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# National Treatment of Americans in the Philippines: Parity Rights, Retail Trade and Investments

A special economic relationship has existed between the Philippines and the United States since the former's attainment, or re-attainment, of independence in 1946 to the present. This relationship has not been altogether satisfactory to both countries; there had been irritants and attempts, not altogether successful, to refine the roughness of some of the features of said relationship. At bottom, the philosophy of this special relationship is to give preferential treatment to Philippine exports in the United States and to accord national treatment to Americans and American business in the Philippines. It is this national treatment element that I seek to examine. I propose to do this under three aspects of the parity amendment, the nationalization of retail trade, and the newly-enacted Investments Incentive Act. I also propose to give my views on the consequences that may arise as a result of the termination of the parity rights in 1974 should they not be extended.

## I. PARITY RIGHTS

### *1. The Period of the Commonwealth*

The Philippines adopted its present Constitution in 1935. It was then under the sovereignty of the United States. It provides that the disposition, exploitation, development, or utilization of the natural resources of the Philippines shall be limited to Philippine citizens, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens. It excepted only rights existing, i.e.,

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formerly acquired, at the time of its effectivity (Art. XIII, Sec. 1, Phil. Constitution). It further stated that no private agricultural land—and this term includes residential land<sup>1</sup>—shall be transferred or assigned except to persons or associations qualified to acquire or hold lands of the public domain in the Philippines. Said public lands are among the natural resources reserved to Philippine citizens as above-stated. It excepted only the case of hereditary succession (Art. XIII, Sec. 5, Phil. Constitution.) And, finally, it says that no franchise, certificate or authority for the operation of a public utility shall be granted to citizens of the Philippines or to corporations or entities organized under Philippine laws, sixty *per centum* of the capital of which is owned by citizens of the Philippines (Art. XIV, Sec. 8, Phil. Constitution).

From 1935 to 1946, however, due to the Tydings-McDuffie Law<sup>2</sup> which operated as an ordinance to the Philippine Constitution, the above-stated areas remained open to Americans. Said law provided that pending the final and complete withdrawal of the sovereignty of the United States from the Philippines, "Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of the citizens and corporations, respectively, thereof."<sup>3</sup>

Americans, therefore, were accorded *full* national treatment in the Philippines during the period of the Commonwealth.

## 2. *The Republic's Inauguration*

After the Second World War, the Philippines and its economy were in ruins. Nonetheless, the Filipinos asked for independence as originally provided in the Tydings-McDuffie Act. And on July 4, 1946, the United States recognized the independence of the Republic of the Philippines.

The realities were such, however, that without some kind of outside assistance, the new Republic could not rise, let alone stand, on its own. As an answer to this problem, the special relationship setup was resorted to, under which, as stated, the Philippines was to be given preferential treatment of its products in the United States, by way of a system of quota, tariff exemption and subsequent imposition, in later

<sup>1</sup> *Krivenko v. Reg. of Deeds*, 79 Phil. 461 (1947). A precedent setting decision of the Philippine Supreme Court which showed the nationalistic spirit followed by the court in interpreting the Constitution.

<sup>2</sup> Also called Philippine Independence Act of 1934, Public Act No. 127, 73rd Congress of the U. S. approved March 24, 1934.

<sup>3</sup> Sec. 2 (a) (16).

years, of a gradually increasing rate of tariff duties, until it shall reach 100% by 1974. This setup was carried out by the enactment of the Philippine Trade Act of 1946\* by the United States Congress and the signing of the Philippine Trade Agreement of 1946 between the chief executives of the two countries.

The price [so to speak], however, that the Philippines had to pay for this aid, was a concession in its nationalistic policy embodied in its Constitution, which as shown earlier reserved specific activities to Philippine Nationals. The Tydings-McDuffie law no longer being effective to stop said provisions of the Constitution from applying to Americans, the latter stood to lose their right to national treatment. It was then asked by the Americans, that during the effectivity of the preferential treatment agreement in favor of Philippine goods, Americans be accorded in the Philippines the same rights as Filipinos in the disposition, exploitation, development, and utilization of natural resources and the operation of public utilities. This was in fact made a condition to the grant not only of the preferential treatment "aid," but also to that of full benefits of the Rehabilitation Act providing for payment of war damages.<sup>4</sup>

And to accommodate this set-up, the Philippine Constitution had to be amended, to insert an ordinance thereto providing for such national treatment of Americans in the above-stated areas reserved to Philippine nationals, for a period not beyond July 3, 1974.

The full text of said ordinance is as follows:

Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of

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\*60 Sta. 141, 22 USC §125 (1958).

<sup>4</sup> Philippine Rehabilitation Act of 1946, 60 Sta. 128, 50 USC §§ 1751-1806 (1958). See Cortes, *U.S. Investments In Philippine Resources*, 40 WASH. L. REV., p. 484.

the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

This, then was the special measure adopted to assist the war-ravaged Philippine economy to its feet: National treatment of Americans in the Philippines and preferential treatment of Philippine goods in the United States. The former was justified by the reasoning that the emergency required it, for only through such means could the badly-needed private United States investment be attracted to the Philippines.\*

### 3. *Philippine Trade Agreement's Operation from 1946-1954*

As carried out, the Agreement indeed provided goods of the Philippines a fighting chance in the competitive United States markets, thereby assisting the Philippine export trade.

"Philippine articles" enjoyed duty-free entry into the United States until July 3, 1954. Starting July 4, 1954, these articles were to be subject to five per cent of the most-favored-nation United States duty. Annually thereafter the duties were to increase by five per cent until they reached 100 per cent of the most favored nation rate. After July 4, 1974, all Philippine articles would be treated for tariff purposes as would imports from any other country.<sup>5</sup>

Certain portions of the agreement, however, tended to defeat the beneficial effects of this preferential treatment in United States markets. Thus, the Agreement also provided for duty-free entry into the Philippines of "United States articles" until July 4, 1954; thereafter until July 3, 1974, United States articles would be subject to an annually increasing percentage of the Philippine duty.<sup>6</sup>

The United States took full advantage of this privilege, deluging the Philippines with American products, particularly luxury items.<sup>7</sup> Needless to say, this was far from what President Truman, in signing the Trade Act into law, said was its "sole purpose and guiding philosophy,"

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\*See Statement of U.S. High Commissioner Paul V. McNutt during Congressional hearing on the measures, in Cortes, *U.S. Investments in Philippine Resources*, 40 WASH. L. REV. 493.

