

24 February 2020

SEN. AQUILINO PIMENTEL III

Chairperson

Committee on Trade, Commerce, and Entrepreneurship

Senate of the Philippines

GSIS Building, Financial Center, Diokno Blvd.,

Pasay City, Philippines

Dear **Senator Pimentel III**:

We are pleased to submit the Department's position on the following proposed legislation, entitled:

Senate Bill No. 1113

“An Act Amending Republic Act No. 8762, Otherwise Known as the Retail Trade Liberalization Act, 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

Senate Bill No. 1113

“An Act Amending Republic Act No. 8762, Otherwise Known as the Retail Trade Liberalization Act, and for Other Purposes”

The Department supports the objective of the proposed legislation to boost foreign investments in the Philippine retail industry towards greater access to diverse consumer products, more competitive local players, further technology and skills transfer, and additional jobs for Filipinos.

Data on foreign direct investments (FDI) inflow into the retail sector revealed the initial success of the passage of Republic Act (RA) No. 8762 or the Retail Trade Liberalization Act of 2000, with investments surging to USD31.33 million in 2000 from a zero base the previous year. However, inflows saw an abrupt decline the following year at a value of USD1.83 million. The volatility of FDI flows to the sector continued as it registered a high of USD208.2 million in 2016 only to drop by 60.1% the following year (See *Annex Figure 1*). This may point towards the current policy structure’s inability to attract and sustain investor interest.

Reforms in the Philippine retail sector are timely given the significant changes in the investment pattern in the Association of Southeast Asian Nations (ASEAN) with wholesale and retail trade receiving the largest FDI at USD38.9 billion in 2017. This sharp growth of 75% from USD22.2 billion allowed this industry to overtake traditional main recipients of FDI, namely finance and manufacturing, which recorded investments of USD31.6 billion and USD15.6 billion, respectively.¹

Further, the modestly increasing trend of the Philippine retail sector’s gross value-added (GVA) and share to gross domestic product (GDP), which have reached Php1.3 trillion and 13.6% in 2019, respectively, shows its potential contribution to the economy (See *Annex Figure 2*).

However, with the relatively restrictive and less competitive Philippine policy on retail trade vis-à-vis its ASEAN neighbors (See *Annex Table 1*), it was only able to garner USD83.1 million or 0.2% of the total FDI to ASEAN wholesale and retail trade.²

Relative to the stipulations under the proposed legislation, DTI submits its specific comments and recommendations including:

Stipulations under Senate Bill No. (SBN) 1113	DTI Comments/Recommendations
“Section 1. Section 5 of Republic Act No. 8762 is hereby amended to read as follows:	The Department recommends a higher threshold of USD300 thousand for the minimum paid-up capital requirement for

¹ ASEAN Investment Report 2018 Foreign Direct Investment and Digital Economy in ASEAN

