

30 January 2020

HONORABLE RICHARD J. GORDON
Chairperson
Committee on Justice and Human Rights
Senate
Pasay City

Dear Senator Gordon:

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

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| 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 |

OFFICE OF THE SECRETARY

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

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“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).

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-rodrido-duterte-statement-international-criminal-court-withdrawal> on 30 January 2020

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 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.

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.

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Bureau of Trade and Industrial Policy Research

30 January 2020

Ref: BTIPR-122019-78

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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_swd_philippines.pdf, accessed on 24 January 2020