<sup>5</sup> Phil. Trade Agreement, Art. I, par. 2; Salans and Belman, U.S.-Phil. Special Relationship, 40 WASH. L. REV. 451.

<sup>6</sup> The terms "Philippine article" and "United States article" were defined in the Agreement. Philippine or United States products not falling thereunder were subject to full most-favored-nation rates in the importing country, during the effectivity of the agreement. Art. I, pars. 5 and 6 of Phil. Trade Agreement, 61 Stat. 2611, T.I.A.S. No. 1588.

<sup>7</sup> Salans and Belman, *op. cit.*, p. 455.

to furnish "a formula for the rehabilitation of the Philippines national economy."<sup>8</sup>

It, therefore, appeared that the "assistance" that was given by the United States to the Philippines had the proverbial strings attached; for the United States, a developed country whose economy stood well the war, had no need for preferential treatment and exemption from tariff duties from a country whose economy was shattered by that same war.

National treatment, on the other hand, granted to Americans in the areas of natural resources and public utilities, did help attract private United States investment, although not as much as expected. In 1950, direct private investments by Americans in the Philippines totalled \$149,000,000. Of this, \$15,000,000 fell under agriculture, \$23,000,000 in manufacturing, \$47,000,000 in public utilities, and \$30,000,000 in trade.<sup>9</sup>

Since economic development did not progress as rapidly as anticipated,<sup>10</sup> partly due to disadvantageous provisions in the Trade Agreement that tended to perpetuate the dominant portion of Philippine export industries dependent upon the United States market, and which discouraged Filipinos from establishing local industries to produce consumer goods of the kind imported duty-free from the United States, strong representations were made to remove the features of the Agreement regarded as detrimental to its avowed purpose.

At the same time, the national treatment clause of the Agreement came under *heavy attack primarily because the same privilege was not extended under the Agreement to Filipino citizens or juridical entities in the United States*. As a result, negotiations were made to effect these changes.

#### 4. The Laurel-Langlely Agreement

The President of the Philippines formally requested the revision of the 1946 Trade Agreement on March 7, 1953. The President of the United States, on March 16, 1953, expressed willingness thereto. Negotiations started at Washington, D.C., on September 20, 1954. In the meanwhile, the two governments extended the period of reciprocal free trade from July 3, 1954 as originally scheduled to end under the 1946 Agreement, to December 31, 1955.<sup>11</sup>

<sup>8</sup> Public Papers of the President of the U.S., Harry S. Truman, 1946, 217 (1962). See Salans and Belman, *op. cit.*, 543.

<sup>9</sup> Cortes, U.S. Investments in the Philippines, *op. cit.*, p. 500.

<sup>10</sup> Salans and Belman, *op. cit.*, p. 454.

<sup>11</sup> Salans and Belman, *op. cit.*, 454-455.

The Revised Trade Agreement, popularly known as the Laurel-Langley Agreement, was signed on September 6, 1955, proclaimed on October 26, 1955 and took effect on January 1, 1956.<sup>12</sup> It primarily deals with trade relations. In this area, a formula was agreed upon, accelerating the rate at which Philippine duties would be levied on United States imports and decelerating the rate at which the United States duties would be collected on Philippine products.<sup>13</sup>

Secondarily, but more important for our purposes, the Laurel-Langley Agreement also dealt with parity rights. Article VI of the Revised Agreement provided for *reciprocity* in the right to exploit natural resources and to operate public utilities.

Reciprocity, however, was subject to these limitations namely: (1) The rights conferred may be exercised by citizens of the Philippines only with regard to natural resources of the United States subject to federal control; and (2) Filipino citizens may exercise these rights only through the medium of a corporation organized under the laws of the United States or any of the States; in the same way, United States citizens may exercise rights over Philippine natural resources only by incorporating under Philippine law, provided that at least sixty per cent of the capital of such corporation is owned or controlled by American citizens. Excepted from this requirement of corporate form was the right of citizens of either country *to acquire and own private land within the territory of the other*.

Furthermore, the right of the Philippines or of the United States to set further limits in the following cases was expressly reserved: (1) the right to dispose of its public lands in small quantities to actual settlers who are its own citizens, or in the case of the United States, who, if not United States citizens, have declared their intention to become such citizens; (2) the right to limit the extent to which aliens may engage in fishing or in enterprises which furnish communications services and air or water transport. The rights hereunder reserved, however, were also stipulated as not capable of being exercised in derogation of rights previously acquired.

Still another reservation was made in favor of the several States of the United States, thus: said States may limit the extent to which citizens or corporations or associations owned or controlled by citizens of the Philippines may engage in the activities specified in the Agreement. The Philippines, on the other hand, is not given a similar

<sup>12</sup> Salans and Belman, *op. cit.*, 455; Cortes, *op. cit.*, 486; Guevara, *Philippine Business Organizations*, 40 WASH. L. REV., 537.

<sup>13</sup> Salans and Belman, *loc. cit.*; Art. I of Rev. Agreement.

power, but only one of, in effect, retaliation. It reserves the power to deny any rights specified in the Article to citizens of the United States who are citizens of States, or to corporations or associations at least 60% of whose capital is owned or controlled by citizens of States which deny like rights to citizens of the Philippines, or to corporations or associations which are owned or controlled by citizens of the Philippines.

In so retaliating, the Philippines, it is further provided, shall not affect previously acquired rights. An exception to this is if any State should impose a retroactive restriction on Philippine citizens or Philippine owned or controlled corporations or associations, in which case the Philippines may likewise apply like limitations to citizens or corporations or associations owned or controlled by citizens of such States.

Perhaps the most noteworthy portion of the Agreement, in regard to parity, is Article VII, which actually extended the scope of parity rights given in 1946, to cover a new field: "business activities."

Article VII, Sec. 1, provides as follows:

1. The United States of America and the Republic of the Philippines each agrees not to discriminate in any manner, with respect to their engaging in business activities, against the citizens or any form of business enterprise owned or controlled by citizens of the other and that new limitations imposed by either Party upon the extent to which aliens are accorded national treatment with respect to carrying on business activities within its territories, shall not be applied as against enterprises owned or controlled by citizens of the other Party which are engaged in such activities therein at the time such new limitations are adopted, nor shall such new limitations be applied to American citizens or corporations or associations owned or controlled by American citizens whose States do not impose like limitations on citizens or corporations or associations owned or controlled by citizens of the Republic of the Philippines.