² Bangko Sentral ng Pilipinas data on FDI 2017

<p>'SEC. 5. Foreign Equity Participation. - Foreign-owned partnerships, associations and corporations formed and organized under the laws of the Philippines may, upon registration with the Securities and Exchange Commission (SEC) and the Department of Trade and Industry (DTI), or in case of foreign-owned single proprietorships, with the DTI, engage or invest in the retail trade business [, subject to the following categories:] WITH A MINIMUM PAID-UP CAPITAL OF THE EQUIVALENT IN PHILIPPINE PESO OF ONE HUNDRED THOUSAND US DOLLARS (US\$100,000.00). PROVIDED THAT, THE FOREIGN ENTITY SHALL COMPLY WITH ANY OF THE FOLLOWING:</p> <p>(1) HIRE FILIPINO EMPLOYEES COMPRISING AT LEAST FIFTY PERCENT (50%) OF THEIR WORKFORCE OR AT LEAST FIFTEEN (15) FILIPINO EMPLOYEES, WHICHEVER IS HIGHER;</p> <p>(2) UTILIZE ADVANCE MACHINE INTELLIGENCE OR AUTOMATED WORKFORCE, AS DETERMINED BY THE DEPARTMENT OF SCIENCE AND TECHNOLOGY (DOST); OR</p> <p>(3) TRANSACT AT LEAST FIFTY PERCENT (50%) OF THEIR RETAIL BUSINESS ONLINE.</p> <p>XXX”</p>	<p>retail enterprises. This roughly converts to Php15 million, which is the upper bound asset size requirement for micro and small enterprises (MSEs), allowing for this segment to remain exclusive to Filipinos. This is seen to strike a balance between encouraging foreign investments and stimulating the development of our domestic retail sector given that MSEs, which comprised 45.8% of the total establishments and 21.0% of total employment in 2017 (See <i>Annex Tables 2 and 3</i>), may find it difficult to compete in a fully-liberalized market.</p> <p>Further, we suggests limiting the allowable branches/stores to one per USD300,000 of paid-up capital to ensure that foreign retailers will not engage in the practice of establishing branches/stores that may encroach on MSEs by spreading their paid-up capital to numerous branches/stores.</p> <p>In addition, the Department expresses its reservations on the additional requirements on local employment, utilization of machine intelligence or automated workforce, and online transactions as it may impose increased barriers to entry and dissuade investments by retailers.</p> <p>Instead, initiatives to ensure a competent workforce and facilitate innovation may be sufficient in inducing retailers to employ locally and adopt technology.</p>
<p>“Section 2. Sections 6 and 7 of Republic Act No. 8762 are hereby deleted and the succeeding sections renumbered</p>	<p>We recommend a transitory provision on the deletion of the requirement for retail trade enterprises to publicly offer shares of stock to ensure the consistency of the application</p>

<p>accordingly.”</p>	<p>of the new law to foreign retailers registered under RA No. 8762.</p>
<p>“Section 3. Section 8 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p>‘SEC. 8. Qualifications of Foreign Retailers. – [No foreign retailer shall be allowed to engage in retail trade in the Philippines unless all the following qualifications are met:</p> <p>XXX</p> <p>d. Only nationals from, or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade in the Philippines.]</p> <p>The DTI is hereby authorized to pre-qualify all foreign retailers, subject to the provisions of this Act, before they are allowed to conduct business in the Philippines. The DTI shall keep a record of qualified foreign retailers who may, upon compliance with the law, establish retail stores in the Philippines.</p> <p>XXX”</p>	<p>The Department recommends retaining the reciprocity requirement to allow for a level playing field as foreign nationals seeking to engage in retail business in the Philippines would allow Filipinos the same in the foreign nationals’ territories.</p> <p>Further, we opine that the functions of assessing the compliance with the minimum capital and reciprocity requirements be transferred from the Department of Trade and Industry (DTI) to the Securities and Exchange Commission (SEC) and included in their registration process for foreign retailers. This furthers the objectives of RA No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018.</p>
<p>“Section 4. Section 9 of Republic Act No. 8762 is hereby amended to read as follows:</p> <p>‘Sec. [9] 7. Promotion of Locally Manufactured Products. – [For ten (10) years after the effectivity of this Act, at] AT least [thirty] TEN percent [30%] (10%) of the aggregate cost of the stock inventory of foreign retailers [falling under Categories B and C and ten percent (10%) for Category D] shall be made in the Philippines.’”</p>	<p>The Department views that requiring at least 20% of the aggregate cost of the stock inventory of foreign retailers shall be made in the Philippines with at least 10% to be sourced from MSMEs may further ensure that the benefits of foreign investments are inclusive.</p>

Moreover, in consideration of e-commerce, we propose to update the definition of retail trade to read as follows:

"Section 3. Definition. - As used in this Act.

(1) *"Retail trade"* shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, **WHETHER DONE THROUGH PHYSICAL STORES, OR THROUGH THE INTERNET OR OTHER ELECTRONIC MEANS**, but the restriction of this law shall not apply to the following:

XXX"

The Department reiterates its support for the objective of the proposed legislations taking into consideration its comments and recommendations to attain both investment attraction and domestic enterprise development.



