Japan-Philippines EPA within ASEAN-Japan CEPA: Development Denied

Jose Enrique Africa, IBON Foundation

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Introduction

International economic policies such as regional trade deals are politically-negotiated outcomes of interaction between governments. National governments in turn are influenced by political alignments resulting from the interplay of domestic social forces, which are themselves contingent on the contours of domestic economic activity. This paper briefly looks into how the Philippine government conducted itself vis-à-vis the Japan-Philippines Economic Partnership Agreement (JPEPA) and the ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEPA).

The first part of the paper outlines in broad strokes the overall economic context in which the JPEPA and AJCEPA deals were negotiated. This section takes up the last two to three decades of 'free market' policies of 'globalization' in the Philippines and runs through some key indicators of their socioeconomic impact. These are relevant to establish the conditions existing at the time of the JPEPA and AJCEPA that influenced the eventual deals: a government committed to exclusionary free trade and investment, an already greatly liberalized policy environment, and economic conditions further predisposing policy-making to liberalization.

These conditions include the marked increase in the presence in the country of foreign capital with major export interests exerting a strong influence on economic policies – aside from the resource extraction of the past (i.e., plantation agriculture, mining) there is now also electronics assembly and business process outsourcing (BPO). There is also the success of the government's cheap labor export thrust that has resulted in large remittance flows that effectively facilitate further liberalization by mitigating liberalization-related foreign exchange pressures. And there is how local industrial capital representing potential defensive interests has been greatly diminished.

The second part of the paper discusses the JPEPA and AJCEPA which are recent deals taking effect only at the end of 2008; particular attention is given to the JPEPA which is by far the more comprehensive. The section begins by sketching the state of economic ties between Japan and the Philippines especially after the last decades of liberalization to give a sense of the economic context in which the deals were negotiated. There is a brief background on the negotiations and the main issues raised during the ratification process in the Philippines where it is argued that the sorts of issues raised and the somewhat limited opposition were influenced by the prevailing economic context.

This is followed by a discussion on the general content of the two deals and of their relationship to each other that stress their imbalance especially given the stark inequalities between the two countries. They are criticized for giving up a great deal of economic sovereignty, drastically reducing policy space and flexibility, and making a strategic

development path for the Philippines even more difficult. The section ends with a short update of JPEPA implementation.

The paper concludes with a few points related to the workshop theme of seeking more inclusive trade policies in post-crisis Asia.

Philippine economic policies and trends

With its population of 91 million in 2008 the Philippines is the 2nd largest country in Southeast Asia, next to Indonesia, and the 13th largest in the world. However by gross domestic product (GDP, purchasing power parity) it is only the 5th largest in the region and 38th in the world. Further affirming its overall economic backwardness is its ranking 163rd worldwide in terms of GDP per capita (PPP).

As with anywhere else the Philippines' socioeconomic policies are defined by the political and economic interests dominating the country from within and without. In practice, especially in the era of so-called 'globalization', this has meant policies with a strong bias for market-based foreign capital-driven and -defined 'development'. This agenda has been consistent over the last three decades of International Monetary Fund (IMF) stabilization programs, World Bank (WB) structural adjustment, ASEAN and World Trade Organization (WTO) deals, and various economic legislations. Mass movements, social movements and civil society have become more prominent in recent decades but have not yet been able to challenge the ascendancy of foreign capital, domestic big business and landlord elites to the point of reorienting policy away from the neoliberal orthodoxy.

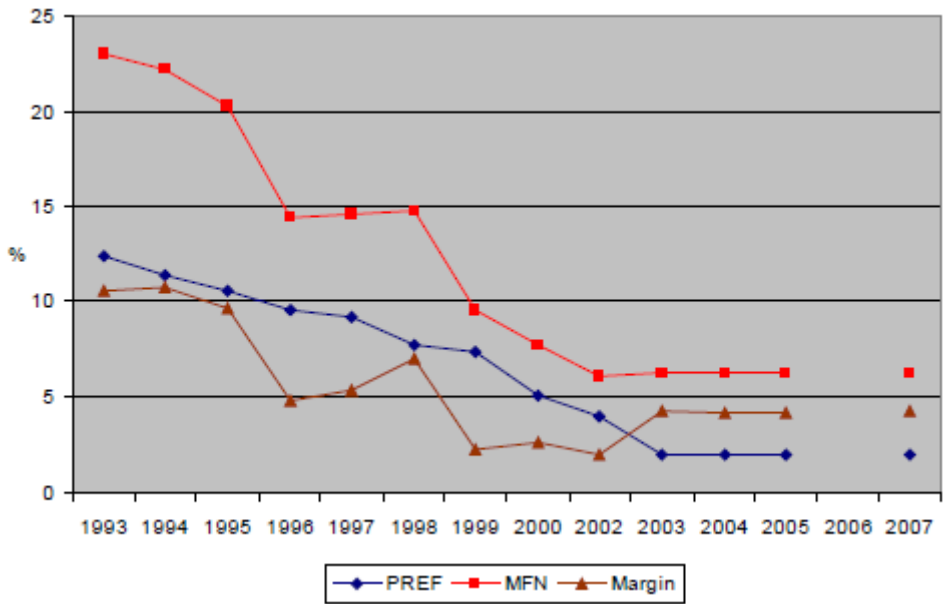
Successive governments since the 1980s have then been able to progressively take away policy instruments of state guidance and protection. Trade and investment liberalization was implemented rapidly and one-sidedly, or without any corresponding real effort to build domestic capacities, long before JPEPA and AJCEPA were even considered. Successive tariff reform programs beginning as early as 1981 reduced duties deeper and faster than most countries in the region – average nominal tariffs were steadily cut in the 1980s, particularly rapidly during the 1990s and further albeit at a slightly slower rate in the 2000s. (See Table 1 and Chart 1) The Philippine Senate ratified the General Agreement on Tariffs and Trade (GATT) in 1994 and the Philippines became a founding member of the WTO in 1995.

