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**The Japan-Philippines Economic Partnership Agreement:
An Act of Economic Treason**

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Introduction

Last September 9, 2006 in Helsinki, Finland, President Gloria Macapagal-Arroyo and former Japanese Prime Minister Junichiro Koizumi signed the historic Japan-Philippines Economic Partnership Agreement (JPEPA), a comprehensive free trade agreement and bilateral investment agreement rolled into one, and the first bilateral trade treaty which the Philippines has entered into since the Parity Rights Agreement of 1946 with the U.S.

Over the past 8 months, the JPEPA has been beset with controversy, with environmental groups and the rest of civil society raising the alarm about provisions in the treaty that will legally allow Japan to dump its garbage and toxic waste here in the Philippines. Provisions that were deliberately included in the JPEPA and offered by the Philippine government as a concession during the negotiations.

The administration has been dismissing the issue as a “red herring,” implying that environmentalists’ fears are unfounded and alarmist. It is likewise attempting to assuage fears of toxic waste dumping by proposing the signing of a side agreement wherein Japan will promise to not export materials considered illegal in the Philippines.

The administration has likewise attempted to justify its decision to enter into the JPEPA, saying that it will spur economic growth and reduce poverty by bringing in Japanese investments and opening up Japanese markets to our agricultural products, as well as our nurses and caregivers. The administration likewise insists that the costs of exclusion (or the costs of not entering into the JPEPA) may be very high, as our ASEAN neighbors Singapore, Malaysia, and Thailand have already entered into similar trade agreements with Japan, and the Philippines could be left behind if we don’t enter into the JPEPA.

It must be pointed out, however, that the JPEPA poses not just serious environmental issues, but also grave constitutional, legal, and economic issues that the government ignores at its own peril. The Senate must take a long, hard, incisive look beneath the so-called gains and benefits that the administration insists that the country will be reaping under the JPEPA, and not be unwitting collaborators in what may very well be an act of economic treason against the Filipino people.

Legalizing toxic waste trade:

Sacrificing the environment at the altar of economic growth

In negotiating the JPEPA, our government negotiators, policymakers, and analysts did not factor in the environmental costs and benefits of trade and investment liberalization. Moreover, they ignored existing domestic and international commitments of the Philippines to ensure protection of the environment.

This much is crystal-clear from the fact that the JPEPA expressly includes municipal waste, clinical waste, sewage sludge, chemical waste, and incinerator ash (among others) in the list of tradable goods, *and* immediately eliminates tariffs on these products. This was not a mere oversight, but a *conscious and deliberate* act on the part of the Philippine government: these goods were initially *excluded* from the JPEPA in the earlier drafts, but were subsequently in February 2006, *over the objections of the DENR and civil society*. Moreover, no less than DTI Secretary Peter Favila admitted in November 2006 that the inclusion of the toxic waste provisions was a necessary concession to convince Japan to open up its markets to our nurses and caregivers.

The inclusion of waste products in the JPEPA list of tradable goods and their immediate zero-rating upon effectivity of the JPEPA create the market conditions that will encourage and facilitate trade in toxic waste between Japan and the Philippines. Under the JPEPA, there is a *prima facie* presumption that these are *permitted* importations. There are no indicated restrictions or qualifications to the importation of such waste products; neither were there any express reservations made. The zero-rating likewise creates an obligation on the part of the Philippines to *allow* such importation at rates that cannot go any higher than those designated in the tariff schedule, i.e. 0%.

It must be pointed out that Japan has a serious problem with waste disposal and has in fact resorted to exporting much of its trash to developing countries such as India, Nigeria, and China, as this has proven to be cheaper than actual recycling. International environmental groups that have been monitoring the movement of Japan's toxic waste have already decried Japan's systematic attempt to create waste colonies throughout the region through its 3R (reduce, reuse, recycle) initiatives and attempts to embed them in trade agreements such as the JPEPA. (The Basel Action Network's November 2006 report entitled "JPEPA as a Step in Japan's Greater Plan to Liberalize Hazardous Waste Trade in Asia" is very instructive in this regard.)

Philippine government officials and even the Japanese Embassy have attempted to defend the JPEPA by saying that there are sufficient laws and international treaties in place to prevent the *illegal* entry of Japanese toxic waste into the Philippines. The Japanese Embassy even made an official statement that it will "not allow any export of toxic and hazardous wastes to another country, including the Philippines, unless the government of such a country approves such export."

This, however, is all double-speak and legal subterfuge. The JPEPA effectively *legalizes* what was previously illegal by creating contradictions between the JPEPA and Philippine domestic laws (such as the Clean Air Act, the Toxic Substances and Hazardous and Nuclear Wastes Control Act, and the Solid Waste Management Act) and international environmental commitments (specifically the Basel Convention on the Transboundary Movement of Hazardous Wastes), as well as internal contradictions within the JPEPA itself. These contradictions between the JPEPA and existing Philippine environmental laws – not to mention internal contradictions within the JPEPA itself – can be readily exploited by Japanese waste exporters and their Philippine importer counterparts, who already take advantage of the inefficient, corrupt, and lax Customs administration in the Philippines.