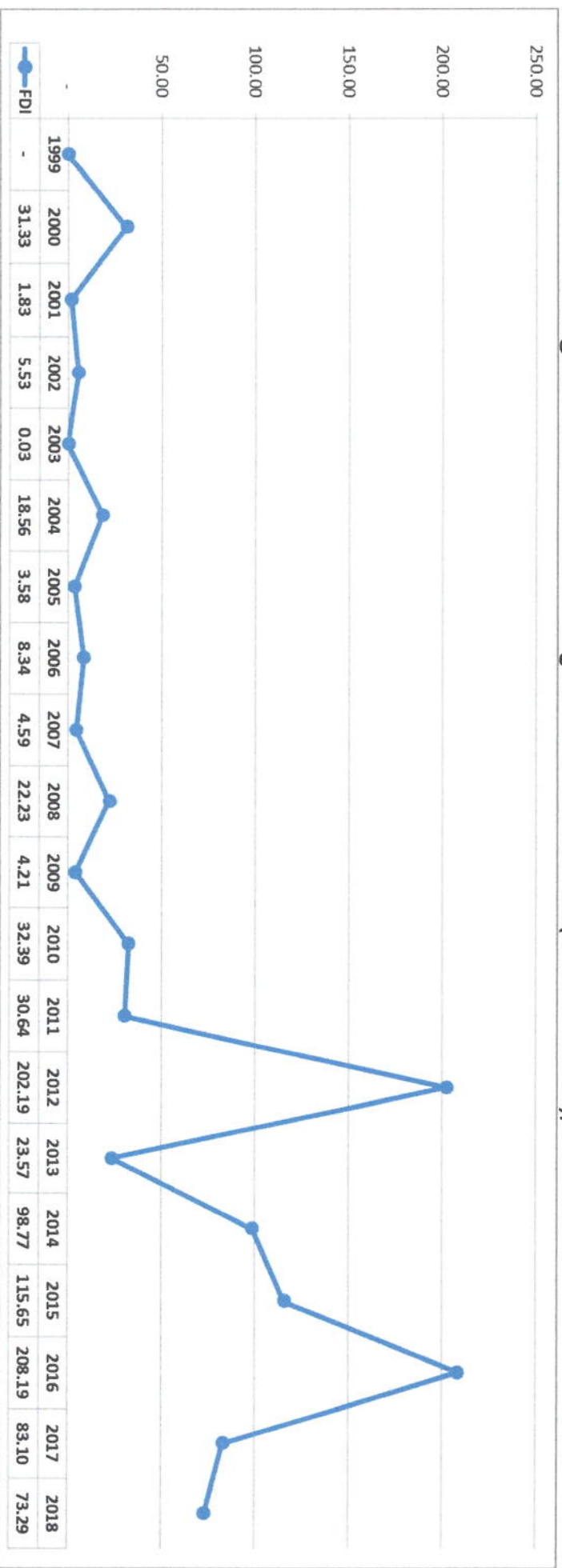
**Bureau of Trade and Industrial Policy Research
24 February 2020**

