracy "to exert utmost efforts to lift or ease restrictions on certain investment areas or activities with limited foreign participation." The president specified eight sectors in which he ordered the reforms to be made. One of these eight is "retail trade enterprises." Memorandum Order 16 seeks to implement Point 3 of the president's Socio-Economic Agenda, which seeks to reduce restrictions on foreign ownership.

- The heads of the two most relevant government agencies, the **secretaries of the Department of Trade and Industry and the National Economic Development Agency**, fully support the intent in MO 16 for liberalization of the current regime for foreign investment in retail trade enterprises. Their **position papers are subsequent to the issuance of MO 16 and consistent with it. They both recommended $200,000.**

- **The position paper of Sec. Ramon Lopez on January 31, 2018 recommended that HB 4595 set a minimum paid-up capital requirement of $200,000**. The DTI believes that reforms to liberalize retail trade in the country will lead to more foreign players, more diversified, high quality, and lower priced products for consumers and Filipino MSMEs. Also, in DTI's view, the entry of foreign companies will provide opportunities for local manufacturers and MSMEs to access supply chains of foreign retailers to become integrated to the global value chain. **NEDA echoes the same position in its position paper signed by Sec. Pernia.**

- In the **Senate counterpart bill**, Sen. Gatchalian recommends that the provisions on the **minimum capital be based on what is prescribed in the Foreign Investment Act**.

- **We were confused by the stated position of the Board of Investments** representative at the TWG to support a minimum paid-up capital threshold of **$500,000,** which contradicts the earlier position taken by DTI Secretary Lopez.

- The **BOI representative argued that $500,000 is the cutoff point between SMEs and large firms in government statistics and that the BOI believes SMEs should be protected from foreign competition. We disagree** with this argument. We do not believe there would be a flood of many foreign-owned retail firms investing between $200,000 and $500,000 that would greatly displace the much more numerous Philippine SMEs. Even one thousand new foreign SMEs are unlikely to threaten Philippine SMEs.

- **The current restrictive regime has failed to attract much foreign investment but the $200,000 threshold will attract more investment and create many more jobs.** Only 28 large foreign retail investments are recorded since 2000 or less than two a year on average. Assuming as many as 1,000 new retail investors were to enter the Philippines in the decade after enactment of the HB 4595 (a rate more than 25 times higher than the rate from 2000 to 2018) and each invested the minimum capital of $200,000 and hired 20 Filipinos, this would be considered a successful reform. The total capital infusion would be $200,000,000 (1,000 x $200,000) and the total jobs created would be 20,000 (1,000 x 20). It is more likely that the investors who enter will invest much more than $200,000 and hire more than 20 employees each, so the positive impact would be greater.

- With rising population growth and uncertain prospects for increasing job opportunities for OFWs, the **Philippines should maximize attraction of foreign investors into the country in labor-intensive business activities**. Retail trade is a high labor-intensive business activity which does not require high skill levels.

- Thus, we believe **the recommendations for $500,000 as well as for the status quo are inconsistent with the president's MO 16, protectionist, and will attract much less foreign investment and create fewer jobs than the $200,000 amount.**

- The **number of MSMEs in the retail sector in the Philippines is enormous** compared to the much smaller number of foreign retail establishments that may enter under the lower capitalization requirement. According to government data, some 46% or about **437,000 of the total of 950,000 MSMEs in the country operate in Retail Trade, Wholesale Trade, and Repair businesses.**

- With the current high GDP growth rates of 6 to 7%, this number **should grow and could reach 650,000 in seven years** (assuming rate of growth of MSMEs = GDP growth rate). At a $200,000 threshold, foreign investment will not compete with micro and most small domestic retail trade firms. The Philippine Government defines "small" enterprises as having assets valued from PhP3 million to PhP5 million and "medium" size enterprises as having Php5 million to PhP100 million. Above PhP100 million is "large." The proposed reform will allow foreign investors to compete with both medium and large domestic retail firms. Of the 950,000 about 100,000 of the total are small, medium, and large. Medium firms number around 4,000 firms, as do large. The current law with a $2,500,000 capital requirement ($2.5 million x 53 = PhP133 million) only allows competition with "large" domestic retail firms.

We also wish to refute arguments of the industry associations that recommend maintaining the current Retail Trade Act provisions.

- Argument 1. Foreign retail investors opening stores in the Philippine will import low-cost and possibly unsafe merchandise, often made in China, that Filipino retailers cannot match because of lack of access and low-cost vendors and/or manufacturing facilities.

  Answer. **The nationality of the retailer makes little difference in the products the retailer sells because of low tariffs on imports and weak domestic manufacturing.** Filipinos as well as Filipino-Chinese merchants flood the stalls of Divisoria and everywhere in the country with low cost goods from China, Vietnam, and elsewhere. While it would be advantageous to the Philippines to produce its own goods for export and local consumption, production costs are often higher in the Philippines and tariffs are very low. The label "Made in the Philippines" is not widely found on goods sold outside the Philippines and decreasingly on goods consumed in the Philippines. Also, **there is no evidence that the 28 foreign retailers that have invested in the country under RA 8762 have been selling unsafe merchandise**. Instead, they have a good record of being responsible merchants. It is highly likely that foreign retail investors operating under the liberalization provisions of the proposed amendments will also be responsible merchants.

- Argument 2. Foreign governments assist exporters.

