

30 January 2020

HONORABLE ADELINO B. SITOY

Presidential Adviser on Legislative Affairs and Head
Presidential Legislative Liaison Office
Office of the President
2F Annex New Executive Bldg.,
J.P. Laurel St., San Miguel, Manila

Dear **Secretary Sitoy**:

We are pleased to submit the Department's position on various Death Penalty related bills:

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| House Bill No. 368 | An Act Adopting the Higher Prescribed Penalty, Including Death, of the National Law of an Alien Found Guilty of Trafficking Dangerous Drugs and Other Similar Substances, Amending for the Purposes Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act Of 2002" |
| House Bill No. 741 | An Act Amending Section 1 of Republic Act No. 9346 Otherwise Known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines" |
| House Bill No. 1380 | An Act Imposing the Death Penalty on Certain Heinous Crimes, Repealing for the Purpose Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines and Further Amending Act No. 3815, as Amended, Otherwise Known as "The Revised Penal Code" and Republic Act No. 7080, entitled "An Act Defining and Penalizing the Crime of Plunder and Amending Republic Act No. 9165, Otherwise Known as "The Comprehensive Dangerous Drugs Act Of 2002", Republic Act No. 8177 entitled "An Act Designating Death by Lethal Injection and Other Penal Laws |
| House Bill No. 1588 | An Act Imposing the Death Penalty for Specific Crimes, Repealing for the Purpose Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines and Further Amending Act No. 3815, as Amended, Otherwise Known as "The Revised Penal Code" and Republic Act No. 9165, Otherwise Known as "The Comprehensive Dangerous Drugs Act Of 2002" |
| House Bill No. 1800 | An Act to Impose the Death Penalty in the Heinous Crime of Kidnapping, Amending for that Purpose The Revised Penal Laws, as Amended and for Other Purposes |

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- House Bill No. 1806 **An Act to Impose the Death Penalty and Increase Penalty on Certain Heinous Crimes Involving Dangerous Drugs, Amending for that Purpose Other Special Penal Laws, as Amended and for Other Purposes**
- House Bill No. 1807 **An Act to Impose the Death Penalty On the Heinous Crimes of Aggravated Rape, Amending for that Purpose The Revised Penal Laws, as Amended And For Other Purposes**
- House Bill No. 2026 **An Act Re-Imposing the Death Penalty on Certain Heinous Crimes, Repealing for the Purpose of Republic Act No. 9346, and for Other Purposes**
- House Bill No. 2092 **An Act Imposing Death Penalty on Certain Heinous Crimes, Repealing for the Purpose Republic Act No. 9346 entitled An Act Prohibiting the Imposition of Death Penalty in the Philippines and Further Amending Act No. 3815, as Amended, Otherwise Known as The Revised Penal Code and Republic Act No. 9165, Otherwise Known as "The Comprehensive Dangerous Drugs Act Of 2002"**
- House Bill No. 3128 **An Act Imposing Death Penalty on Certain Heinous Crimes, Repealing for the Purpose of Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines and Further Amending Act No. 3815, as Amended, Otherwise Known as "The Revised Penal Code" And Republic Act No. 9165, Otherwise Known as "The Comprehensive Dangerous Drugs Act of 2002"**
- House Bill No. 3256 **An Act Imposing Death Penalty on Certain Heinous Crimes, Repealing for the Purpose of Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines and Further Amending Act No. 3815, as Amended, Otherwise Known as "The Revised Penal Code" And Republic Act No. 9165, Otherwise Known as "The Comprehensive Dangerous Drugs Act of 2002"**
- House Bill No. 3261 **An Act Re-Imposing the Death Penalty and Increasing Penalties for Crimes Involving Dangerous Drugs, Amending for the Purpose Of Republic Act No. 9165, Otherwise Known as "The Comprehensive Dangerous Drugs Act Of 2002"**
- House Bill No. 4743 **An Act Imposing the Death Penalty on Certain Heinous Crimes, Repealing for the Purpose Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" and Amending Act No. 3815, as Amended, Otherwise Known as The "Revised Penal Code," And Other Special Penal Laws**
- House Bill No. 4922 **An Act Declaring Hazing as a Heinous Crime If, as a Consequence of the Hazing, Death, Rape, Sodomy, or Mutilation Results Therefrom**
- Senate Bill No. 27 **An Act Re-instituting the Death Penalty in the Philippines**