Table 1: Average nominal tariff rate, 1975-2004 (%)

	1975	**1980**	**1985**	**1990**	**1995**	**2000**	**2004**
Agriculture	67.16	61.95	35.86	34.61	27.99	14.60	9.33
Manufacturing	41.42	39.07	27.09	27.10	14.00	6.99	3.34
Overall	44.32	41.37	27.6	27.84	15.87	8.06	4.19

Source: Tariff Commission

Chart 1: Average tariffs, 1993-2007 (%)



The government's liberalization bias is also evident in how applied tariffs in both agricultural and non-agricultural products in 2008 were far lower than WTO bound rates. (See Table 2) There is also how the country's trade weighted average tariffs are among the lowest in the major economies of Asia. (See Table 3)

Table 2: Philippine tariff profile, 2007-08 (%)

		Non-Ag	Ag	Total
Simple average final bound		23.4	34.7	**25.6**
Simple average MFN applied	**2008**	5.7	9.7	**6.3**
Trade weighted average	**2007**	3.5	13.4	**4.5**
Imports (US$ billion)	**2007**	39.4	4.3	**43.7**

Source: World Trade Organization (WTO)

Table 3: Trade weighted average tariffs, 2007 (%)

	Non-Ag	Ag	Total
Vietnam	11.4	15.9	**11.7**
India	7.9	44.4	**9.3**
Brunei	4.8	7.1	**5.1**
Thailand	4.4	14.0	**4.8**
China	4.2	12.0	**4.5**
Malaysia	3.9	19.9	**4.7**
Indonesia	3.6	6.6	**3.9**
Philippines	3.5	13.4	**4.5**
Japan	1.2	14.7	**2.2**
Singapore (2006)	0.0	1.1	**0.0**

Source: World Trade Organization (WTO)

Regulations and restrictions on foreign investment were also removed wholesale – 100% foreign ownership has been allowed in all but a few sectors since 1991 and there is complete freedom to repatriate capital. Foreign exchange controls were dropped in 1993. Water transport was liberalized and deregulated in 1992, telecommunications in 1993, banking and shipping in 1994, airlines in 1995, mining in 1995, oil in 1996 and 1998, and retail trade in 2000.[1] Some US$6.7 billion worth of government assets has been privatized since 1987 including oil firms, water utilities and power plants.[2] Essential road and power infrastructure has been turned over to the private sector through build-operate-transfer (BOT) projects following deregulation in 1993. Hospitals began the process of "corporatization" around 1999.

The absence of significant measures to build up domestic capacity meanwhile constrained the country's ability to take advantage of supposed new export opportunities as well as made it difficult for domestic producers to compete with cheap imports and foreign locators in the country. Fiscal constraints also limited the implementation of any meaningful safety nets.

The Philippines has in short been aggressively 'globalizing' since the 1980s and is now arguably among the most formally open countries in East Asia – but with little meaningful progress to show for this. Actual economic outcomes are, unsurprisingly, contrary to the development promises of 'globalization'. Liberalization has certainly has caused foreign trade and investment to grow to much larger shares relative to the domestic economy: trade has doubled from being 52.0% of GDP in 1980 to breach 100% in 1997, and then has averaged 98.0% annually in the decade 1999-2008.[3] It is likewise with foreign investment and inward foreign direct investment (FDI) stock rose from being equivalent to 3.9% of GDP in 1980 to reach as high as 24.2% in 2000, albeit down to 12.7% in 2008 amidst the global drop in investment flows.[4]

From 1999 to 2008 about a third of FDI has been in manufacturing yet the sector's share of GDP has been steadily declining since the 1980s and, at 23.1% of GDP in 2008, is now as small as it was in the 1950s (averaging 23.3% in the period 1955-1959).[5] Among the industries floundering since the 1990s are garments and textiles, footwear, ceramics, tiles, tire, rubber, petrochemicals and plastics, pulp and paper, and iron and steel. At the same time the share of foreign transnational corporations (TNCs) has been rising and TNCs have in the last few years accounted for some four-fifths of the total sales of manufacturing corporations in the country's Top 1,000 corporations.[6] Still, the overall quality of manufacturing remains poor and is mainly low value-added manufacturing heavily dependent on imported fuel, semi-processed raw materials, machinery and technology from abroad. This poor industrial structure also explains why the country's chronic trade deficit is unabated and has even worsened from being equivalent to 4.3% of GDP in the 1980s to 9.6% in the 1990s and 7.2% so far in 2000-08.[7]

The share of agriculture in GDP was down to 18.1% last year which is the smallest in the country's history.[8] Productivity remains low and stagnant with widespread rural poverty and

[1] IBON Philippine Socioeconomic Laws Monitor
[2] IBON computations on data from the Bureau of the Treasury (BTr)
[3] IBON computations on data from IMF International Finance Statistics (IFS) on-line database
[4] IBON computations on data from UNCTAD World Investment Report (WIR), various years
[5] FDI data from Bangko Sentral ng Pilipinas (BSP), national income data from National Statistical Coordination Board (NSCB)
[6] IBON computations on data from BusinessWorld Top 1000 Corporations in the Philippines 2009
[7] IBON computations on data from IMF IFS on-line database
[8] NSCB

landlessness. The corn, sugar, onion, garlic and livestock subsectors in particular are having difficulties competing with imports while the rice sector is labouring under long-standing neglect. The country has been experiencing agricultural trade deficits every year since 1994 and is already the world's biggest rice importer. This is not surprising given how domestic food production measured in kilograms per capita is lower today than in the early 1970s.[9]

Meanwhile a handful of 'export winners' with limited linkages to the domestic economy are played up as signs of progress – electronics assembly, BPOs, and tropical fruits exports (mainly bananas, pineapples and mangoes). Electronics account for over two-thirds of exports but 85-90% of whose value is estimated to be imported.[10] BPOs meanwhile account for just 1.1% of jobs and barely 2.0% of GDP but are given liberal incentives, support and effectively even subsidized through government-sponsored training programs.[11]