Sec. 2 of the same Article is a reservation, along the same pattern as described above, in regard to the rights of the several States of the Union to limit the extent to which Philippine citizens or Philippine-citizen-owned or controlled corporations or associations, may engage in any business activities, providing also for the same retaliation sanction and non-retroactivity of sanction and exception thereto.

##### 5. *Present Rights of Americans to National Treatment*

The parity amendment *opened* to United States citizens, and all forms of business enterprises owned or controlled directly or indirectly



by United States citizens, the disposition, exploitation, development or utilization of the natural resources of the Philippines, and the operation of public utilities, "in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines."<sup>14</sup> *All constitutional and statutory limitations on such rights imposed on Philippino citizens or Philippino-citizen-owned or controlled corporations or associations are therefore also deemed imposed on United States citizens or United States citizen-owned or controlled business enterprises.* Hence, such limitations bear examination.

*(a) Constitutional and statutory limitations of right to acquire lands.*

Article XIII, Sec. 1 of the Philippine Constitution provides that "Natural resources, with the exception of public agricultural lands, shall not be alienable . . . ." Timber and mineral lands of the public domain, therefore, cannot be acquired, even by Filipinos. In regard to private agricultural lands, Article XIII, Sec. 5 states: "Save in cases of hereditary succession, no private agricultural lands shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

As noted earlier,<sup>15</sup> the Laurel-Langley Agreement requires that parity rights over natural resources be exercised through corporate form, without prejudice to individual citizens of one party acquiring *private* lands in the territories of the other. Hence, although the Philippine Constitution allows individuals to acquire *public* agricultural lands not in excess of 144 hectares,<sup>16</sup> the Laurel-Langley Agreement itself precludes this method of acquiring such lands. Since individual Filipino citizens can acquire public lands in the Philippines, this is one right over natural resources to which parity does not extend in favor of American citizens *as individuals or natural persons*.

*(b) Right to exploit, develop or use natural resources of the Philippines.*

The right to lease *public* lands is limited to Philippine citizens and corporations or associations at least 60% of the capital stock of which

<sup>14</sup> See Full Text, *supra*, p. 4.

<sup>15</sup> *Supra*, p. 8.

<sup>16</sup> Art. XIII, Sec. 2.

belongs to Philippine citizens.<sup>17</sup> By virtue of parity rights, the same is available to Americans. As stated, however, the Laurel-Langley Agreement requires the exercise of parity rights over "natural resources in the public domain" of the Philippines to be "only through the medium of a corporation organized under the laws of the Philippines and at least 60% of the capital stock of which is owned or controlled by citizens of the United States."<sup>18</sup> American citizens, therefore, may not as individuals lease public lands.

No prohibition obtains against aliens leasing *private* lands.<sup>19</sup> Americans, therefore, need not invoke parity rights to lease private lands. The Supreme Court, however, in a recent case,<sup>20</sup> stated that a lease virtually transferring ownership may be regarded as a sale. The facts of the case involved not only a long period of lease but also a prohibition on the part of the lessor to sell, for a period of 50 years, thereby rendering the contract tantamount to a virtual transfer of ownership. Americans being capable of acquiring private lands by sale under parity rights, this ruling does not at present apply to them.

As stated, the Philippine Constitution allows development, exploitation and use, but not acquisition, of timber and mineral lands, respecting, however, acquisitions prior to its effectivity in 1935.

Regulating mineral lands is the Mining Act of 1936.<sup>21</sup> It covers "all valuable mineral deposits in public or in private land not closed to mining locations, and the land on which they are found, excepting coal, petroleum, and other mineral oils and gas." Leases under this law may be for a period of twenty-years renewable for a like period. Since parity rights extend up to July 3, 1974, only, unless there is a new agreement extending it, leases in favor of sixty percent United States citizen-owned corporations organized under Philippine law may be granted not to extend beyond said date. As of 1965, however, no American corporation had taken advantage of this privilege under the Mining Law.<sup>22</sup> This will be discussed in detail later.

The special law governing mineral oils, hydrocarbon gas, bitumin, asphalt, mineral wax, and similar or naturally associated substances, is the Petroleum Act of 1949. Among others, it provides for granting of

<sup>17</sup> Art. XIV, Sec. 1; Com. Act. 141, Sec. 33 (1936) or the Public Land Act.

<sup>18</sup> Art. VI, Sec. 2 of Laurel-Langley Agreement.

<sup>19</sup> Art. 1643 of the Civil Code allows lease for 99 years. See *Smith Bell & Co. v. Reg. of Deeds*, 96 Phil. 53.

<sup>20</sup> *Phil. Banking Corp. v. Lui She*, L-17587, Sept. 12, 1967.

<sup>21</sup> Com. Act No. 137.

<sup>22</sup> *Cortes, op. cit.*, 490.

exploration, exploitation, refining and pipe line concessions. An exploration concession may be obtained for a 4-year period, renewable for two periods of three years each. An exploitation concession may be acquired for twenty-five years, renewable for another twenty-five years. American corporations have shown more interest in this area.<sup>23</sup>

As to coal, lands bearing such mineral may be leased in blocks of from fifty to 1,200 hectares, without exceeding six blocks in a single province. The period is 25 years, renewable for another 25 years.

Licenses for taking and removal of forest products may be granted by the Bureau of Forestry, for a period not exceeding 20 years.<sup>24</sup> Special-purpose licenses, to establish saw-mills, lumber yards, etc., may be obtained from the Director of Forestry, with the approval of the Secretary of Agriculture and Commerce, for a period not exceeding 25 years.<sup>25</sup>

Fishery rights may be acquired under the Fisheries Act.<sup>26</sup>

### *(c) Right to Operate Public Utilities.*

The Public Service Act<sup>27</sup> regulates the operation of public utilities. It reiterates the requirements of the Constitution already noted regarding Philippine nationality of the operator.

The Customs and Tariffs Code<sup>28</sup> governs coastwise shipping. This law has more stringent requirements than the Constitution. It requires 75% Filipino ownership of the subscribed capital stock for a corporation to engage in the business of coastwise shipping; hence, the American counterpart should also be 75% American-owned to enjoy parity rights in coastwise shipping. This is not a violation of Article VII of the Laurel-Langley Agreement agreeing not to impose new limitations to national treatment in business activities because the former law<sup>29</sup> even required 100% Filipino or American ownership of such corporations.