- Senate Bill No. 187** **An Act Punishing Extraordinary Heinous Crimes with the Penalty of Qualified Reclusion Perpetua, Thereby Amending Republic Act No. 9346, Otherwise Known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines", and for Other Purposes**
- Senate Bill No. 189** **An Act Imposing Death Penalty and Increased Penalties on Certain Heinous Crimes Which Involves Manufacturing and Trafficking of Dangerous Drugs, Amending for The Purpose Other Special Penal Laws, and for Other Purposes**
- Senate Bill No. 207** **An Act Reinstating the Death Penalty for Certain Heinous Crimes Involving Dangerous Drugs and Plunder, Amending for That Purpose Other Special Penal Laws, and for Other Purposes**
- Senate Bill No. 226** **An Act to Impose the Death Penalty on Certain Crimes Punishable Under Republic Act No. 9165 Otherwise Known as The Comprehensive Dangerous Drugs Act of 2002, Amending for the Purpose Republic Act No. 9346 Otherwise Known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines", and for Other Purposes**
- Senate Bill No. 381** **An Act to Impose the Death Penalty on the Heinous Crime of Kidnapping, Amending for that Purpose The Revised Penal Laws, As Amended, And For Other Purposes**
- Senate Bill No. 382** **An Act to Impose the Death Penalty on the Heinous Crime of Rape with Homicide, Amending for that Purpose The Revised Penal Laws, as Amended, and for Other Purposes**
- Senate Bill No. 495** **An Act Imposing Death Penalty in the Philippines**
- Senate Bill No. 753** **An Act Re-imposing the Death Penalty and Increasing Penalties for Crimes Involving Dangerous Drugs, Amending for the Purpose Certain Provisions of Republic Act No. 9165, as Amended, Otherwise Known as The 'Comprehensive Dangerous Drugs Act of 2002'**
- Senate Bill No. 796** **An Act Re-Instituting the Death Penalty in the Philippines**
- Senate Bill No. 1091** **An Act Recognizing Hazing as a Heinous Crime, Amending for the Purpose Republic Act No. 7659, as Amended, Otherwise Known as Death Penalty Law**

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

With my best regards.

Very truly yours,


RAMON M. LOPEZ
 Secretary



DTI Position on

- House Bill No. 368 An Act Adopting the Higher Prescribed Penalty, Including Death, of the National Law of an Alien Found Guilty of Trafficking Dangerous Drugs and Other Similar Substances, Amending for the Purposes Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act Of 2002"
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- House Bill No. 1806 An Act to Impose the Death Penalty and Increase Penalty on Certain Heinous Crimes Involving Dangerous Drugs, Amending for that Purpose Other Special Penal Laws, as Amended and for Other Purposes
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- Senate Bill No. 27** **An Act Re-instituting the Death Penalty in the Philippines**
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Senate Bill No. 1091 An Act Recognizing Hazing as a Heinous Crime, Amending for the Purpose Republic Act No. 7659, as Amended, Otherwise Known as Death Penalty Law

“In our jurisdiction, our country adopts the generally accepted principles of international law – and in fact they are deemed to be part of the law of the land, to wit:

“SECTION 2. The Philippines xxxx adopts the generally accepted principle of international law as part of the law of the land xxxx.”
(Section 2. Article II, Constitution)

The constitutional provision above-quoted however is not absolute as any principle of international law even if generally accepted, if it contravenes our constitution, cannot supplant nor diminish the Philippine Constitution. Domestic laws are supreme over international law unless the former are violative of internationally recognized principles of justice.”