These trends underpin the rising joblessness in the country especially as 'globalization' policies gained traction since the 1980s. [12] Unemployment rates in previous decades were 8.0% (1956-1960), 7.3% (1961-1970) and 5.4% (1971-1980). Upon greater liberalization they started to rise steadily to 10.2% (1981-1990), 9.8% (1991-2000) and to 11.3% so far in the period 2001-2008 – making the last eight years the country's worst eight-year period of sustained high joblessness. By 2008 there were 4.4 million unemployed and a true unemployment rate of around 11.5 percent. Poverty remains widespread with some 70% or 61 million Filipinos living off P86 a day in 2006 (approximately US$1.80 at current exchange rates); this family income survey is corroborated by IBON's October 2009 nationwide opinion survey where 71% of respondents rated themselves as poor.[13]

The domestic jobs crisis goes far in explaining the unprecedented forced migration. The latest official estimate of the stock of overseas Filipinos is 8.73 million as of end-2007, or around a tenth of the population, consisting of 5.03 million overseas Filipino workers (OFWs) and 3.69 million permanent residents or immigrants.[14] In 2008, 1.24 million Filipinos were deployed abroad or almost 3,400 leaving per day.[15]

The Philippines is unique among the largest countries in the world for its unparalleled dependence on overseas work which is a major vent for surplus labor and significant driver of domestic consumption and growth. Remittances which reached US$16.4 billion in 2008 have been equivalent to an annual average of 10.3% of GDP in the last five years.[16] This is a

[9] IBON computations on data from Food and Agriculture Organization's (FAO) FAOSTAT on-line database
[10] Export data from BSP, import content is a generally accepted industry estimate cited for instance in Rosalinda Palanca-Tan (2004), "Prospects and Problems of Expanding Trade with Japan: A Survey of Philippine Exporters", Philippine Institute of Development Studies (PIDS), Discussion Paper Series No. 2004-10, March 2004.
[11] IBON estimates based on reported industry employment data compared against labor force figures from the National Statistics Office (NSO) Labor Force Survey (LFS) and on national income account data from the NSCB
[12] Unemployment estimates computed by IBON using data from the NSO LFS. The trend remains essentially the same even if various changes in unemployment methodologies since the 1950s are considered. The 2008 figures are estimated by IBON particularly correcting for a change in methodology in 2005 that reduced unemployment by up to 3 percentage points.
[13] Income poverty data are IBON estimates using data from the latest NSO Family Income and Expenditure Survey (FIES) in 2006. The government officially reports population poverty incidence at 32.9% in 2006 however using a low poverty line of P42 (about US$0.90 at current exchange rates).
[14] Commission on Filipinos Overseas (CFO)
[15] Philippine Overseas Employment Administration (POEA)
[16] IBON computations on remittance data from BSP and GDP data from NSCB

significant contribution to the country's foreign exchange reserves which reached US$37.6 billion, or 6.0 months worth of imports, in 2008. It is plausible that this further inclines the government to liberalization, and to FTAs, in two ways.

First is how the relative stability and consistency of remittances due to the sheer numbers of Filipinos abroad and their dispersion worldwide (at least for now) relaxes the foreign exchange constraint and ensures a steady source of foreign exchange for liberalization-induced imports, profit repatriation and debt payments. Second, is how this dependence on foreign markets for overseas Filipino workers and the institutionalized cheap labor export policy may incline the government to enter into FTAs to be able to keep and expand access to foreign jobs.

The government's liberalization effort is continuing and it has or is pursuing regional FTAs through ASEAN (apart from the intra-ASEAN AFTA are FTAs with Japan, China, Korea, Australia-New Zealand, India, European Union and US), a bilateral deal with the US, and is supporting a conclusion to the WTO's Doha Round. Domestically its next targets are the nationalist economic provisions of the 1987 Philippine Constitution which constitute the final legal barriers to complete economic liberalization.

Unfortunately the government's foreign trade and investment strategy is fixated on seeking market access and increasing FDI inflows as its main metrics of success rather than any immediate or, much less, strategic socioeconomic development considerations. To be sure, the country appears a laggard in Asia in terms of FTA initiatives and has much less than Singapore, Thailand, Malaysia, Indonesia, China and Japan. Japan in particular has or is negotiating deals with ASEAN, Malaysia, Indonesia, Singapore, Brunei, Thailand, Vietnam, Philippines, Switzerland, Mexico, Chile, Korea, India and Peru. But this should be qualified by how the government was rapidly liberalizing even before FTAs became popular in Asia in the 2000s.

The Philippines' strategy is not underpinned by any coherent policy of domestic agricultural and industrial development. This is mainly due to the ascendancy of foreign capital-biased and externally-oriented elite interests in economic policy-making, likely reinforced by the country's 'successful' cheap labor export policy. These strongly incline economic policy to be outward-oriented and pro-liberalization even at the expense of broad-based domestic productive economic activity. There is no real building of local farming and factory capacities. The situation is even aggravated by disjointed government mechanisms for negotiating international economic deals that moreover barely or only perfunctorily involve the general public and civil society.

The country's experience with the JPEPA and AJCEPA is a useful case study illustrating these general points. In negotiating these deals the government has had little qualms in voluntarily restricting its policy space, disempowering itself and putting the economy and its resources into a subordinate role vis-à-vis Japan – under the euphemism of "complementarity" between the economies.