It must likewise be pointed out that government analysts, policymakers, and negotiators did *not* even consider the ramifications of including toxic waste in the list of JPEPA tradable goods. This much was admitted by the Philippine Institute for Development Studies (PIDS) – the government think-tank

which provided policy and economic analysis for the JPEPA negotiations – during the Senate hearing on 27 November 2006, and again during a JPEPA PIDS forum on 19 January 2007.

But the toxic waste provisions are just the tip of the iceberg. Even assuming that the Philippine and Japanese governments decide to issue a side agreement to exclude toxic waste trade under the JPEPA – and the legal effects of such an agreement are open to question – the economic implications of the JPEPA could very well belie administration claims that JPEPA will usher in a new era of economic growth and prosperity.

***Trade liberalization and tariff elimination:
Negating manufacturing-led growth***

The JPEPA aims to eliminate tariffs on practically all tariff lines in our Tariff and Customs Code, spanning from immediate tariff elimination (such as for toxic waste items) to gradual reduction over a period of 10 years. Tariff liberalization is premised on the assumption that liberalization in the trade of goods will spur economic growth and reduce poverty.

The computable general equilibrium (CGE) models used by government economists to measure the projected benefits of trade liberalization under the JPEPA have generally yielded positive results. It must be pointed out, however, that these CGE projections are predicated on the assumption of perfect competition, which never happens in the real world. These models say little, if at all, about the distribution of costs and benefits of trade liberalization.

The Philippines stands to lose approximately P3 to P9 billion pesos from tariff elimination under the JPEPA. This is money that could otherwise have helped reduce our growing fiscal deficit.

Moreover, the JPEPA will aggravate our current trade deficit with Japan. The Philippines currently has a trade deficit vis-à-vis Japan, with imports amounting to US\$9.184 billion in 2005 (comprising 17.71% of our total imports) versus exports of only US\$7.150 billion. Near total liberalization under the JPEPA will inevitably cause imported Japanese products to flood the Philippine market and thereby pressure local industries to shift from manufacturing to importing. This in turn will cut local employment in the affected sectors.

In its Philippine Development Outlook for 2007, the Asian Development Bank stated that if the Philippines is truly serious about reducing poverty and generating employment, it cannot just rely on services for economic growth. It must achieve a growth rate of at least 8%, and this growth must be *manufacturing-led*. Trade liberalization under the JPEPA, however, covers vital basic, “hard” industries such as the cement, petrochemical, steel, and automotive industries. This will inevitably sever the forward and backward linkages of such industries with local small- and medium-scale enterprises, and hollow out what little is left of the Philippine industrial and manufacturing sector.

It must likewise be pointed out that tariff elimination under the JPEPA goes far beyond the country’s commitments under the World Trade Organization (WTO). Whereas the WTO provides for ceiling bound rates that allow for some policy space to raise tariffs in accordance with the exigencies of the country’s economic situation, the JPEPA provides no such leeway. Once tariffs are eliminated, there will be no turning back.

What is disturbing is that Philippine government negotiators apparently gave away too much *unnecessarily*. Japan excluded 238 tariff lines: 202 agricultural products (including fish products such as cod, herrings, sardines, and mackerel which the Philippines has an advantage in) and 36 industrial products (including slippers and footwear). Moreover, Japan likewise maximized its privilege to impose quotas and delay tariff reduction on certain agricultural products coming in from the Philippines, including bananas which is supposed to be our primary export to Japan. On the other hand, the Philippines excluded only 6 tariff lines: 5 for rice, and 1 for salt.

What is even more disturbing is that it turns out that such tariff elimination will have little, if any impact on the decision of Japanese investors to do business in the Philippines. In his presentation during the JPEPA forum sponsored by JETRO and the Makati Business Club last 16 March 2007, Mr. Ichiro Tsuji of JETRO said that the main concern of Japanese investors is the improvement of the business environment. The elimination of Philippine tariffs will have minimal effect considering that most Japanese investors are based in special economic zones, which generally allow duty-free importation anyway.

Investment liberalization:

Surrendering our power to utilize foreign investment for economic development

With foreign direct investment (“FDI”) as a major source of capital and foreign currency reserves for the country and Japan being the country’s biggest source of FDI, the Philippine government understandably wants to entice even more Japanese to invest locally.

However, in the Philippine government’s zeal to attract more Japanese FDI, it has allowed unfettered FDI under the JPEPA by prohibiting the imposition of performance requirements. Under the JPEPA, the Philippine government cannot require Japanese investors to, among others, transfer technology, employ a certain number of Filipino nationals, and attain a given level or value of research and development. This drastically limits the benefits that the country can reap from Japanese FDI.

Countries like China and Malaysia which have benefited greatly from FDI did not allow unfettered FDI but extensively regulated it. Moreover, studies have shown that a country is more likely to benefit from FDI if such FDI is integrated into its national development and technological plans, instead of simply being left to the whims of market forces.

