

20 December 2019

**REPRESENTATIVE JESUS C. SUNTAY**

Chairperson  
Committee on Human Rights  
House of Representatives  
Batasan Complex, Batasan Hills  
Quezon City

Dear **Representative Suntay**:

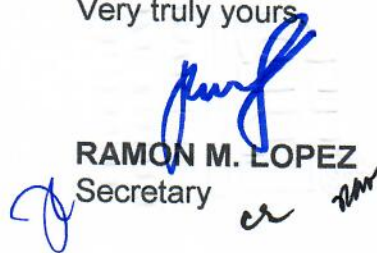
We are pleased to submit the Department's position on House Bill No. 3597, entitled:

**An Act Mandating the Government to Provide Access to Information on Food and Other Basic Commodities to Guarantee the Right of the People to Affordable Food and Adequate Food Supply Prescribing Guidelines Therefor, and For Other Purposes**

This is without prejudice to the Department's submission of additional inputs.

With my best regards.

Very truly yours,



**RAMON M. LOPEZ**  
Secretary

OFFICE OF THE SECRETARY

DTI Position on

**House Bill No. 3597**

**An Act Mandating the Government to Provide Access to Information on Food and Other Basic Commodities to Guarantee the Right of the People to Affordable Food and Adequate Food Supply Prescribing Guidelines Therefor, and For Other Purposes**

The Department supports the objectives of the proposed bill in adopting and implementing a policy of full public disclosure of all government transactions relative to food, particularly importation permits for basic commodities like rice, corn, and sugar, granted by the Department of Agriculture (DA), Department of Trade and Industry (DTI), and other agencies involved in handling the country's food supply.

The Department expresses its views on certain provisions of the bills, to wit:

<b>Proposed Provision</b>	<b>DTI Position/Recommendations</b>
<p>Sec. 2. Declaration of Policy. – The State recognizes as a matter of policy the fundamental right of the people to affordable food and adequate food supply.</p> <p>xxx</p> <p>the State shall adopt and implement a policy of full public disclosure of all government transactions involving food and basic commodities, consistent with the Constitutional right of the people to information on all matters of public concern.</p>	<p>The provision is consistent with Article II, Section 28 of the Philippine Constitution which guarantees the right of people to information of transactions involving public interest and also abides by the consumer's right to be informed, which is included as one of the eight (8) basic consumer rights.<sup>1</sup></p>
<p>Sec. 3. Definition of Terms. –</p> <p>xxx</p> <p>(e) "Trade secret" shall mean any information, including a formula, pattern, compilation, program, device, product, method, technique or process, that is used, or may be used, in business or for any commercial advantage, derives independent economic value, actual or potential, from not being generally known to the public or to persons who can obtain economic value from its disclosure or use, is the subject of reasonable efforts to prevent it from becoming generally known, and the disclosure of which would result in harm or improper benefit.</p>	<p>For Section 3(e), the enumeration of items under the term "trade secret" is suggested to also include "technique, or process, <b>DESIGN OR INSTRUMENT</b> that is used or may be used in business or for any commercial advantage."</p>
<p>Sec. 4. Publication of Importation Permits. – In the spirit of transparency and</p>	<ul style="list-style-type: none"><li>• For Section 4(d), the date of contract of import is recommended to be</li></ul>

<sup>1</sup> United Nations (UN) Guidelines for Consumer Protection

<p>accountability, the Department of Agriculture shall cause the publication of the following information on importation permits that it has granted for basic commodities, such as rice, corn, and sugar.</p> <p>xxx</p> <p>(d) Date of contract of import;</p> <p>xxx</p> <p>(f) Schedule, cargo or vessel, and maximum tonnage per shipment</p>	<p>explicit. The contract of import could be either a Supply or Shipment Contract, both of which have different effectivity dates.</p> <ul style="list-style-type: none"> <li>• For Section 4(f), it is proposed to read <b>“COMMODITY DESCRIPTION, DATE OF SHIPMENT (BILL OF LADING DATE), PERFORMING VESSEL/CARRIER, MARKS AND NUMBERS OF THE GOODS AND THE QUANTITY/TONNAGE PER SHIPMENT, AND NAME OF SHIPPING LINES.”</b></li> <li>• Although the law does not explicitly mention that bill of lading has to be dated, international trading practice prescribes that the bill of lading has to be signed after the completion of loading. The date is very important in the expiry of the documentary letter of credit.</li> <li>• The marks and number of goods refer to the number of packages or pieces in terms of goods shipped in containers/airfreight, while the quantity or weight, as the case may be, refers to commodity/goods shipped in bulk through vessels.</li> <li>• The term “maximum tonnage” is suggested not to be used. Instead,</li> <li>• The tonnage indicated in the ocean bill of lading (B/L) is suggested to be used because it is more specific instead of the term “maximum tonnage.” The tonnage/quantity in the B/L is based on per pre-shipment loading inspection conducted by a nominated inspector/surveyor and the same is indicated in the shipping document (Certificate of Quantity and Quality) from which the banks base their computation when effecting payments for letters of credit.</li> </ul>
<p>Sec. 5. Coverage and Limitations. – All information, as herein defined, which are in the custody or under the control of a government body shall be made accessible and available for public scrutiny, copying and reproduction, except when:</p> <p>xxx</p> <p>(e) The information pertains to trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a</p>	<ul style="list-style-type: none"> <li>• We find the limitation in Section 5(e) acceptable for being consistent with the protection afforded to trade secrets or undisclosed information pursuant to Section 4(g) of RA No. 8293 or the Intellectual Property Code, and Article 39.2 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.</li> <li>• To the extent that the exempted information pertains to the contents of a patent application for food and basic commodities as defined in Section 3(a) of the bill, we also find Section</li> </ul>