Japan-Philippines economic links

The Philippines has significant economic ties to Japan which translates into Japan having significant economic leverage over the Philippines. Japan is the country's biggest source of FDI with cumulative equity investments of US$3.91 billion amounting to 20.8% of the FDI

stock as of 2006 (slightly more than the US$3.86 billion from the US).[17] The Philippines on the other hand has a negligible investment presence in Japan. Japan is also the country's biggest source of official development assistance (ODA) and in 2008 its US$4.17 billion worth of loan commitments accounted for 41.6% of the country's entire ODA portfolio and resulted in US$418.3 million in disbursements for the year.[18]

The Philippine' US$14.3 billion worth of imports and exports with Japan in 2008 made up 13.5% of the country's total trade and made Japan the country's second largest trading partner after the United States (US). (See Table 4) In particular the US$7.7 billion worth of exports to Japan (accounting for 15.7% of total exports) is only slightly less than the US$8.2 billion to the US (16.7% of total exports). From the point of view of Japan however the Philippines is much less important as a trade partner and accounts for barely 2% of its exports and of its imports.

Table 4: Philippines-Japan bilateral merchandise trade (US$ billion)

	Total trade	**Exports to Japan**	**Imports from Japan**	**Balance of trade**
2004	15.65	7.98	7.67	0.31
2005	15.28	7.21	8.07	-0.87
2006	15.19	7.92	7.27	0.65
2007	14.14	7.30	6.84	0.46
2008	14.28	7.68	6.60	1.08
Q1 2009	2.38	1.24	1.14	0.1
Growth Rate, 2004-2007 (%)	-2.57	-0.64	-4.55	

Source: Department of Trade Industry (DTI)

The Philippines and Japan were in general already quite open to each other even before the JPEPA and AJCEPA. Some 73% of all Philippine exports by value to Japan was already entering tariff-free; on the other hand, over 50% of the total value of Philippine imports from Japan was entering duty-free while another 35% were subject to tariffs of just 5% and below.[19]

MFN rates for agricultural products in Japan were high and indeed even higher than in the Philippines; rates for non-agricultural products were low and only less than a percentage point less than in the Philippines. (See Table 5) Notably however, total trade weighted average MFN tariffs were smaller in the Philippines (3.7%) than in Japan (4.5%).

Table 5: Tariff levels – Philippines and Japan, 2005 and 2006 (%)

		RP			**Japan**		
Simple Average MFN		**Total**	**Ag**	**Non-Ag**	**Total**	**Ag**	**Non-Ag**
Bound		25.6	34.7	23.4	6.1	28.4	2.7
Applied	2006	6.3	9.6	5.8	5.6	24.3	2.8

[17] BSP
[18] National Economic and Development Authority (NEDA, 2008) 17th Philippine ODA Review
[19] Tariff Commission (TC)

Trade weighted average MFN	2005	3.7	14.5	2.8	4.5	27.0	1.9
Imports (US$ billion)	2005	42.5	3.3	39.2	508.0	52.0	456.0
Agriculture (% of total lines)							
Tariff Quotas		2.1			9.5		
Special Safeguards		16.0			11.8		

Source: WTO

Agricultural items constitute only a small part of total trade between the two countries. Food exports for instance are actually a small and even diminishing share of total Philippine exports to Japan and accounted for only 7.4% of total exports to it over the period 2001-2006. These are among the reasons why the Philippine government defined the country's export interest as lying primarily in obtaining openings and lowering tariffs in Japan's agricultural sector that was protected by tariffs (2006 bound rate 28.4%, applied 24.3%, trade weighted average 27.0%), tariff quotas (9.5% of total agricultural lines) and special safeguards. Specific agricultural products pushed by the Philippines included: bananas, pineapples, mangos, sugar and fisheries. Other products seen as benefitting from tariff reduction/elimination or expanded TRQs are: confectionery, beverages and spirits (fruit wine), and vegetable oils.

However most of these products are not really exported by Filipino firms but by foreign agri-business TNCs. In 2005, Japan imported 97.1% of its fresh pineapples, 86.8% of its fresh bananas, and 40.3% of its fresh mangoes from the Philippines – overwhelmingly from Dole and Del Monte.[20] For bananas, the five firms which account for some 95% of the Philippines' total exports are Dole (27% share), Del Monte (26%), Chiquita/Unifrutti (21%), Fresh Asia Produce Co. International (12%) and Sumitomo (9%); they also account for some 97% of total banana exports to Japan.[21] These agri-business TNCs have moved from direct growing to contract growing and farm lease arrangements, including with big domestic corporate grower counterparts. These firms will be the ones benefiting from JPEPA and not the actually labouring farm workers or small peasant contract growers.

Industrial products meanwhile had very low tariffs in Japan (2006 bound rate 2.7%, applied 2.8%, trade weighted average 1.9%) except for certain product groups. This is likely because many "Philippine" exporters are actually just Philippine-based TNCs assembling inputs using cheap Filipino labor and then exporting them to the Japan leg of a regional production line – not Filipino industrial interests competing with Japanese industrial interests. The "manufacturing" of electronic components in the country is dominated by the likes of Toshiba, Fujitsu, Panasonic, Epson and Hitachi while Toyota, Honda, Mitsubishi and Isuzu are the leading manufacturers of transport equipment and auto parts. So when the Philippine government identifies supposedly Philippine electronics, automotive parts and components for "export promotion" to Japan it is actually promoting the interests of Japanese firms based in the country.

[20] Larry N. Digal (2005), "Benefit Diffusion and Linkage Development in the Philippine Tropical Fruits Sector", Paper presented during the conference entitled "Closing the Productivity Gap" sponsored by the World Bank and the National Economic and Development Authority", Asian Institute of Management Policy Center, June 27, 2005.
[21] Ibid.

Also reinforcing the view that the main beneficiary of JPEPA is Japanese capital is how among the investment opportunities identified by Japan are precisely the areas of supposed "export promotion" by the Philippines – electronics, motor vehicles, information technology (IT) and IT-enabled services (especially BPOs), and energy (downstream oil and natural gas).

The biggest part of "Philippine" exports to Japan consists of industrial manufactures which accounted for 74.8% of total exports in the period 2001-2006.[22] Semiconductors and other electronics inputs accounted for over four-fifths of these industrial manufactures with auto parts taking up most of the remaining balance. So, reflecting the low level of Philippine industrial capacity to begin with, the only industrial products of export interest but facing high tariffs were textile, clothing, and leather and footwear.