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ANNEX

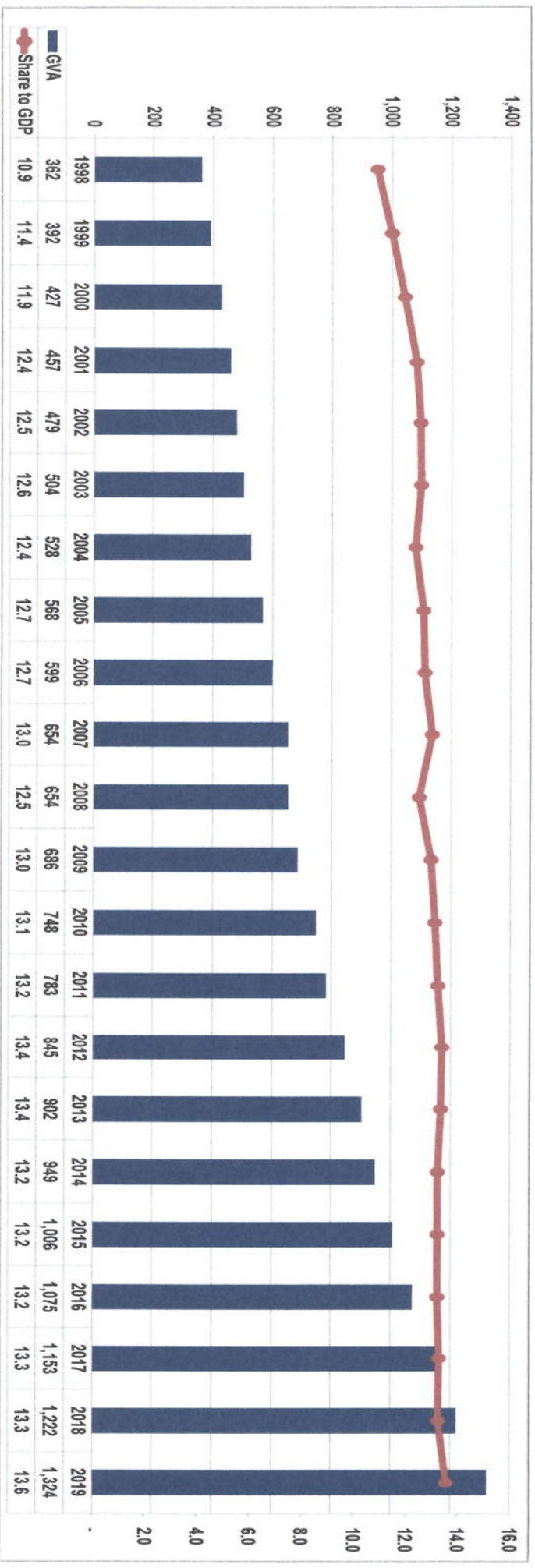
Figure 1. Retail Trade³ Foreign Direct Investments (in USD million), 1999-2018



Source: Bangko Sentral ng Pilipinas

³ Referred to as Trade/Commerce from 1999 to 2010 based on 1994 PSIC and referred to as Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles from 2011-2018 based on 2009 PSIC

Figure 2. Retail Trade Gross Value-Added (in Php billions) and Share to Gross Domestic Product (%), at Constant 2000 Prices, 1999-2019



Source: Philippine Statistics Authority

Table 1. Restrictions on Retail Trade

Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
<p>There is no restriction on total foreign ownership of companies incorporated in Brunei.</p> <p>Locally incorporated companies are required (as provided in the Companies Act) to have at least one of the two directors – or if more than two directors, at least two of them – to be ordinarily resident in Brunei, but exemptions may be obtained in some circumstances.</p> <p>Foreign investors can fully own incorporated companies, foreign company branches, or representative offices, but not sole proprietorships and partnerships.</p>	<p>No restriction on FDI for retail >200m² (GATS).</p>	<p>FDI only in large scale retail and must involve local SME partner – although not necessarily through equity stake.</p> <p>Business closed to foreign investments: Retail of motorcycles and commercial vehicles and retail trade in non-minimarkets, non-department stores, textile, games and toys in stores, cosmetic articles, footwear, electronics, mail order houses or via internet (consequently will restrict e-retailing foreign ownership), and food and beverages.</p>	<p>Retail businesses are reserved for Lao citizens only.</p> <p>Foreign investors are allowed to participate in wholesale businesses through joint ventures with Lao investors.</p>	<p>No FDI in supermarkets with less than 2000m².</p> <p>All applications involving foreign investment, including expansion of existing outlets, require approval from the Committee on Distributive Trade.</p> <p>To start a retail business, companies must be locally incorporated.</p>	<p>FDI permitted in supermarkets, department stores, and shopping centers above a certain minimum size.</p> <p>No FDI in small-sized retailing.</p> <p>Under joint venture form, local citizen's share >40%.</p>	<p>Category A: Minimum paid-up capital <USD2.5 million reserved exclusively for Filipinos.</p> <p>Category B: 60% foreign ownership for minimum paid-up capital of USD2.5 M.</p> <p>The opening of branches by a foreign retailer is allowed, provided that the investments of each store/branch established under Category B must be no less than the peso equivalent of USD830 thousand.</p> <p>Category D: 100% foreign ownership for enterprises specializing in high end or luxury products, provided that the paid-up capital per store is USD250 thousand.</p>	<p>All industries are open to foreign investment with an emphasis on industries with worldwide markets and scope for progressive growth in technology.</p>	<p>The retail sale of all goods of all kinds with a total minimum capital < THB100 million is on List 3: Businesses in which Thai nationals are not yet ready to compete with foreigner.</p>	<p>FDI in retail subject to strict economic needs test (except first outlet) – except an outlet – except an FIE may open a second outlet if <500m² and located in designated areas for trading activities without a needs test.</p>

