

Anatomy of a (bad) trade deal: how the Philippines negotiated the JPEA

Monday 10 November 2008, by [PURUGGANAN Joseph](#) (Date first published: October 2008).

Contents

- [FULL SPEED AHEAD](#)
- [RESEARCH](#)
- [FORMAL NEGOTIATIONS](#)
- [JAPANESE LESSONS](#)
- [TOXIC WASTE AND THE CONSTITUTION](#)
- [WAY FORWARD](#)

With a majority vote of 16-4, the Philippine Senate ratified the controversial Japan-Philippines Economic Partnership Agreement (JPEPA) last October 8, 2008 thus paving the way for the implementation of the controversial trade and investments deal with Japan which had already been approved by the Japanese Parliament in December 2006.

Despite the Senate nod however, questions continue to hound the deal. Weeks prior to the vote, a number of Senators, expressing concern over the constitutional infirmities and the lopsidedness of the deal in Japan's favour, were pushing for a re-negotiation of the agreement.

The call for renegotiation was further proof that there really was no overwhelming support for JPEPA even among supporters of ratification in the Senate. Senator Manual Roxas II, one of the principal sponsors of the treaty acknowledged weeks before that JPEPA was poorly negotiated, as he made a call to reform the way the Philippine government negotiates trade agreements in light of the dismal JPEPA outcome.

Just how did the Philippines negotiate JPEPA? Could we have had a better deal or gotten more out of the agreement had we negotiated better? Or were the odds stacked up against us from the start?

FULL SPEED AHEAD

For all intents and purposes, the JPEPA negotiations started in January 2002 when Japanese Prime Minister Junichiro Koizumi visited the Philippines in the first leg of his ASEAN tour aimed to gather support from regional leaders for his "Initiative for Japan-ASEAN Comprehensive Economic Partnership."

This visit is significant because it reflected the shift in Japanese trade policy from a purely multilateral approach to trade, to adopting a "dual approach" of pursuing regional and bilateral agreements alongside pushing its agenda in the WTO.

Having secured the nod from the Philippines and the rest of ASEAN, Japan went full steam ahead in trying to actualize these commitments in a series of formal and informal meetings.

In May 2002, in her first visit to Japan after having already expressed support for Koizumi's ASEAN initiative, Philippine President Gloria Macapagal Arroyo proposed the setting up of a working group in order to study the possibility of establishing an economic partnership agreement with Japan and put in place a mechanism for bilateral discussions on JPEPA.

The Working Group on JPEPA was formed, composed of representatives from concerned government agencies of both parties. The task of the working group was to study the possible content, substance, and the coverage of a mutually beneficial economic partnership between the two countries, including the possibility of forming a free trade agreement (FTA).

By April 2003, with strong indication from the Working Group of the common desire of both parties to proceed, separate independent studies to assess the sustainable impact of JPEPA were initiated.

RESEARCH

By May, through Executive Order 213, President Arroyo established the Philippine Coordinating Committee (PCC) to study the feasibility of JPEPA. The PCC is an inter-agency committee co-chaired by the Undersecretary for International Economic Relations of the Department of Foreign Affairs (DFA) and the Undersecretary for International Trade of the Department of Trade and Industry (DTI). The PCC was tasked to represent the country in meetings, consultations and negotiations, the formulation of the recommended Philippine positions, to conduct consultations with other government agencies and private sector representatives (as necessary), and to draft a proposed framework for JPEPA and its Implementing Agreements (IA).

From June to December 2003, the Philippine Institute for Development Studies (PIDS) initiated a research project to study the feasibility and desirability of JPEPA. The overall aim of the project was to address the fundamental question of whether the Philippines should enter into a Japan-RP Economic Partnership Agreement. PIDS proposed to answer this question by conducting specific research guided by the basic principles of first, the Philippines' agenda and reform objectives and second, the issue of multilateralism versus bilateralism.

The feasibility of JPEPA was judged by the PIDS studies against the principal objectives of reforms defined as (1) global competitiveness, (2) sustainable growth, (3) efficiency in allocation, and (4) poverty alleviation.

A total of 17 research projects were undertaken under the Japan-Philippines Economic Partnership Research Project. Two were impact analysis on the whole economy, nine were analysis on specific sectors and concerns (agriculture, manufacturing, services trade, tourism, movement of natural persons) and six were special studies on such topics as Japanese ODA, rules of origin, and human resource development among others.

At least 14 out of these 17 studies were prepared for or in coordination with the Philippine APEC Study Center Network (PASCN) and PIDS. At least seven of these studies were funded by the Japan International Cooperation Agency (JICA) and at least four were funded through the Ministry of Economy, Trade and Industry (METI) of Japan.

A report of the Joint Coordinating Team (JCT) cited the PIDS studies conclusion that the JPEPA would provide positive impacts both on the Philippine economy and on poverty reduction on the whole, while the impact is differential among sectors. The studies also pointed the need for adjustment measures to maximize benefits of JPEPA, including mutual recognition, the promotion of movement of natural persons between the two countries and various cooperation programs.