Philippine industrial backwardness is also reflected in the nature of Philippine defensive interests. Only a small share of imports from Japan had locally produced counterparts to begin with – perhaps 10-14%, by value, at most.[23] These are mainly in low value manufactured items such as certain kinds of sockets, plugs, rubber, wiring, auto parts/accessories, glass, panels and boards, yarn, fabrics and paper products.

JPEPA-AJCEPA: Background

JPEPA and AJCEPA are examples of how Japan is pursuing its two-track approach towards a Southeast Asian region-wide economic regime – i.e., with region as a whole and through bilateral efforts with each ASEAN member country. These in turn are located within a wider 16-country Comprehensive East Asia Partnership Agreement (CEPEA).

Formal talks on the AJCEPA commenced in April 2005, it was signed by ASEAN and Japan leaders in April 2008, and then it entered into force in December 2008. By June 2009 the AJCEPA has been implemented by Japan and seven ASEAN countries: Singapore, Malaysia, Brunei, Vietnam, Laos, Myanmar and Thailand. Formal negotiations on the JPEPA were launched in December 2003, it was signed in September 2006 and then officially took effect in December 2008.

The JPEPA is patterned after the high standards of the JSEPA and was negotiated in a process lacking transparency. It was brought into the realm of public discourse only late in the process – in the run up to the required ratification by the Philippine Senate. This public disclosure was also mainly upon demands by civil society and mass movements rather than as a result of government initiative. The AJCEPA was in 2005 classified by the Department of Justice (DOJ) as an executive agreement rather than a treaty needing ratification by the Senate – bringing it even further away from public scrutiny.

The AJCEPA actually demands much less in terms of commitments from the Philippines than the far-reaching JPEPA which is a resolutely "WTO+" deal – so in this sense the AJCEPA is from a bilateral perspective basically redundant with respect to the Philippines/JPEPA. However the AJCEPA functions as a framework and mechanism for pushing liberalization between the ASEAN countries as well as between Japan and the newer and LDC ASEAN members.

[22] Department of Trade and Industry (DTI)
[23] Ceferino S. Rodolfo (2007), "A briefing on the trade implications of the proposed JPEPA", School of Management, University of Asia and the Pacific, December 2007.

Interests involved, issues raised

The sorts of issues raised against the JPEPA reflect the objective economic conditions prevailing in the Philippines following its decades of liberalization. The most controversial and deliberated issues against JPEPA turned out to be that of Japan using the deal to dispose of its toxic wastes in the country, on the deal giving undue privileges to Japanese investors in violation of various nationalist economic provisions in the 1987 Philippine Constitution, and on big Japanese commercial fishers being given greater access to local fish resources at the expense of smaller domestic fishers. The export of nurses and caregivers to Japan also became an issue but more because of the difficult requirements they needed to fulfil before being able to work rather than in the context of a fundamental criticism of migration and remittances as a development tool.

Conspicuous for being only a minor issue pushed mainly by some NGOs and people's organizations was the matter of the JPEPA's unequal terms and the loss of economic policy sovereignty. Even the potentially decisive question on the JPEPA's unconstitutionality was treated as a mainly legalistic matter rather than a substantive debate on the merits or otherwise of liberalization. It is notable that these concerns were raised by lawyers rather than by any business groups or economic interests who, even when the matter was already raised, remained silent.

In contrast the most vocal pro-JPEPA voices aside from the government were from the country's biggest business groups including or aligned with foreign TNC interests: the Semiconductors and Electronics Industries of the Philippines, Inc. (SEIPI), Philippine Chamber of Commerce and Industry (PCCI), the Philippine Exporters Confederation, and foreign chambers of commerce. They are the main beneficiaries of international trade and investment regimes facilitating regional production lines.

Certainly there was determined and sustained opposition to JPEPA by trade unions, peasant and fisherfolk organizations especially from organized groups grasping the deal's more far-reaching implications such as the locking-in of Philippine underdevelopment, reinforcing the exploitation of the country's labor and natural resources by Japanese corporations, and advancing Japanese hegemonic ambitions for East Asia. However a broader farmer-, worker- or community-based campaign appears to have been restricted by there being scant domestic industrial interests left to be threatened, by Japan not being a major agricultural goods exporter, and by the economy already being greatly liberalized to begin with – it was perhaps only the fisherfolk groups that could be said to have been able to mobilize vigorous opposition based on a direct threat to their economic interests.

It seems that there were few materially existing economic interests facing a clear and present danger. The decades of liberalization had already caused trade and investment barriers to be quite low for long enough to economically and politically weaken domestic interests groups that might otherwise have been resistant – i.e., import-competing domestic manufacturing and agricultural producers. Additional trade liberalization was also generally from already very low applied tariffs and so in effect rather incremental.

Environmental groups, NGOs and some lawyers groups did mount fully justified and principled opposition such as on the toxic waste, unconstitutionality and loss of economic sovereignty. But these are still relatively weak rallying points especially when pitted against

the hegemony of neoliberal orthodoxy in government and, albeit less formalistically, in the public consciousness. The grassroots and multi-sectoral opposition to JPEPA was spirited but unfortunately unable to realize a sufficient critical political mass to prevent its ratification. It is also likely significant that the JPEPA was being negotiated at a time that political repression in the country was rising with assassinations, attempts, and enforced disappearances already serious enough to have been reported to the United Nations (UN) General Assembly.

JPEPA-AJCEPA: Content

The JPEPA is the more comprehensive and substantial of the two deals. (See Table 6) It is a "WTO+" agreement including the controversial "Singapore issues" that is the Philippines' first full-fledged free trade deal. The JPEPA's substantive chapters include: i) Trade in Goods, ii) Rules of Origin, iii) Customs Procedures, iv) Paperless Trading, v) Mutual Recognition, vi) Trade in Services, vii) Investment, viii) Movement of Natural Persons, ix) Intellectual Property, x) Government Procurement, xi) Competition, xii) Improvement of the Business Environment, xiii) Cooperation, and xiv) Dispute Avoidance and Settlement.