His Excellency President Rodrigo Roa Duterte¹

The DTI recognizes the intent of the above Senate Bills to re-impose the death penalty on certain heinous crimes that are brutal, grievous and exceptionally repulsive to the morals of a just and civilized society, thus ensuring the security of our people and strengthening the fabric of society. However, the reinstatement of capital punishment may be perceived as a breach of the country’s international commitment to abolish death penalty and may result in a major setback to the country.

In support of the statement of President Duterte on the primacy of the domestic laws, we are of the view that adherence to generally accepted principles of international law should work hand in hand with the country’s exercise of sovereignty and the right to pursue an independent policy. The economic benefits that the country has gained from its faithful compliance to international commitments should not be a deterrent to acts of state driven by compelling national interest.

On the part of the Department, we are focusing our position on the impact of the re-imposition of the death penalty on trade and investments, specifically, the possible loss of the country’s GSP+ (Generalized Scheme of Preferences Plus) special privileges granted by the European Union (EU).

The GSP+ is a special incentive arrangement for sustainable development and good governance in the form of zero duties. It is a non-reciprocal preferential tariff treatment to exports of beneficiary countries, offering zero tariffs on 6,274 products

¹ Statement of the President of the Republic of the Philippines on the Jurisdiction of the International Criminal Court, 13 March 2018 retrieved from <https://www.rappler.com/nation/198171-full-text-philippines-rodriigo-duterte-statement-international-criminal-court-withdrawal> on 30 January 2020

comprising 66% of all EU tariff lines, allowing the entry of these products in the EU market at much lower price, thus rendering them more competitive.

On 25 December 2014, the Philippines became the only ASEAN country granted beneficiary status of the EU GSP+. In exchange for this duty-free access to the EU market, the Philippines committed to engage the EU, through a binding undertaking, in a continuous dialogue regarding the country's compliance to international agreements on good governance, labor, human rights and environmental protection. It should be noted that the Philippines was a signatory to and has committed to implement the 27 conventions prior to its application to become a GSP+ beneficiary.

The successful application of the Philippines to the GSP+ in 2014 resulted in greater market access of PH products to the EU. Philippine exports to EU increased notably from EUR 6.6 billion in 2016 to EUR 7.49 billion in 2018, as exports under the GSP+ expanded from EUR 1.7 billion in 2016 to EUR 1.92 billion in 2018. Similarly, GSP+ utilization rate² increased from 71% in 2016 to 73% in 2018.

Top GSP+ export products include: crude coconut oil, canned tuna, vacuum cleaners, spectacle lenses, pneumatic tires, relays, non-motorized bicycles, footwear, prepared/preserved pineapples and fatty alcohols. The increase in exports has benefitted several communities including, but not limited to General Santos, Davao, Cebu and economic zones in Laguna, Cavite and Batangas.

Philippine Exports to EU

	2016	2017	2018
Total PH Exports to EU	EUR 6.6 B	EUR 7.23 B	EUR 7.49 B
PH Exports under GSP+	EUR 1.7 B	EUR 1.9 B	EUR 1.92 B
GSP+ Utilization Rate	71%	71%	73%

Source: EuroStat as cited by DTI-BITR

Furthermore, GSP+ gives strong incentives for foreign companies to invest in the Philippines. Several companies have established their manufacturing operations here in order to take advantage of GSP+ benefits. These operations cut across a range of industries that include electronics, agriculture, processed foods, apparel, craft goods, travel goods and home appliances. Companies that have invested in manufacturing facilities in the Philippines include Finnish sauna manufacturer SAWO Inc., British home appliances brand Dyson, and Japanese bicycle parts manufacturer Shimano.

Indeed, Philippine trade and investments have benefitted considerably from the GSP+. However, as this preferential scheme was granted unilaterally, it can also be withdrawn unilaterally, based on the following grounds:

² Utilization rate refers to the percent share of exports that availed the GSP+ preferences over the total exports that are eligible to avail of the GSP+ preferences.

1. A country has another type of special trade access to the EU granting the same tariff preferences as the scheme, or better (such as a free trade agreement or preferential trade agreement)
2. A country has achieved a high or upper middle income economy status for three consecutive years according to the World Bank classification.
3. Under exceptional circumstances, when a country has committed a serious and systematic violation of fundamental rights and labor rights conventions.