On the other hand, the Japanese studies projected positive but very minimal effects on Japan's GDP of 0.01-0.03 % (Kawasaki) and 1.7-3.03% increase for Philippine GDP in the long run.

FORMAL NEGOTIATIONS

Very little information on what transpired in the formal negotiating sessions is available to the public. We do know that the formal sessions commenced in February 2004 and had at least eight formal sessions in Manila and Tokyo from February- October 2004. These sessions were then followed by at least three working level sessions in Manila from November 2004 to February 2005. What followed next were consultations/hearings on tariffs, the completion of the text, legal review, and processes leading to mutual acceptance of the text, completion of other legal requirements and the joint signing of JPEPA by leaders.

The PCC is mandated to conduct consultations with private sector representatives but only as it deems necessary. The conduct of sector specific consultations became the discretion of the lead national government agencies. The government however reported that public consultations were indeed conducted at least three times in a span of two years (2002-2004) and at least on three more occasions in working group and JCT meetings there was private sector presence.

In at least one occasion, one member of civil society was present in a formal negotiating session. In the second round of talks in April 2004 in Tokyo, a researcher from Tambuyog Development Center (TDC) joined the Philippine negotiating panel as an adviser on fisheries issues of Undersecretary Segfredo Serrano of the Department of Agriculture (DA). This was the first and last time that Tambuyog or any other civil society organization was invited to participate as part of the Philippine negotiating panel in the JPEPA negotiations.

After the signing of the deal in September 2006, the Executive set its sights on securing the mandatory approval of the Senate. JPEPA was officially transmitted to the Senate on August 17, 2007. To prepare for this process the Philippine government created through Administrative Order 198 an interagency task force for JPEPA Senate ratification. The multi-agency JPEPA task force (JTF) was tasked to put forward to the Senate the benefits, advantages and opportunities to the Philippine economy of a bilateral agreement with Japan

Hearings on JPEPA were first conducted by the Committee on Trade and Commerce chaired by Senator Manuel Roxas II in November 2006 before joint hearings of the Committees of Trade and Commerce and Foreign Relations were conducted under the leadership of Senator Miriam Santiago. Santiago conducted a total of nine hearings from September to December 2007 with each hearing focusing on specific issues (economics, environment, movement of natural person, constitutional issues, and agriculture).

The committee report calling for "conditional concurrence" was completed by April 2008. Santiago however backtracked and deferred her sponsorship speech on JPEPA opting to secure a side agreement with Japan first. The side agreement was secured in late August 2008. The deal is set for plenary debates in the Senate. As of this writing, 12 Senators have signified their intention to approve the deal while at least five are still toying around with the idea of giving the agreement back to the executive for re-negotiation.

JAPANESE LESSONS

Being the first bilateral agreement concluded by the Philippines, JPEPA set a precedent for future

bilateral trade negotiations. The JPEPA negotiations raised a number of critical questions which are worth examining closely if we are to learn from this process and reform the way we negotiate such agreements.

The first issue is defining the national agenda. In the case of JPEPA, at least three elements were instrumental in defining the substance of the agreement. The first is the use of the Japan-Singapore Economic Partnership Agreement (JSEPA) as a template for JPEPA. JSEPA, the very first bilateral economic partnership agreement (EPA) forged by Japan is considered a springboard or catalyst for promoting Japan's economic relations with other ASEAN countries.

The second element, which was evident early on, was the commitment of both parties to push for an ambitious agreement that is not just a free trade agreement but covers other areas such as services, investment, human resources development and other forms of economic cooperation. Through five meetings of the Working Group —four in Manila and once in Tokyo — between October 2002 and July 2003, both parties tossed around proposals for possible elements of the agreement.

For Japan, its negotiators were clearly pushing for greater liberalization of the investment regime, market access for Japanese manufactures and improvements in the business environment. For the Philippines, the main agenda included market access for agricultural and fisheries products, and movement of natural persons, particularly targeting market access opening for the healthcare sector.

The third crucial element is research, which provided the empirical justification to the claims of gains and benefits and which fuelled the negotiations forward. The PIDS played a central role in the research part of the negotiation process. While the government recognizes the area of research as an area of strength for the Philippines, a number of issues and concerns should be levied against the JPEPA studies.

The JPEPA research project of PIDS was clearly guided by a trade policy that is supportive of a more liberal regime for trade and investment. These studies were conducted after a political decision at the highest level has already been made to not just proceed, but see the negotiations through, thereby raising the question of the real role of these studies. Are they meant to provide empirical basis for decisions on whether to proceed with the negotiations or are they meant simply to provide the justification for decisions that have already been made?

And lastly, how independent are these studies? Of particular concern with the JPEPA researches is the extent of Japanese influence, both directly (through funding) and indirectly (through the framework of addressing what Japan needs rather than what the Philippines wants) into the outcomes of the researches.