### *(d) Right to Engage In Business.*

Foreign corporations—i.e., organized not under Philippine laws—may engage in business in the Philippines by obtaining a license for that

<sup>23</sup> *Ibid.*

<sup>24</sup> Rev. Administrative Code, Secs. 1831, 1835.

<sup>25</sup> *Ibid.*, Sec. 1838.

<sup>26</sup> Public Act No. 4003.

<sup>27</sup> Com. Act. No. 146.

<sup>28</sup> Rep. Act 1937, effective July 1, 1957.

<sup>29</sup> Act No. 2761 as amended by Sec. 1172, Rev. Adm. Code.

purpose from the Securities and Exchange Commission.<sup>30</sup> In the case of a bank, the license is issued by the Monetary Board<sup>31</sup> upon showing that public interest and economic conditions justify it.

Statutory limitations in certain areas of business restrict the right of aliens or foreign corporations from doing business in the Philippines. The Laurel-Langley Agreement, however, provides that each party "agrees not to discriminate in any manner, with respect to their engaging in business activities, against the citizens or any form of business enterprise owned or controlled by citizens of the other."

*This non-discrimination clause was not contained in the 1946 Trade Agreement.* What was therein provided was merely the right of the President of the United States to suspend and later to abrogate the treaty in the event that he determines and proclaims, after consultation with the President of the Philippines, that the Philippines was in any manner discriminating against United States citizens or in any form of United States business enterprise.<sup>32</sup>

*Accordingly, the non-discrimination in business agreement should be construed as effective only on January 1, 1956 when the Revised Trade Agreement took effect.* Restrictions in business activities already provided for prior to that time must be deemed to remain even against United States citizens and business enterprises. This is further indicated by the rest of the non-discrimination clause:

. . . and that *new limitations* imposed by either Party upon the extent to which aliens are accorded national treatment with respect to carrying on business activities within its territories, shall not be applied as against enterprises owned or controlled by citizens of the other Party which are *engaged in such activities therein at the time such new limitations are adopted*, nor shall such new limitations be applied to American citizens whose States do not impose like limitations on citizens or corporations or associations owned or controlled by citizens of the Republic of the Philippines.<sup>33</sup>

There are many limitations prior to the Laurel-Langley Agreement but I will only touch on the nationalization of retail trade.

As my final note, however, on the discussion of the Laurel-Langley Agreement, the Philippine Supreme Court, in a recent case<sup>34</sup> has ruled that as an additional requirement for enjoyment of parity rights or national treatment, proof of reciprocity in the sense that the

<sup>30</sup> Phil. Corp. Law, Sec. 68.

<sup>31</sup> Rep. Act 337, Sec. 14.

<sup>32</sup> Art. X, par. 4 of 1946 Phil. Trade Agreement.

<sup>33</sup> Art. VII, par. 1, emphasis ours.

<sup>34</sup> *Palting v. San Jose Petroleum, Inc.*, L-14441, Dec. 17, 1966.

different States to which American stockholders in a corporation belong, also allow Filipino citizens or corporations or associations owned or controlled by Filipino citizens to engage in exploitation, development, disposition, and utilization of the natural resources in those States. (See paragraph 3, Article VI of the Laurel-Langley Agreement, *supra*.)

## II. RETAIL TRADE

### 1. *Nationalization of Retail Trade in 1954.*

Republic Act 1180 enacted on June 19, 1954 entitled "An Act to Regulate The Retail Business," nationalized retail trade in the Philippines.

Among its salient provisions are Section 1:

"No person who is not a citizen of the Philippines, and no association, partnership, or corporation the capital of which is *not wholly owned by citizens of the Philippines*, shall engage directly or indirectly in the retail business: Provided, that a person who is not a citizen of the Philippines, or an association, partnership, or corporation not wholly owned by citizens of the Philippines, which is actually engaged in the said business on May fifteen, nineteen hundred and fifty four, shall be entitled to continue to engage therein, unless its license is forfeited in accordance herewith, until his death or voluntary retirement from said business, in the case of a natural person, and for a period of ten years from the date of the approval of this Act or until the expiration of the term of the association or partnership or of the corporate existence of the corporation, whichever event comes first, in the case of juridical persons. Failure to renew a license to engage in retail business shall be considered voluntary retirement.

"Nothing contained in this Act shall in any way impair or abridge whatever rights may be granted to citizens and juridical entities of the United States of America under the Executive Agreement signed on July fourth, nineteen hundred and forty six between that country and the Republic of the Philippines."

and Section 4, defining "retail business":

"SECTION 4. As used in this act, the term 'retail business' shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:

"(a) a manufacturer, processor, laborer, or worker selling to the general public the products manufactured, processed or produced by him if his capital does not exceed five thousand pesos, or

"(b) a farmer or agriculturist selling the product of his farm."

This statute's constitutionality was assailed and the Supreme Court upheld it, in *Ichong v. Hernandez*,<sup>35</sup> as a valid exercise of the State's police power. Relied upon were the fact that retail business was then in alien dominance and control,<sup>36</sup> that retail is a sensitive portion of the economy and tied up with the nation's security and public interest, so that citizenship was deemed a valid basis for classification thereby not infringing the equal protection clause<sup>37</sup> of the Philippine Constitution.

And the due process clause<sup>38</sup> of the same Philippine Constitution was deemed complied with on the finding that the law was not unreasonable, arbitrary or capricious and the means selected has a real and substantial relation to the ends sought to be attained.<sup>39</sup>

## 2. *Applicability to United States Citizens and Business Enterprises.*

Philippine Secretary of Justice Tuason rendered an opinion on July 21, 1954 to the effect that American citizens and juridical entities were exempt from the prohibitions against aliens engaging in the retail trade and, that they need not register as aliens under the Act.<sup>40</sup> And in support of this view, the provision of the Act was cited which stated that nothing therein shall in any way impair or abridge whatever rights may be granted to citizens and juridical entities of the United States of America under the Philippine-United States Executive Agreement signed on July 4, 1946. The Department of Foreign Affairs concurred with this view.<sup>41</sup>

On April 22, 1963, however, Philippine Secretary of Justice Liwag rendered an opinion<sup>42</sup> to the effect that for an American corporation to be exempt from the coverage of the prohibition in the retail trade law it must be 100% American owned, since a Filipino corporation has to be 100% Filipino owned to be able to engage in retail business, so that a lesser requirement for American corporations would grant the latter *greater* rights than Filipinos themselves. A 98% American-owned corporation will not suffice, he opined.