The AJCEPA meanwhile covers less areas: i) Trade in Goods, ii) Rules of Origin, iii) Sanitary and Phytosanitary Measures, iv) Standards, Technical Regulations and Conformity Assessment Procedures, v) Trade in Services, vi) Investment, viii) Economic Cooperation, and viii) Settlement of Disputes.

The general thrust of each section of the two deals are summarize in Table 6. The JPEPA contains concrete liberalization commitments in trade in goods, services, investments, and movement of natural persons – many of which are unprecedented for the Philippines – with provisions for further action in intellectual property, government procurement, competition policy and dispute settlement. Japan in particular pushed the Philippines for higher levels of services liberalization than in AFTA and under the WTO's GATS.

The AJCEPA on the other hand has concrete commitments only in goods trade with only provisions for further action in the other areas. The AJCEPA is different though in explicitly recognizing SDT and flexibility for LDCs and in having chapters on SPS and on standards.

Table 6: Summary of JPEPA and AJCEPA

JPEPA		AJCEPA	
Preamble		***Preamble***	
1. General Provisions		**1. General Provisions**	In principle accords special and differential treatment, and flexibilities, in recognition of the different levels of economic development of ASEAN Member States, especially the newer ones; recognizes WTO provisions on measures in favour of the LDCs; explicit about granting flexibilities to sensitive sectors in ASEAN and Japan (none of which are in JPEPA)
2. Trade in Goods	Eliminates or reduces tariffs on 95% of industrial and agricultural products (in terms of value) within 10 years	**2. Trade in Goods**	Seeks to eliminate or reduce tariffs between ASEAN and Japan, according to respective country schedules – Japan will eliminate on 90% by value immediately, ASEAN-6 on 90% by value and number of items within 10 years, Vietnam on 90% within 15 years, and the rest on 85% within 18 years
3. Rules of Origin	Sets out the criteria for identifying the origin of goods to determine if they qualify for preferential tariff treatment	**3. Rules of Origin**	Sets out the criteria for identifying the origin of goods to determine if they qualify for preferential tariff treatment; allows cumulation in qualifying value contents (at least 40% value-added across Japan and ASEAN)
4. Customs Procedures	Information exchange and cooperation to facilitate trade through simplified and harmonized customs procedures, including maximizing the use of ICT	**4. Sanitary and Phytosanitary Measures**	Provides for creation of a sub-committee on sanitary and phytosanitary measures as a platform to raise and discuss SPS issues among government officials of the different countries
5. Paperless Trading	Information exchange on best practices	**5. Standards, Technical Regulations and Conformity Assessment Procedures**	Ensures that there is mutual understanding of the standards, technical regulations, and conformity assessment to foster trade among the parties
6. Mutual Recognition	Mutual Recognition Arrangements to facilitate trade in electrical and other products such that both sides accept results of conformity assessment procedures as conducted by the other party		
7. Trade in Services	Neither Party can impose additional market access restrictions for these sectors other than those cited in their Schedules, according the same treatment to	**6. Trade in Services**	No provisions liberalizing trade in services; creates sub-committee on trade and services and establishes a framework for continuing negotiations on the

	domestic and foreign service suppliers for the specified sectors unless otherwise stipulated; standstill obligation or liberalization of services sectors such as: Outsourcing, Air Transport, Health-related and Social Services, Tourism and Travel-related Services, Maritime Transport Services, Telecommunications, and Banking		liberalization and facilitation of trade in services
8. Investment	National Treatment, MFN Treatment and Performance Requirement Prohibitions; enhance transparency by specifying all exceptions to these provisions; mutual commitment to protect investments	**7. Investment**	No provisions liberalizing investments; creates sub-committee on investment and establishes a framework for continuing negotiations on the progressive liberalization, promotion, facilitation, and protection of investments
9. Movement of Natural Persons	Easier entry of qualified Filipino nurses and certified careworkers through language training, clear guidelines on exercise of profession/occupation and streamlined processing of application; possible application in other professions		
10. Intellectual Property	Enhanced cooperation in the field of protecting intellectual property; includes cooperation, technical assistance and appropriate protection and enforcement elements		
11. Government Procurement	Japan and the Philippines shall enter into negotiations at the earliest possible time, not later than five (5) years after the date of the entry into force of the JPEPA, with a view to liberalizing their respective government procurement markets; increased transparency of government procurement laws, regulations and procedures and possible access and liberalization of government procurement activities taking into account the development, financial and trade needs of both parties		
12. Competition	Measures in support of competition shall be taken in conformity with the principles of transparency, non-discrimination and procedural fairness; promotion of increased vigilance and increased attention to the protection of fair competition; measures to promote competition by addressing anticompetitive activities and cooperation in the field of competition		
13. Improvement	Cooperation to improve the business environment of		

of the Business Environment	both countries; a framework of consultations will be set up to ensure more efficient and timely resolution of issues affecting Japanese and Filipino enterprises in both countries		
14. Cooperation	Bilateral economic cooperation in ten fields within ODA context: Human Resource Development; Financial Services; Information & Communications Technology; Energy & Environment; Science & Technology; Trade & Investment Promotion; Small & Medium Enterprises; Tourism; Transportation; Road Development	**8. Economic Cooperation**	Creates sub-committee on economic cooperation as mechanism for promoting cooperation on a variety of fields with the end goal of liberalizing and facilitating trade and investment and promoting the well-being of the people of the ASEAN and Japan: Trade-Related Procedures; Business Environment; Intellectual Property; Energy; ICT; Human Resource Development; Small and Medium Enterprises; Tourism and Hospitality; Transportation and Logistics; Environment; Competition Policy; and Other fields as may be mutually agreed upon
15. Dispute Avoidance and Settlement	Provides mechanism for addressing government to government disputes on the interpretation of implementation procedures while still relying on the primacy of consultations; has time frame for adoption of rules of procedure	**9. Settlement of Disputes**	Provides mechanism for addressing government to government disputes on the interpretation of implementation procedures while still relying on the primacy of consultations
16. Final Provisions		**10. Final Provisions**	

Sources: Department of Trade Industry (DTI), IBON Foundation

The main substantive overlap between the two agreements is with respect to trade in goods. In this regard the Philippines covers more tariff lines in JPEPA but excludes less. (See Table 7) The Philippines excluded only six tariff lines under rice and salt in JPEPA but excluded 132 tariff lines under AJCEPA. Some of the items not included for tariff elimination in AJCEPA were rice, sugar, salt, and some chemicals such as chlorine, sulphuric acid, hydrochloric acid.