<p>privileged or confidential nature, or</p> <p>(f) The information is exempted from disclosure by another law or by the Rules of Court, including, but not limited to, information considered as privileged communication or gathered by any government body in closed or executive session.</p>	<p>5(f) to be acceptable for being consistent with Section 45 of the Intellectual Property Code on the confidentiality of unpublished patent applications.</p> <ul style="list-style-type: none"> <li>• According to this provision, a patent application that has not yet been published shall not be made available for inspection without the consent of the applicant. This requirement of confidentiality subsists until such time that the patent application and search documents are published in the IPO Gazette after the expiration of 18 months from the filing or priority date of the patent application. After publication, the patent application and all related documents shall no longer be exempt from the confidentiality requirement.</li> </ul>
<p>Sec. 6. Procedure for Access. –</p> <p>xxx</p> <p>The government body shall comply with the said request within two (2) working days after the receipt of the request, or within a reasonable period of time mutually agreed upon by the requesting person and the government body's employee concerned, but not to exceed five (5) working days.</p> <p>The time for compliance may, with due notice to the requesting person, be extended by the head of the government body to a period not exceeding fifteen (15) days</p> <p>Sec. 8. Transfer of Request. – If the government body to which the request was filed determines that the information being sought is not in its custody or control, it shall, within two (2) days, notify the requesting person of the same, through writing or other contact channels that the requesting person has provided</p> <p>Sec. 9. Denial of Request. – If the government body decides to deny the request, in whole or in part, it shall within two (2) working days from the receipt of the request notify the requesting person of such denial in writing</p> <p>Sec. 10. Remedies to Compel Disclosure. – Every denial of any request for access to information may be appealed before</p>	<p>We recommend for Section 6 to harmonize compliance time on requests for information with Section 3 of the Implementing Rules and Regulations (IRR) of RA No. 11032 or the Ease of Doing Business Act.</p>

<p>the Office of the Ombudsman by filing, within fifteen (15) days from receipt of a letter of denial, a prayer for the disclosure of the information being sought.</p>	
<p>Sec. 13. Penal Provisions. – Any official or employee of the government body which has possession of any significant information on food supply and prices found guilty by final judgment of the proper court of denying access to information, or parts thereof, without a valid legal ground as provided for in this Act, or who shall knowingly release false and/or misleading information, shall be punished with a fine of not less than Twenty Thousand Pesos (P20,000.00) but not more than Forty Thousand Pesos (P40,000.00), and/or imprisonment of not less than one (1) year but not more than three (3) years, including all the accessory penalties provided by law, upon the discretion of the Court.</p> <p>Any official or employee who shall fail to respond to a request due to negligence, or fail to meet the time limits for response set forth in this Act, without reasonable reasons for such, shall be punished with a fine of not less than Ten thousand Pesos (P10,000.00), but not more than Twenty Thousand Pesos (P20,000.00), and/or imprisonment of not less than six (6) months but not more than one (1) year, including all the accessory penalties provided by law, upon the discretion of the Court.</p> <p>Any official or employee who shall deliberately and knowingly refuse, or because of negligence fail, to update any information his or her office is required to disclose under Section 10 of this Act shall be penalized administratively with suspension from service, without pay, of at least six (6) months but not more than one (1) year. A subsequent offense shall cause his dismissal from service.</p>	<p>The DTI also recommends the harmonization of penal provisions stipulated in Section 13 of the Ease of Doing Business Act with Section 13 of this bill.</p>

The Department reiterates its support to the allow consumers access to information on government dealings related to food with due consideration to DTI's recommendations.

*Karyapinchay*

**Bureau of Trade and Industrial Policy Research**

**20 December 2019**

Ref: BTIPR-112019-407

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