<sup>35</sup> 101 Phil. 1155 (1957).

<sup>36</sup> Chinese.

<sup>37</sup> Art. III, Sec. 1(1). See 101 Phil. 1175 *et seq.*

<sup>38</sup> Art. III, Sec. 1(1).

<sup>39</sup> 101 Phil., 1182.

<sup>40</sup> Opinion No. 175, Series of 1954.

<sup>41</sup> See Salans and Belman, *op. cit.*, pp. 461-462.

<sup>42</sup> Opinion No. 71, Series of 1963.

Such development led to court actions for declaratory relief involving the retail trade nationalization law.<sup>43</sup> Such actions seek to resolve three issues:

(1) Are American citizens or corporations exempt from the retail trade nationalization law by virtue of the Philippine-United States Trade Agreement?

(2) Is 100% American ownership required of American corporations to engage in retail business? and

(3) Does "retail business" include sale to industrial or commercial users?

In their decisions, the Courts of First Instance arrived at different results on these issues. Said decisions are pending appeal in the Philippine Supreme Court.

In regard to the three issues aforementioned, without prejudging the appeals now *sub judice*, the following points are noteworthy:

As to the first issue, the Revised Trade Laurel-Langley Agreement effective January 1, 1956, cannot be invoked to assail the law as violative of the Agreement's non-discrimination clause, because the law antedates that Agreement or clause by more than a year. And said clause forbids "new limitations" to the conditions for national treatment, thereby clearly allowing to be in force the old ones. True, Republic Act 1180 reserves "whatever rights may be granted" to United States citizens and juridical entities under the 1946 Trade Agreement. Prior to its revision effective 1956, however, said Agreement did not contain a non-discrimination clause, but merely granted the United States President the right to retaliate in case of discrimination by suspending—or if discrimination persists, abrogating—the Trade Agreement.<sup>44</sup>

As to the second issue, assuming that in virtue of the Philippine-United States Trade Agreement, American citizens and juridical entities are entitled to national treatment, then surely the national treatment cannot be *supra-national* or better than national. The 100% requirement, if applied to Philippine citizens and entities, must also be applied to United States citizens and entities. Arguments are untenable, that this results in discrimination *in practice* because most Philippine corporations are family corporations and thus wholly Philippine owned or closely held whereas United States corporations are broadly based

<sup>43</sup> *E.g.*, *Esso v. Hon. Teofilo Reyes*, Civil Case No. 57421, CFI of Manila, Br. V.; *USI Philippines, Inc. v. Hon. Marcelo Balatbat*, Civil Case No. 57404, CFI of Manila, Br. I; *Phil. Packing Corp. v. Hon. Teofilo Reyes*, Civil Case No. 57417, CFI of Manila, Br. XXIII.

<sup>44</sup> Art. X, Par. 4 of 1946 Agreement.

and publicly owned.<sup>45</sup> For that matter, so is the so-called parity and reciprocity in the right of each parity to acquire, develop, exploit, and use the natural resources, operate public utilities in the other's territory and engage in business therein. For here there is no *real* parity in regard to the Philippines enjoying such rights in the United States, since Philippine capital is lacking for internal development, let alone for external or foreign investment. If, then, Americans are granted parity rights in natural resources, etc., even if due to imbalance and disparity of political and economic influences there is only formal, not actual, reciprocity in this area,<sup>46</sup> they should also submit to parity in business even if due to the factual disparity in the structure of Philippine and United States corporations real parity may not be present at all times.

As to the third issue, the writer is of the opinion that retail trade does not, in the accepted marketing sense, include sale to institutional users, even if such users do consume the product sold, because they do so not to satisfy personal or household wants but to be able to render service or provide goods to the general public.

Dr. Amado A. Castro, Dean of the University of the Philippines' School of Economics, in testifying as an expert in the USI Philippines case,<sup>47</sup> succinctly differentiated the concepts of retail and wholesale in marketing economics. Thus: "Retailing" is the sale of final goods to final consumers; "final goods" are those goods that are ready for ultimate consumption, or those in the hands of ultimate consumers ready for them to consume; "consumption" is the using up of goods and services in order to satisfy human wants or personal or household wants. On the other hand, "wholesaling" is the sale of intermediate goods to other resellers, end-users or institution users; "intermediate goods" are those used for further production or contributing to the process of placing goods in the hands of ultimate consumers and thereby making a profit for the businessmen.<sup>48</sup>

The points of contact between such economist's definition and that of the statute would be in the statutory definition's element of "general public" and the term "consumption." I personally believe that Institutional users do not really form part of the general public and their use of the products in question—such as public utilities' use of

<sup>45</sup> See Salans and Belman, *op. cit.*, p. 466. One remedy would be not to strictly apply the 100% requirement even to Filipinos, thereby considering 98% or so substantially adequate, on the ground that *de minimis non curat lex*.

<sup>46</sup> See Cortes, *op. cit.*, 488 Footnote 46 citing Golay, *Revised US Philippine Trade Agreement*, 13.

<sup>47</sup> See *supra*.

<sup>48</sup> See decision of CFI in USI Phil. case, *supra*, dated Dec. 14, 1967.



gasoline—is not consumption as that term is as plainly understood. Such a view, is further attuned to the aims of the law from the viewpoint of the evil it sought to remedy. If the Supreme Court adopts this view, \$250 million worth of American investments stand to fall outside of the pale of the law.<sup>49</sup>

### III INVESTMENTS

The third aspect of discussion is—

#### 1. *The Philippine Investment Incentives Act.*

On September 16, 1967, the Philippine Congress enacted Republic Act 5186, the Investment Incentives Act. It declares it to be the policy of the State to encourage Filipino and foreign investments in projects to develop agricultural, mining and manufacturing industries which increase national income most at the least cost, increase exports, bring about greater economic stability, provide more opportunities for employment, raise the people's standards of living, and provide for an equitable distribution of wealth. And furthermore, it also enunciates the State's policy "to welcome and encourage foreign capital to establish pioneer enterprises that are capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available."