Table 7: Summary of Philippine JPEPA and AJCEPA tariff schedules

	JPEPA		**AJCEPA**	
	Number of tariff lines	**Percentage (%)**	**Number of tariff lines**	**Percentage (%)**
Immediate tariff elimination	3,947	66.1	3,779	63.0
Gradual/phased tariff elimination or reduction	1,991	33.4	2,088	34.8
Renegotiation	24	0.4	-	-
Exclusion	6	0.1	132	2.2
TOTAL	**5,968**	**100.0**	**5,999**	**100.0**

Source: Tariff Commission

Their respective provisions on rules of origin are such that businesses are allowed to choose which set of rules will apply to goods that they import/export – i.e., JPEPA's or AJCEPA's. When a product is covered by both agreements but have different preferential tariffs prevailing (according to respective schedules) businesses can choose which tariff rate they want to apply for. When a product from the Philippines is covered by JPEPA but not AJCEPA, the tariff rate in Japan's schedule of concessions under JPEPA applies.

The AJCEPA allows for cumulation in computing the value of goods coming from Japan and ASEAN, further encouraging intra-regional integration. In the case of JPEPA, ASEAN content can be used in conferring origin only on some products such as Textiles and textile articles, Preparations of vegetables, fruit, nuts or other parts of plants, and Cocoa powder.

The imbalance of JPEPA, a deal between starkly unequal Japan and Philippines, in terms of policy space and flexibility is glaring. (See Table 8) The Philippines excludes six tariff lines in just two products (rice and salt) while Japan excludes 651 products (including among others various species of fresh, frozen, cured and processed fish, seaweeds, livestock and their by-products, vegetables, fruits; food preparations such as cereals and breads; alcoholic beverages, cigarettes and leather). Government negotiators have tried to divert from this giving up of space by raising secondary matters such as the Philippines having less tariff lines for immediate elimination, having longer reduction periods, and the lines in question constituting only a small percentage of the value of imports.

The JPEPA also has investment provisions on national treatment, MFN treatment and performance requirements. These give Japanese investors greater protections, ensure that they retain their advantages, and enable them to pursue maximum profit from their operations while however forfeiting gains that the Philippines might otherwise have attained. Much weaker Filipino capital in turn is not in a position to benefit from similar protections in Japan and its development interest rather lies in controlling and regulating foreign investment in the

country. Yet on the contrary there are explicit Performance Requirement Prohibitions preventing the Philippines from obliging Japanese investors to:

a) Export a given level or percent of goods/services
b) Achieve a given level or percentage of domestic content
c) Purchase goods/services provided in its area
d) Relate the volume or value of imports to the volume or value of exports
e) Restrict sales of goods/services in its area by relating such sales to the volume or value of its exports
f) Appoint officials of any particular nationality
g) Hire a given level of its nationals
h) Transfer technology, a production process or other proprietary knowledge to a person in its area
i) Achieve a given level or value of research and development in its area
j) Locate the headquarters of that investor for a specific region or the world market in its Area
k) Supply one or more of the goods/services of investor to a specific region or world market. (JPEPA Chapter 8, Article 94)

Table 8: Summary of selected EPA commitments – Japan, Philippines, Indonesia, Thailand

	Excluded tariff lines	**Protected investment sectors**	**Prohibition of performance requirements**
Japan	651 items	16 sectors	1. domestic content 2. local purchases 3. technology transfer 4. hiring nationals 5. appointing officials 6. minimum R&D 7. export requirements 8. import-export ratios 9. link of domestic sales to exports 10. HQ location 11. overseas supply requirements on investor
Philippines	6 items	5 sectors	
Malaysia (2005)	38 items	17+ sectors	"Shall enter into further consultations, at the earliest possible time [to] review issues pertaining to prohibition of performance requirements within five years from the date of entry into force of this Agreement"
Indonesia (2007)	835 items	40+ sectors	As in JPEPA except: 1. technology transfer 2. hiring of nationals
Thailand (2007)	10 items	1 sector	As in JPEPA except (with permutations): 1. technology transfer 2. hiring of nationals 3. appointing officials 4. minimum R&D 5. link of domestic sales to exports 6. HQ location 7. overseas supply requirements on investor

Source: IBON Foundation

The JPEPA provides for reservations "[With] respect to existing measures that do not conform with obligations imposed by: National Treatment, MFN Treatment, Prohibition of Performance Requirements." Advanced Japan lists at least 16 specific sectors to be so protected, many of which even require a minimum of 66% or full nationality. (See Table 9) Japan includes such strategic areas as mining, telecommunications, air and water transport, shipping, and banks and financial institutions for small business. Underdeveloped Philippines, on the other hand, lists just five (5) specific sectors – mining, rice and corn, geothermal energy, atomic energy and shipping – with the other items just formulated generically or meaningless in terms of explicitly supporting and protecting specific sectors of the economy.