The level of people's participation in the process is another critical issue related to the agenda building process. The JPEPA negotiations have been characterized by critics as a non transparent and secretive process with minimal space for people's participation. While the government claims transparency in the negotiations with a "structured, step-by-step negotiations process consisting of both formal and informal meetings, extensive consultation and public hearings, including attendance in hearings called by the House of Representatives," critics rightly point out the non-disclosure of the text during the negotiations and the absence of a clear mechanism for people's participation as obvious indicators of a democracy deficit in the JPEPA process.

After having identified our aggressive and defensive interests, the next issue in the whole process is the conduct of the formal negotiations themselves. Here the concerns are more administrative. Because this was the Philippines first bilateral agreement of this nature and scope, the process was

largely ad hoc. Inter-agency task forces were created specific for JPEPA alone. The formulation of specific chapters was delegated to specific national government agencies with the PCC mandated to bring all of these together into a coherent national agenda.

TOXIC WASTE AND THE CONSTITUTION: FALLING THROUGH THE CRACKS

Two of the most critical issues that stand out today as major arguments against the agreement — the dumping of toxic waste from Japan and the un-constitutionality of JPEPA — which were oddly enough left unresolved after the formal negotiations process, gives us a glimpse into the level of coherence and coordination (or the lack thereof) in the process.

The Magkaisa Junk JPEPA, a broad, multi-sectoral coalition campaigning against the deal, reported that during the negotiations, upon the advice of the Department of Environment and Natural Resources (DENR) to the DTI, toxic wastes were stricken out of the list of tradable goods in the 2003 working draft of JPEPA only to be re-inserted later to comply with the Harmonized System (HS).

On the legal and constitutional issues, DTI reported a process of legal review to address these concerns towards the end of the formal negotiating process. Two members of the government's legal review team Justice Florentino Feliciano and Attorney Ma. Lourdes Sereno, in their testimonies before the House Special Committee on Globalization, raised serious concerns over the nature and scope of the agreement and the implications on existing legislation and administrative and resource requirements.

Furthermore, Attorney Sereno already raised a red flag on the role of (the executive) department on trade policy setting and treaty execution. This is one area of concern levied against JPEPA by Constitutional expert, Attorney Mervin Magallona when he noted that several provisions in the JPEPA indicate a blatant usurpation of Congressional Power.

So although a review process was conducted, there are serious doubts whether the recommendations of the review panel were even considered in the final agreement.

The third issue is oversight. What role did Congress play? A House Resolution calling for an inquiry on JPEPA led to Congressional hearings conducted under the House Special Committee on Globalization. To a large extent, the congressional hearings on JPEPA became the main platform for public debate on the proposed deal. These hearings compelled the DTI to provide updates on the negotiations to Congress and an opportunity for groups critical of JPEPA to present their positions.

The Congressional hearings however failed to compel the Executive to provide Congress with a copy of the negotiating text, which remained inaccessible to public scrutiny until the deal was signed in 2006. In December 2005, Akbayan et al filed a petition before the Supreme Court to compel the government to publicly disclose the full text of JPEPA. The Supreme Court however ruled in July 2008 against the petition for disclosure and found in favour of the exercise of Executive privilege in the case of JPEPA.

Nonetheless, the Supreme Court decision on JPEPA does not invalidate the need for oversight on deals entered into by the Executive especially because of their far reaching implications on development.

_WAY FORWARD

Examining the JPEPA process leads us to a number of policy options in reforming the trade negotiation process in the Philippines. We should start with an honest assessment of Philippine trade policy and how our adherence to this policy has impacted on development. We should also examine the way the Philippine government works within ASEAN. There should also be closer coordination in ASEAN not just in terms of the ASEAN-wide FTAs that are being negotiated but in relation to the bilateral efforts of its Member states as well.

There are proposals in Congress for the creation of the Philippine Trade Representative Office (PTRO), which could pave the way for a more coherent trade negotiating agenda and a more coordinated and systematic way of negotiations where inputs from academic and research institutions, from private sector, and from civil society organizations and social movements are heard and integrated into the national agenda. Consultations should be made mandatory rather than discretionary on the part of the national government agencies.

An important element of participation is access to information. The enactment of the Freedom of Information Act is an important step towards ensuring that people have access to crucial documents including copies of the negotiating texts and become informed participants in the negotiating process.

The role of Congress in trade negotiations is another area that must be re-examined seriously in light of the JPEPA experience. Congress could play a crucial role in addressing the issue of oversight particularly in light of the Supreme Court Decision upholding the use of executive privilege in the JPEPA negotiations.

With the Philippines and ASEAN engaged in a number of FTA negotiations there is an urgent need to get our act together fast to establish a more systematic, coherent, participatory and more critical negotiations process if we are to prevent a repeat of JPEPA.

P.S.

* From Focus on Trade, Number 144, October 2008.

* Joseph Puruggann is a research associate with Focus on the Global South. He can be contacted at [josephp\(at\)focusweb.org](mailto:josephp(at)focusweb.org)