#### 2. *Rights and Guarantees To All Investors and Enterprises.*

All investors and enterprises are entitled to the basic rights and guarantees provided in the Philippine Constitution. Among other rights further recognized by the Philippine Government to enterprises whether or not registered are:<sup>50</sup>

(a) Repatriation of Investment;<sup>51</sup>

(b) Remittance of Earnings;<sup>52</sup>

(c) Foreign Loans and Contracts—The right to remit at the exchange rate prevailing at the time of remittance such sums as may be

<sup>49</sup> Salans and Belman, *op. cit.*, 448.

<sup>50</sup> Section 4.

<sup>51</sup> Subject to Sec. 74 of Rep. Act 265, namely, the right of the Monetary Board, with the approval of the President of the Philippines, to temporarily suspend or restrict sales of exchange by the Central Bank and subject all transactions in gold and foreign exchange to license by the Central Bank, during an exchange crisis.

<sup>52</sup> Subject to Sec. 74 of Rep. Act 265, *supra*, note.

necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from technological assistance contracts;<sup>5 3</sup>

(d) Freedom from Expropriation—except for public use or in the interest of national welfare and defense and upon payment of just compensation;<sup>5 4</sup> and

(e) Non-requisition of Investment—except in the event of war or national emergency upon payment of just compensation and only for the duration thereof.<sup>5 5</sup>

### 3. A System of Registration of Investments.

The statute under discussion establishes a system of registration of investments.<sup>5 6</sup> And in this framework, it provides for setting aside areas of economic activity in which registered enterprises having a specified local participation are accorded a wide range of benefits, *called the preferred areas of investment*; as well as in areas in which such benefits are accorded to registered enterprises presently without the specified local participation, *called pioneer areas of investment*. Said areas are to be determined by the Board of Investments,<sup>5 7</sup> created under the same law. And in so delimiting these areas, in an Investments Priorities Plan, to be made yearly, the Board is further to determine their corresponding measured capacities.<sup>5 8</sup>

Any area of investment, however, is mandatorily included by the law as preferred (non-pioneer) where an enterprise (1) is engaged in the exportation of finished products completely processed and manufactured in the Philippines with at least 70% of the peso value of its total raw material content being Philippine raw material; (2) is exporting more than 50% of its total production; and (3) does not enjoy any preferential treatment arising from any agreement or

<sup>5 3</sup> Also subject to Sec. 74, Rep. Act 265, *supra*, note. The term “technological assistance contracts” means contracts for (1) the transfer of patents, processes or formulas or other technological rights of foreign origin; and/or (2) foreign assistance concerning technical and factory management, design, planning, construction and similar matters. (Sec. 3 [c]).

<sup>5 4</sup> Subject to Sec. 74, Rep. Act 265, *supra*, note.

<sup>5 5</sup> Subject to Sec. 74, Rep. Act 265, *supra*, note.

<sup>5 6</sup> Section 19.

<sup>5 7</sup> Sec. 18.

<sup>5 8</sup> The term “measured capacity” means the estimated additional volume of production which the Board of Investments determines to be desirable in each preferred and pioneer area of investment, in order to supply the needs of the economy at reasonable prices, taking into account the export potential of the area; it shall not be less than the difference between measurable market demand and existing productive capacity, nor shall it be so much in excess of measurable market demand as to foster or encourage overcrowding in any such area. Sec. 3 [i].

arrangement between the Philippine government and the importing country.<sup>59</sup>

A pioneer area, on the other hand, is one which entails (1) engaging in the manufacture, processing, or production, and not merely assembly or packaging, of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale or (2) using a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw material or finished good which is new and untried in the Philippines, involving substantial use and processing of domestic raw materials, if available, in producing the final product.<sup>60</sup>

The first Investments Priorities Plan has been approved by the President of the Philippines and proclaimed in effect as of June 1, 1968.<sup>61</sup> Applications for registration with the Board of Investments started to be accepted on July 1, 1968.

#### *4. Highlights of procedures and qualifications to be followed for registration.*

An applicant, to be entitled to registration, must satisfy the Board that:<sup>62</sup>

(a) It possesses the qualifications prescribed for a registered enterprise in Sec. 3 (b) of the Act. i.e., it is a corporation incorporated, organized and existing under Philippine laws, of which at least sixty per cent of the capital stock outstanding and entitled to vote is owned and held by Philippine nationals, and at least sixty per cent of the members of the Board of Directors are citizens of the Philippines; or if it does not possess the required degree of ownership by Philippine nationals, certain circumstances must be satisfactorily established;<sup>63</sup>

(b) The enterprise is proposing to start and operate a preferred or pioneer project, or only a pioneer project in the case of non-Philippine enterprises, within a reasonable time to be fixed by the Board;

(c) The enterprise is capable of operating on a sound and efficient basis and of contributing to the national development of the preferred or pioneer area in particular and of the national economy in general;

<sup>59</sup> Sec. 18, second par., R.A. 5186.

<sup>60</sup> Sec. 3 (h).

<sup>61</sup> Proclamation No. 404, dated June 1, 1968.

<sup>62</sup> Sec. 19 of Rep. Act 5186.

<sup>63</sup> Sec. 19 (a), Rep. Act 5186.

(d) If the enterprise is engaged or proposes to engage in undertakings or activities other than preferred or pioneer projects in addition to the project mentioned above, it has installed or undertakes to install an accounting system adequate to identify the investments, revenues, costs, and profits or losses of each preferred or pioneer project undertaken by the enterprise separately from the aggregate investment, revenue, costs, and profits or losses of the whole enterprise, or to establish a separate corporation to each preferred or pioneer project if the Board should so require to facilitate proper implementation of the Act.

Notwithstanding requisites (a) and (b) above, if the measured capacity of any preferred, non-pioneer area is not filled within three years from the date of its declaration as a preferred, non-pioneer area, the Board shall allow enterprises not possessing the required percentage of Philippine ownership and control, but otherwise qualified, to be registered in such areas, under prescribed conditions for pioneer areas.

As used in the law, "Philippine Nationals" refers to a citizen of the Philippines; or a partnership or association wholly owned by Philippine citizens; or a corporation organized under Philippine laws of which at least 60% of the outstanding voting stock is owned and held by Philippine citizens; or a trustee of funds for pension or other employees retirement or separation benefits, where the trustee is a Philippine National and at least sixty per cent of the fund will accrue to the benefit of Philippine nationals.

Likewise, the Board of Investment has provided certain rules and procedures to be complied with by parties seeking registration of their respective enterprises.<sup>64</sup>

### *5. Incentives for Investment*

The basic rights and guarantees stated earlier are the *first* incentives to investment, applicable to all, *whether registered or not*.