Table 9: JPEPA Reservations for Existing Measures

Japan	Philippines
1. Agriculture, fisheries and forestry	1. Mining**
2. Mining*	2. Culture, production, milling, processing, trading excepting retailing, barter and sale of rice and corn**
3. Drugs/medicine manufacturing	3. Geothermal energy, natural gas and methane gas**
4. Leather/leather products	4. Atomic energy**
5. Oil industry	5. Shipping**
6. Telecommunications*	6. Water rights**
7. Water supply and waterworks	7. Private land lease and ownership**
8. Heat supply industry	8. Lands of public domain**
9. Air transport*	9. Small and medium enterprise ownership**
10. Road transport	10. Cooperative ownership**
11. Water transport*	11. Condominium ownership**
12. Shipping*	12. Manufacturing export requirement
13. Railways	13. Divestment requirement
14. Freight forwarding*	
15. Banks and financial institutions for small businesses*	
16. Security guard services	

* *Minimum 66% or full nationality required*
** *Minimum 60% or full nationality required*
Source: IBON Foundation

JPEPA/AJCEPA implementation

It is barely a year since the JPEPA and AJCEPA took effect so any assessment of impact will be limited aside from the repercussions on the levels and pattern of economic activity upon the onset of the global crisis. There is also the inherent difficulty of tracing causality considering the relative openness of the economy even before the deals. In any case, the Department of Trade and Industry (DTI) replied to a request from IBON and cited the following outcomes of JPEPA as of October 2009. None appear very substantial yet:

1. Deployment of Nurses and Caregivers – 283 health workers (93 nurses, 190 caregivers) dispatched in May 2009 to Japan to undergo onsite language and culture training for six (6) months in designated language institutions in Tokyo, Osaka, Nagoya, and Hiroshima before starting to acquire necessary knowledge and skills at the respective hospitals or care facilities through work and training in Japan. Another group of 10 workers who were exempted from the 6-month Japanese language training in Japan because of their proficiency, departed on 31

May 2009. On 27 September 2009, 30 qualified Filipino students will be sent to Japan to study caregiving for 2 years.

2. Issuance by the Philippines of a retroactive certificate of origin for agricultural products, in particular banana exports to Japan.
3. Issuance of implementing rules and regulations on TRQ availments for Philippine imports of tinplate, hot rolled and cold rolled steel.
4. Processing of a Japanese request for a refund on duties paid on iron and steel products from December 11, 2008 to May 7, 2009 when the imports should already have been covered by the JPEPA preferential rate.
5. The RP Government has requested the Government of Japan to initiate negotiations to delay the elimination of customs duty on tariff lines for Motor Vehicles scheduled in 2010.
6. One (1) trade fair – The Outbound Business Matching (OBM) Cum FOODEX Trade Fair Participation on *March 1-8, 2009, Tokyo and Chiba, Japan* participated in by fourteen (14) companies with twenty-eight (28) delegation members.
7. Five (5) promotional activities for three (3) sectors: home furnishings and wearables, food, and IT services – These activities were in an overseas trade fair participated in by 31 companies and a Philippine trade fair with 739 companies.
8. The Confederation of Garment Exporters of the Philippines (CONGEP) and the Japan Textile Federation (JTF) held initial meetings on the first week of September to discuss proposed amendments in the Rules of Origin for textile and garments under the JPEPA.
9. Net foreign direct investment by Japan of US$565.8 million in the first semester of 2009 (note: compared to US$728.2 million from the US from January to July, 2009).
10. Sub-committees convened: Sub-Committee on Services (April 2009), Sub-Committee on Movement of Natural Persons (June 2009), Sub-Committee on Improvement of the Business Environment (June 2009), Sub Committee on Cooperation (July 2009) and RP side Joint Committee (July 2009).

Certainly there is a sense in which the JPEPA and AJCEPA deals could not cause much more immediate damage to domestic production already badly damaged by the previous period of trade liberalization. Yet while the damage of unrealized and stifled potential due to constrained policy is much less easy to see, from a development perspective this must certainly be considered significant.

Challenges

On the workshop theme of working towards inclusive trade policies in post-crisis Asia, three points come to mind. The first relates to the apparent asymmetry between what is undesirable and the developmental alternative. It is more or less clear what the more advanced economies like Japan, the US and the European Union (EU) want from ASEAN countries especially its more underdeveloped and weaker economies – open markets, profitable opportunities, flexibility in its production locations and freedom in its investment decisions. In many instances these are at the expense of domestic development. Yet it is less clear what kind of mutually beneficial integration ASEAN countries can have with each other that doesn't just

put them in a self-destructive race-to-the-bottom vis-à-vis the big powers, or that doesn't just give play to exploitative profit-making by regionally home-grown ASEAN corporations.

The second point is how, even before the matter of more progressive regional trade policies agreed upon between governments can be taken up, many of our countries are faced with a more basic, direct and pressing problem: retrograde political leaderships that uphold foreign interests and corporate profits rather than the majority people's right to development. The changed economic conditions of the post-crisis world have not altered the long-standing need to struggle to keep building democratic momentum and expanding what is politically possible to realize in the socioeconomic realm. Indeed democratic politics will be vital to also address various urgent internal problems such as land, asset and wealth redistribution, poverty reduction, job creation, social services, and corruption.

Third is how the dynamics of the global crisis itself may even serve to further harden neoliberal orthodoxy, undermine rights and welfare, and increase anti-democratic counter-currents as international capital and domestic elites seek to pass as much of the burden of crisis onto the people as possible. Greater labor flexibilization, wage and benefit cuts, austerity programs leading to social service cutbacks, and worse plunder of natural resources enforced through open and disguised political repression immediately come to mind.

The current global crisis per se is unlikely to spontaneously cause major realignments among the country's ascendant interest groups or between these and majorities suffering their domination. The opportunity for meaningful change hinges on more effective contestation by grassroots and people-oriented political forces, especially mass movements and progressive elements within government especially in parliament but also within the judiciary and, to a limited degree, the executive. These are the real beginnings of addressing the country's long-standing structural problems and subordination to big international capital. They are also preconditions to any of our countries making any real contribution to a positive effort towards more inclusive and transformative regional economic policies. ###