The lifting of restrictions and regulation on Japanese FDI appears to be an effort of the Philippine government to attract FDI without having to resort to the harder work of addressing the *real* reasons why investors are shying away from the Philippines: macroeconomic instability, corruption, contracting and regulatory uncertainty, poor infrastructure, high power costs, high costs of doing business, and peace and order concerns. In exchange for the promise of quick money and short-term gains, the Philippine government will be surrendering its power to regulate FDI and harness it for long-term economic development.

***The JPEPA treaty-making process:
Railroading democracy***

Despite warnings by international trade law experts Justice Florentino P. Feliciano and Atty. Ma. Lourdes Sereno that the Philippines should not be rushed into concluding and ratifying the JPEPA, the Philippine government proceeded to sign the JPEPA hastily in September 2006, after just 2 ½ years of negotiations.

The JPEPA negotiations were conducted very haphazardly and with very poor inter-agency coordination. Trade policy-setting and negotiation functions were dispersed across several government agencies, many of which had divergent and sometimes opposing mandates. The poor inter-agency coordination was aggravated by the lack of information-sharing and dissemination among the agencies. This resulted in internal inconsistencies and contradictions within the JPEPA that can be exploited by Japan to our detriment.

The JPEPA negotiations were likewise characterized by secrecy and very little public consultation, with the government negotiators refusing to disclose the contents of the JPEPA *even to members of Congress*. Concerned citizens coming from the peasant, fisheries, labor, and women's sectors, together with their representatives in Congress, were forced to file a case with the Supreme Court in December 2005 to compel the negotiators to divulge the status and contents of the JPEPA and to restrain its signing until full public disclosure and consultation had been done. However, President Arroyo proceeded to sign the JPEPA in Helsinki, Finland, beyond the reach of the Philippine media and Filipino people. It was a fittingly symbolic culmination of an entire process that violated the rights of the Filipino people under the Philippine constitution and railroaded Philippine democracy.

JPEPA: For whose benefit? Do we really need it?

It is important to understand that the JPEPA was initiated and drafted almost entirely by Japan; even a mere cursory examination of Japan's economic partnership agreements (EPAs) with Malaysia, Singapore, Indonesia, and Thailand shows that major portions of these EPAs are identical to their counterpart provisions in the JPEPA, revealing a common template.

It is likewise important to understand Japan's motives for initiating such EPAs with the ASEAN member countries. With China's emergence as an economic powerhouse and direct competitor, Japan is struggling to regain its dominance and competitive edge within the Asian region. With an aging workforce, negative birth rate, and very expensive wage standards, the only way Japan can compete with China is to transfer its industries overseas to ASEAN, creating a region-wide production hub that takes advantage of economies of scale and a younger and more dynamic workforce that saves them tremendous wage and production costs. JPEPA thus fits into Japan's plans to reassert its economic dominance in the region.

Do we really need the JPEPA? Countries in East Asia such as China have experienced high rates of economic growth without the benefit of an FTA or even membership in the WTO. As UP School of Economics Dean Raul Fabella pointed out in a JPEPA forum held on 17 March 2007, any comparative advantage that we have vis-à-vis Japan will come to pass, with or without JPEPA.

Truth be told, we do *not* need an FTA to spur our economic development. In a December 2005 paper, the PIDS put it quite succinctly:

“Policymakers in the Philippines should realize that FTAs are neither necessary nor sufficient for economic growth. Hence, there should be a de-emphasis on the current trend to negotiate FTAs, most of which are knee-jerk reactions to the initiatives of other countries.” (emphasis supplied)

The same study states:

“It should be emphasized that the impediments to faster economic growth are largely internal. For example, the study of the East Asian miracle points to four main factors: outward orientation, a modernized agriculture sector, bureaucratic efficiency, and relatively equitable distribution of income. Moreover, outward orientation by these countries was not achieved through joining an FTA. (Neither was outward orientation a result of trade liberalization.) The Philippines is a clear example where unimpressive economic growth is largely due to internal factors. It is quite obvious that economic resources would be better allocated if these were channeled to agricultural productivity, improving governance, and strengthening institutions rather than finalizing the Japan-Philippines Economic Partnership Agreement, negotiating the China-ASEAN Free Trade Agreement, or pursuing an FTA with the US and other countries.” (emphasis supplied)

The JPEPA is but the first in a long line of free trade and economic partnership agreements currently being negotiated by the Philippines, and it will set the stage for all future trade and investment agreements to come. Should the Senate approve the JPEPA in its current form, other countries will demand nothing less than the concessions that we gave Japan. If we have already given up so much to Japan, what else will there be left to give other countries in the future? And what else will there be left for the Philippines?

For all its pretenses at being an “economic partnership” agreement, the JPEPA is really a partnership between unequals, and a repressive agreement that sacrifices the health, the environment, the long-term economic development, and ultimately, the dignity and the sovereignty of the Filipino people. It is an act of *economic treason* that must be labeled for what it truly is and should be condemned accordingly.