The other incentives in Rep. Act 5186 are given only to registered enterprises.

#### *(a) Incentives to Registered Enterprises*

A registered enterprise, to the extent engaged in a preferred area of investment, is entitled to the following benefits:

- 1) "Deduction of Organizational and Pre-Operating Expenses.
- 2) "Accelerated Depreciation.

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<sup>64</sup> Rule IV, Sec. 3 of Rules and Regulations of Board of Investments, adopted April 30, 1968, and BOI instructions for registration, pp. 1-2.

- 3) "Net Operating Loss Carry-Over.
- 4) "Tax Credit on Domestic Capital Equipment.
- 5) "Tax Exemption on Imported Capital Equipment.
- 6) "Deduction for Expansion Reinvestment.
- 7) "Tax Credit for Withholding Tax on Interest.
- 8) "Anti-Dumping Protection.
- 9) "Protection from Government Competition.
- 10) "Employment of Foreign Nationals."<sup>6 5</sup>

(b) *Incentives to a Pioneer Enterprise.*

In addition to the benefits and incentives given to registered enterprises, pioneer enterprises shall be entitled to the following:

"Tax Exemptions.—A pioneer enterprise shall be exempt from all taxes under the National Internal Revenue Code, except income tax, to the following extent:

- 100% up to December 31, 1972
- 75% up to December 31, 1975
- 50% up to December 31, 1977
- 20% up to December 31, 1979
- 10% up to December 31, 1981

"Post-Operative Tariff Protection.—A pioneer industry shall be entitled to tariff protection to an extent not exceeding 50% of the dutiable value of imported items similar to those being manufactured or produced by a pioneer enterprise, unless a higher rate is in force under the Tariff Code or pertinent laws. The Tariff shall take effect upon certification by the Board of Investments that the pioneer enterprise is operating on a commercial scale. A pioneer enterprise may still claim additional protection under the Tariff Code.

"Employment of Foreign Nationals.—A pioneer enterprise may employ foreign nationals during the first five years of its operations. Foreign nationals, their spouse and dependent children may reside in the Philippines for the duration of their employment contract.

"In case the majority of the capital stock of a pioneer enterprise is owned by foreign investors, the positions of president, treasurer and general manager, or their equivalents, may be held by foreign nationals. The employment of foreign nationals in positions that cannot be filled by Philippine Nationals may also be allowed on two conditions:

1. that their employment shall not exceed five years; and
2. the enterprise shall train Filipinos in administrative, supervisory and technical skills."<sup>6 6</sup>

<sup>65</sup> See Blue Pamphlet, *Incentives To Investments In The Philippines*, pp. 9-11.

<sup>66</sup> See Blue Pamphlet, pp. 11-12.

(c) *Special Export Incentives to Registered Enterprises.*

Likewise, registered enterprises shall be entitled to the following special incentives for exports of their products and commodities:

- 1) "Double Deduction of Promotional Expenses.
- 2) "Double Deduction of Shipping Costs.
- 3) "Special Tax Credit on Raw Materials."<sup>67</sup>

(d) *There is also Financial Assistance Preference given to Registered Enterprises.*

"Preference in the Grant of Government Financial Assistance.—To the extent allowed by their respective charters, government financial institutions such as the Development Bank of the Philippines, Philippine National Bank, Government Service Insurance System, Social Security System and the Land Bank shall accord high priority to and facilitate the processing of, applications for financial assistance submitted by pioneer and other registered enterprises which are considered Philippine Nationals. Such financial assistance may be in the form of equity participation in preferred, common, or convertible preferred shares of stock or in loans and guarantees.

"The government financial institutions shall contribute up to 30% of the total capitalization of a registered enterprise whenever such contribution would enable the formation of a pioneer or other registered enterprise with at least 60% control by Philippine Nationals. The Board of Investments shall recommend to each financial institution the order of priority to be given the applications of pioneer and other registered enterprises.

"Private Financial Assistance.—Because of restrictive investment guidelines set previously for insurance companies, the Investment Incentives Act empowers the Insurance Commissioner to allow insurance companies to invest in new issues of stock of registered enterprises, notwithstanding that said enterprises may not have paid regular dividends.

"Loans for Investment.—The Government Service Insurance System and the Social Security System shall extend to their members five-year loans at a maximum interest rate of 6% per annum for the purchase of shares of stock of any registered enterprise. The maximum loan available to each employee in any one calendar year is 50% of his annual gross income, and shall be amortized in 60 equal monthly installments. The shares of stock so purchased shall be deposited in escrow with the lending institution for the full term of the loan, with partial releases to be made in proportion to the payments against the loan. The borrower shall receive all dividends earned by the shares of stock while held in escrow.

<sup>67</sup> See Blue Pamphlet, pp. 12-13.

"The total investment of the government financial institution concerned, consisting of its direct investment and the loans extended to its members for the purpose of investing in a registered enterprise, shall not exceed 49% of the total capitalization of the registered enterprise."<sup>68</sup>

The foregoing concerns enterprises as such. But there are also Incentives to Investors in Registered Enterprises.

An investor in a registered enterprise shall have the following rights and benefits:

- 1) "Protection of Patents and Other Proprietary Rights
- 2) "Capital Gains Tax Exemption.
- 3) "Tax Allowance for Investments.
- 4) "Tax Exemption on Sale of Stock Dividends."<sup>69</sup>

#### *6. Applicability to United States Citizens and Business Enterprises.*

The statute, Rep. Act 5186, or the Investment Incentives Laws does not state its effect on United States citizens and business enterprises. The Rules and Regulations of the Board of Investment adopted April 30, 1968 pursuant to Section 16, pars. (b) and (1) of the Act, however, has provided thereon Rule XII, Sections 1 and 2, which read as follows:

"Section 1. Within the three-year waiting period prescribed in the third paragraph of Section 20 of the Act, no non-Philippine national shall enter into and engage in a preferred non-pioneer area of investment, even without incentives, in the absence of a certificate issued by the Board stating that no Philippine national is already engaged therein; or if there be any Philippine national so engaged, a certificate that the said non-Philippine national shall engage in the manufacture of finished products primarily for export. To be deemed engaged in manufacture primarily for export, a non-Philippine national must export no less than seventy per cent of its total production,

"Section 2. Notwithstanding the foregoing provisions, United States citizens and enterprises owned or controlled by them may enter without incentives into a preferred non-pioneer area of investment during the three-year period following its declaration as preferred non-pioneer even if there are Philippine nationals already engaged therein."