While the proposed reinstatement of the death penalty may be considered as a violation falling under the 3rd ground, the Philippines may actually lose its GSP+ beneficiary status under any of the three grounds mentioned due to the following:

1. **The PH is working on another type of special trade access to the EU granting the same or better tariff preferences as the GSP+.** With the recent conclusion of the Philippines-European Free Trade Association Free Trade Agreement (EFTA-FTA), the Philippines is now pushing for the Philippine-European Union (PH-EU) FTA. Negotiations for FTA officially commenced in December 2015, based on the 2007 Association of Southeast Asian Nations (ASEAN) negotiating directives. Currently, there have been two (2) rounds of negotiations done in May 2016 and February 2017.
2. **The Philippines is expected to be an upper middle income country in the near term.** The Philippines is classified as a Lower Middle Income economy based on the World Bank economy status classification³. Having ascended the US\$3,000 GNI (gross national income) per capita mark in 2013 and having sustained average annual growth rate of 6.30% from 2010 to 2019⁴ on the back of sound macroeconomic fundamentals, the Philippines is expected to make the leap from a Lower Middle Income Country to an Upper Middle Income Country in the near term. Such positive economic development will also lead to the country's loss of its GSP+ preferences.

Upper Middle Income Threshold and PH GNI per capita
(Values in US\$)

Calendar Year	Upper Middle Income Threshold	PH GNI per capita
2016	3,956-12,235	3,570
2017	3,896-12,055	3,650
2018	3,996-12,375	3,830

Sources: WB, PSA

3. **The reinstatement of death penalty may be perceived as a violation of basic human rights.** The reinstatement of capital punishment may be seen

³ Based on GNI per capita thresholds calculated using the World Bank Atlas method

⁴ The Philippines sustained annual average growth rate (AAGR) of 6.30% during the period 2010 – 2019, as compared to the 4.46% average growth for 2000 – 2009.

as a breach of the country's international commitments under the International Covenant on Civil and Political Rights (ICCPR). The ICCPR is a multilateral treaty adopted by the United Nations General Assembly that obligates member State Parties to protect and preserve basic human rights including the right to life and human dignity.

Since the ICCPR is one of the international core conventions being considered by the EU in granting GSP+ preferences, its violation may be determined by the EU as ground for possible withdrawal of the country's GSP+ beneficiary status.

However, this may be weighed against the backdrop of the Philippines' reported progress on labor rights, environmental protection, gender equality, trafficking of people, health, education, social – economic rights and the fight against corruption.⁵

Thus, it can be deemed that with or without the reinstatement of the death penalty, the Philippines is already on the verge of losing its GSP+ beneficiary status due to all of the other grounds that may be cited for its withdrawal, including as a welcome consequence of the Philippines' attainment of upper middle income economy status due to the country's robust growth and development in the last 10 years.

Should the Philippines lose its GSP+ privileges, the country will be relegated to the standard GSP scheme. Under this scheme, only 2,422 "non-sensitive" products are subject to zero duty, while the 3,767 "sensitive" products that have positive MFN rates will only have a 3.5 percentage point reduction, instead of zero duty. This will be applicable until the finalization of the on-going PH-EU FTA.

Ultimately, the reinstatement of the death penalty when compelled by national interest is a political decision inherent in the exercise of sovereignty that no amount of economic gains may restrain.

The determination by the EU whether or not to withdraw the GSP+ beneficiary status from the Philippines will be contingent on how the Union would view this matter as against the country's progress in other equally important core conventions covering labor rights, environmental protection, gender equality, people trafficking, health, education, social – economic rights and the fight against corruption.

Layapinchan

Bureau of Trade and Industrial Policy Research

30 January 2020

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⁵ The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of the Philippines covering the period 2016 – 2017, https://eeas.europa.eu/sites/eeas/files/10_en_2016_-_2017_gsp_sw_d_philippines.pdf, accessed on 24 January 2020