  Answer. All governments, including the Philippine Government, assist exporters but the argument is distorted and not relevant to the policy reform in this proposed legislation. Export credit agencies (ECA), like the **US Eximbank, support American exports but do not give US foreign retailers incentives to operate abroad.** The incentives are given to the companies that export goods and not to retailers. The US Eximbank makes loans for exports at near market interest rates but provides no financing for retail investments. Boeing and Airbus get support for aircraft sales to foreign airlines. Industrial goods usually receive such assistance not consumer goods. Foreign government agencies also assist to introduce exporters to potential foreign buyers, including by participation at international trade fairs. This has nothing to do with retailing but is normal support for exporters who wish to transact with foreign importers.

- Argument 3. The withdrawal of current protection of $2,500,000 with the same support for Filipino MSME retailers, will ruin Filipino MSME retailers.

  Answer. As discussed above, the **proposed reforms will NOT apply to micro and small enterprises.** Their protection will continue. The reforms will apply to medium and large. It is incorrect and misleading to state that the "MS" in MSMEs will no longer be protected.

- **Modern advanced trade agreements contain provisions for open cross-border flow of capital flows.** These include the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), also known as TPP11, FTAs of the European Union with other ASEAN countries, and a free trade agreement with the United States. These are among the most important new trade and investment agreements that the Philippines is expected to negotiate in the next few years.

- In conclusion, enactment of the Retail Trade Act amendments with a $200,000 minimum capital requirement will **improve the rating of the Philippines in international competitiveness indices.** The 2017 OECD FDI Restrictiveness Index rated the Philippines as the most restrictive of 67 countries in its FDI restrictions. According to the 2018 WEF Global Competitiveness report, among the ASEAN-6, the Philippines (56th) ranked fifth. The others ranked as follows: Singapore (2nd), Malaysia (25th), Thailand (38th), Indonesia (45th), and Vietnam (77th) (see attached).

  We look forward to the passage of this vital legislation.

  Thank you and best regards,

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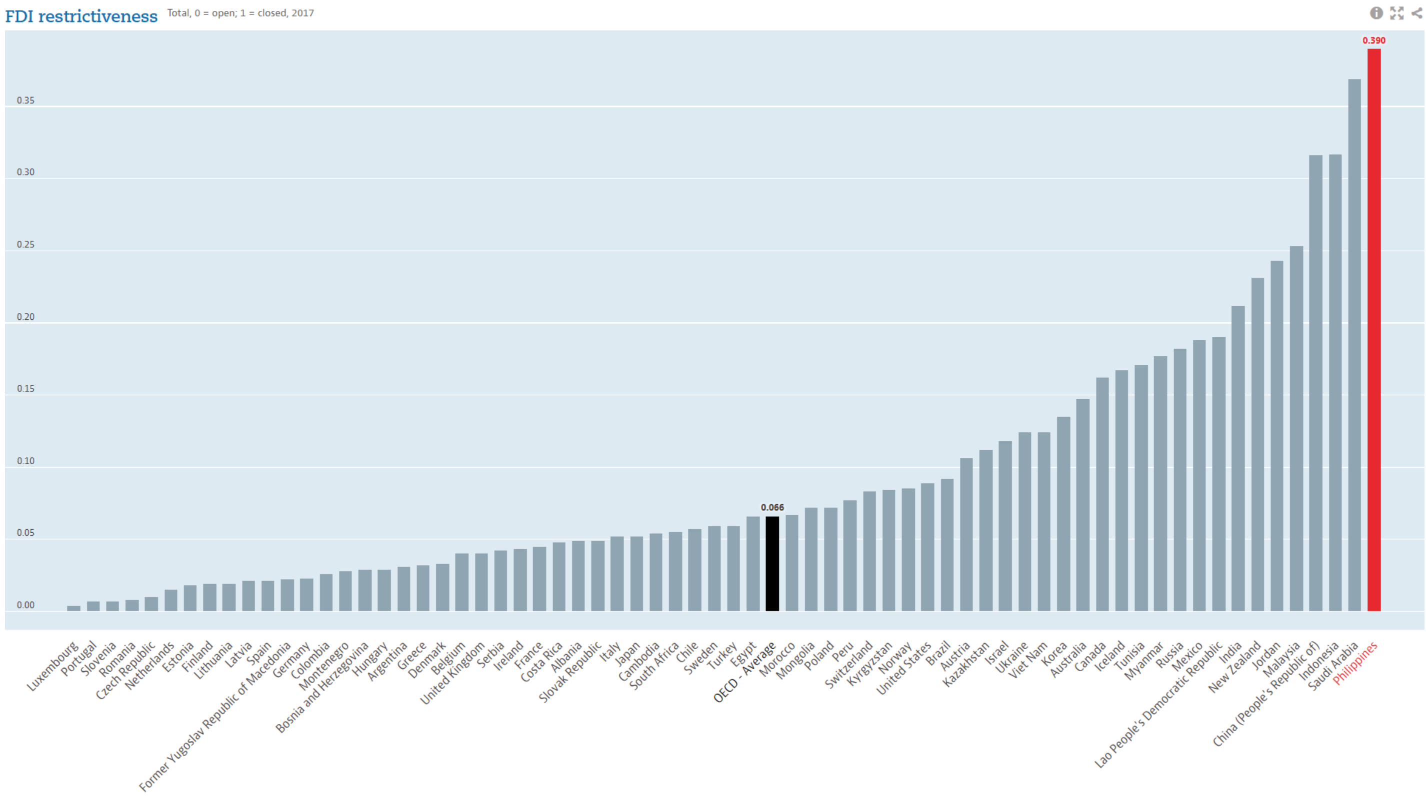
cc: Deputy Speaker Arthur Yap

Attachment: OECD FDI Restrictiveness Index 2017

OECD
FDI Restrictiveness Index, 2017



Source: OECD