The foregoing indeed conforms to the Philippine commitment in Article VII, Sec. 1 of the Laurel-Langley Agreement not to apply "new

<sup>68</sup> See Blue Pamphlet, pp. 14-15.

<sup>69</sup> See Blue Pamphlet, pp. 13-14.

limitations" on the extent to which aliens are accorded national treatment in business activities, as against enterprises owned or controlled by citizens of the United States engaged in such activities at the time said new limitations are adopted. The Board of Investment's regulation in fact does not seem to require such prior engagement in the newly-limited activities.

#### IV. CONCLUSION AND THE FUTURE

The Philippines is a nation in search of full economic independence. There is however no "instant" way to development. After almost twenty-five years of national treatment given Americans under the Philippine-United States Trade Agreement, the national sentiment points to doing away with such a means of attracting foreign investments. In its place, the national development must be carried first by Philippine effort and capital; if these are lacking—and they are—then foreign investment is invited to supplement them. Sensitive areas of the economy or national patrimony, however, are duly reserved for Philippine Nationals and will continue to be. The final test of this new approach will of necessity lie in the fruits of experience in the years to come.

After July 3, 1974, if parity rights are not extended, Americans and American-owned or controlled business enterprises will feel the full brunt of the Philippines' nationalistic restrictions. What happens then? This is the last aspect of my discussion.

The future of rights acquired by Americans while enjoying national treatment have been much discussed. Some opine that *acquired lands* resulted in vested rights that cannot be taken away in the face of the due process and equal protection clauses of the Philippine Constitution as well as its provisions on expropriation and vested rights.<sup>70</sup> Others say they can be taken away, since they were acquired under a law *per se* and by agreement temporary, namely, the parity amendment appended to the Philippine Constitution as an *ordinance*.<sup>71</sup>

A distinction, in my view, should, however, be made. The parity rights accorded in regard to disposition, development, exploitation and use of natural resources and the operation of public utilities, consists in rendering the foregoing "open" to United States citizens or United States-citizen owned or controlled enterprises. So by July 4, 1974,

<sup>70</sup> Cortes, *op. cit.*, 495. She finds the status of leases doubtful.

<sup>71</sup> Senator Tolentino for one stated this view.



these shall no longer be "open" to them. The parity ordinance will no longer be appended to the Philippine Constitution, so that thenceforth the Philippine Constitution will apply with full vigor. Now different effects will follow depending on what had been opened and would then be closed. First, on the "*disposition*" of public agricultural land. After July 3, 1974, public agricultural lands can no longer be disposed to American corporations since its "*disposition*" would no longer be open to them. As regards "*dispositions*" made prior thereto, meaning during effectivity of the parity, they are valid. Can they be undone simply because parity rights will have ceased? My answer is in the negative, because the *right of ownership*, although originating from the "*disposition*," is *not dependent on parity rights for its subsistence*. The parity right in this case refers to ACQUIRING the land; the same is also true of private lands. After the land has been acquired, the parity right accorded has been exercised. *Acquisition or disposition is a single, non-continuing act*. Hence, once done, the right (of acquiring) is no longer continually exercised, although the right of ownership, which is different from the right to acquire, is continuous. As a consequence, termination of the *right to acquire* does not affect the right of ownership already acquired.

But this is not so with the development, exploitation and use of other natural resources. The right accorded in these cases under the parity amendment refers to a *per se* continuing act—namely, the development, exploitation and use of the natural resources. Once parity rights end, there can be no further right to the development, exploitation or use of public lands, since the parity right in this case is one that needs continuing exercise, it being a continuing act.

Likewise, the operation of public utilities is also continuing; and so is business activity; hence, these cannot extend beyond July 3, 1974. As the Laurel-Langley Agreement itself provides that it shall "have no effect after July 3, 1974,"<sup>72</sup> the *parity rights* according national treatment thereunder cannot be exercised beyond July 3, 1974. But rights vested by previous exercise of those rights, which can be possessed without continuance of parity rights, such as ownership of lands acquired by exercise of parity right to acquire lands, cannot be removed after July 3, 1974 *for the reason alone* that the parity rights agreement has terminated.

After parity rights are terminated, United States investment opportunities will remain in the Philippines. Resort can be had to joint

<sup>72</sup> Art. XI of Revised Trade Agreement.

ventures, as in fact these have been proven successful in two instances<sup>73</sup> such as in the Manila Gas Corporation, in which I had the privilege of being a board director representing the 40% American interests, and in the Goodrich Phil. Co., Inc. For I think it would be unrealistic to think of equality between a developed and a developing country. And the prime reason for reluctance to invest, the risk of uncompensated expropriation of property,<sup>74</sup> is already absent in the Philippines' case, especially in view of the guarantees of the Investment Incentives Act discussed earlier.

There is a feeling in the United States now, as published in the papers, that the Philippines having passed from an underdeveloped to a developing country should no longer be given economic aid and preferential treatment.<sup>75</sup> If this be so, it should also follow that American interests should no longer seek national treatment in the Philippines, inasmuch as such treatment was resorted to only as a means to assist the Philippine economy towards development. Whatever arrangements there may be, let us proceed forward as partners to progress realizing and recognizing each others' rights, needs and dignity.

The writer wishes to end this discussion with one thought:

We, the lawyers of this era are esteemed by our respective people for we play a great role in any field of endeavor, be it business, politics or domestic relations. We bring our clients to greater profits, guide our nations in its international relations, and advise our citizens in their domestic problems. But most important of all is that unless we and our successors see and recognize that beyond the value of any currency is the human rights and dignity, a nation's needs and its sovereignty, and unless we and our successors work toward that goal, no matter how developed, industrialized and prosperous nations are or will be, the day may never come when our descendants will see, nay, even hope for a one prosperous and peaceful world.

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<sup>73</sup> Cortes, *op. cit.*, 496, citing Manila Gas Corporation and Goodrich Phil. Co., Inc.

<sup>74</sup> See Paul M. Goldberg, *Increasing The Flow of Private Funds*, 42 WASH. L. REV. 213.

<sup>75</sup> See, Development Bank of the Philippines' Chairman's Statement of prevailing attitude of private U.S. business, Manila Times, July 5, 1968.