Source: OECD Southeast Asia Investment Policy Perspectives, December 2014 and Oxford Business Group

Table 2. Number of Establishments by Employment Group, 2017

Region/Industry (Section)	Number of Establishments				
	TOTAL	Employment Grouping (MSME)			
		MICRO	SMALL	MEDIUM	LARGE
	915,726	820,795	86,955	4,018	3,958
G - Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles	421,041	392,637	27,193	808	403
I - Accommodation and Food Service Activities	119,794	106,017	13,440	261	76
C - Manufacturing	116,766	102,787	11,998	963	1,018
S - Other Service Activities	56,474	53,788	2,669	9	8
K - Financial and Insurance Activities	40,051	33,708	6,101	116	126
J - Information and Communication	35,526	33,822	1,456	120	128
Q - Human Health and Social Work Activities	27,184	25,011	1,843	159	171
P - Education	17,342	8,864	7,905	329	244
M - Professional, Scientific and Technical Activities	16,832	14,816	1,831	93	92
N - Administrative and Support Service Activities	15,793	12,238	2,279	346	930
R - Arts, Entertainment, and Recreation	14,882	13,600	1,220	27	35
L - Real Estate Activities	9,569	7,828	1,636	56	49
A - Agriculture, Forestry, and Fishing	9,216	6,770	2,131	143	172
H - Transport and Storage	8,269	5,580	2,335	200	154
F - Construction	3,376	1,497	1,449	208	222
E - Water Supply, Sewerage, Waste Management and Remediation Activities	1,496	759	662	53	22
D - Electricity, Gas, Steam, and Air Conditioning Supply	1,172	410	581	104	77
B - Mining and Quarrying	943	663	226	23	31

Source: Philippine Statistics Authority

Table 3. Total Employment by Employment Group, 2017

Region/Industry (Section)	Total Employment				
	TOTAL	Employment Grouping (MSME)			
		MICRO	SMALL	MEDIUM	LARGE
G - Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles	7,710,908	2,345,992	1,981,316	551,871	2,831,729
C - Manufacturing	1,888,961	1,072,395	549,288	110,183	157,095
N - Administrative and Support Service Activities	1,536,494	318,427	309,503	132,486	776,078
L - Accommodation and Food Service Activities	1,064,364	36,604	64,544	48,141	915,075
P - Education	691,626	324,878	306,625	33,093	27,030
K - Financial and Insurance Activities	377,619	38,071	192,515	45,756	101,277
F - Construction	377,466	127,218	110,271	15,743	124,234
J - Information and Communication	235,029	6,393	46,076	28,911	153,649
Q - Human Health and Social Work Activities	221,839	67,320	41,109	16,620	96,790
H - Transport and Storage	209,594	55,743	48,207	23,292	82,352
A - Agriculture, Forestry, and Fishing	209,131	21,555	66,361	26,613	94,602
S - Other Service Activities	203,448	26,822	57,754	19,210	99,662
M - Professional, Scientific and Technical Activities	187,001	139,508	42,770	1,127	3,596
L - Real Estate Activities	177,890	42,066	45,799	13,142	76,883
R - Arts, Entertainment, and Recreation	91,902	23,783	36,734	7,435	23,950
D - Electricity, Gas, Steam, and Air Conditioning Supply	91,611	36,886	22,114	3,886	28,725
B - Mining and Quarrying	64,961	1,831	16,909	15,258	30,963
E - Water Supply; Sewerage, Waste Management and Remediation Activities	43,098	2,801	6,553	3,298	30,446
	38,874	3,691	18,184	7,677	9,322

Source: Philippine Statistics Authority