THE RECENT AMENDMENT TO THE PHILIPPINE NATIONALIZATION OF RETAIL TRADE LAW

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I. **Pending Supreme Court Cases —**

At the time Presidential Decree No. 714 was issued on May 28, 1975, amending Republic Act No. 1180, otherwise known as the Retail Trade Nationalization Law, there were a number of test cases pending in the Philippine Supreme Court involving the interpretation of the law as to the scope of the term "retail" and the coverage of Americans and American-owned enterprises. There were 19 pending cases and at least 5 of these cases had been heard on oral arguments.[1] These cases were in the nature of appeals from decisions of Courts of First Instance in petitions for declaratory relief, as well as special civil actions for prohibition, mandamus or certiorari raising questions purely of law on the interpretation of the statutory provisions.

II. **The Principal Issues —**

The test cases raised two principal issues under Republic Act No. 1180.

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[1] Among the notable retail trade law cases pending in the Supreme Court were the following:

1. Mobil Oil Phil., Inc. v. T. Reyes, L-29013
2. Shell Distrib. Co., Inc. v. Hon. Cornelio Balmaceda, L-28488
3. Tidewater Oil Co. v. Hon. M. Balatbat, L-28935
4. Caltex (Phil.) Inc. v. Hon. T. Reyes, Sr., L-28939
5. Procter & Gamble Phil. Manufacturing Corp. v. Hon. C. Balmaceda, L-30082
6. Goodyear Tire & Rubber Co. of the Phil. v. Hon. T. Reyes, L-30063
7. Hon. Cornelio Balmaceda v. Union Carbide Phils., Inc., L-30442
8. U.S. Industries, Phil., Inc. v. Hon. M. Balatbat, L-30081
9. B.F. Goodrich Phil., Inc. v. Hon. T. Reyes, L-30067
10. Esso Standard Eastern, Inc. v. Hon. T. Reyes, L-28859

The first: Does retail trade under Republic Act No. 1180 include sale of merchandise, commodities or goods to industrial or commercial users as distinguished from sale of such goods to personal or household users?

The second issue was: Are Americans and American-owned enterprises exempted from the Retail Trade Nationalization Law and, if so, under what conditions?

III. **Reasoning and Argument Pro and Con —**

The different conclusions reached by various Courts of First Instance on the afore-mentioned issues, as well as the submissions of the respective counsel of the parties involved in these cases, and those of prominent **amici curiae** are along similar lines **pro** and **con** the above issues. A **precis** of these reasonings and arguments may be given as follows:

1. Scope of Retail Trade under Republic Act No. 1180 —

(a) Argument pro broad coverage

The reasons given for the conclusions to the effect that Republic Act No. 1180 includes, in the definition of retail trade, **sale of merchandise to industrial and commercial users**, were briefly as follows:

Firstly, it was contended that Republic Act No. 1180 set forth a definition of retail trade for purposes of said law and in said definition it does not distinguish between sale of goods for industrial and commercial use and sale of goods for personal consumption, but rather speaks of sale of goods "for consumption." And thus the proponents of this view invoked the well-known rule in statutory construction that where the law does not distinguish, neither should we distinguish.[2]

Secondly, the proponents of a broad interpretation of "retail business" argued that Republic Act No. 1180 was intended by Congress to be a far-reaching piece of legislation, not an ordinary one. It was the intent of Congress in passing said law to place all channels of distribution in the country in the hands of nationals instead of under alien control as they were at the time the law was passed. And thus, it was further argued, a restrictive interpretation of the term "retail business" to cover only **sari-sari** stores and other small-time business selling goods for personal and household consumption, and excluding from the coverage of the law the big alien business selling goods for consumption to industrial,

[2] Section 4 of Republic Act No. 1180, prior to the recent amendment, read as follows:

"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."

commercial and agricultural users, would be tantamount to closing a small door but leaving wide open the big gates to foreign domination in the field of retail trade. As a further clincher to the argument, it was pointed out that the provisions of the law itself in speaking of retail trade business mention not only individuals but also partnerships and corporations, thus clearly showing that Congress intended the legislation to refer not only to small business but also to the multi-million peso enterprises in foreign hands.

Thirdly, these proponents argued that the definition of retail as commonly understood, and as derived by analogy from decisions of the Supreme Court in tax cases, is to the effect that a sale of goods to someone who uses it in such a way as to destroy or diminish its utility is a sale of goods for consumption and is thus retail.

(b) Reasonings and argument contra

Against the above view, reasons were given to the effect that the term "retail business" under the law should be given a restrictive interpretation so as to include only sale of goods for personal and household consumption and not sale of goods to industrial and commercial users. The reasons were as follows:

Firstly, the definition of the law of retail business in Section 4 thereof, is undeniably vague and inadequate and thus resort is necessary to the aids of statutory construction in order to determine its precise meaning. And the primordial aim of statutory construction in these cases is that one should search for the intention of Congress in passing the legislation in question. And those who argue for a restrictive interpretation point out that the problem or evil sought to be remedied by the legislation in question was the alien domination of the business of selling merchandise, goods and articles to the public for purposes of personal and household consumption. The reason of the law was to put into Filipino hands the sources of the daily personal and household wants of the Filipinos. The very purpose or intnent of the law, therefore, does not extend to articles that are not needed for daily personal and household use but rather are consumed for industrial and commercial uses, not by persons or households, but by factories and corporation and public utilities.

Secondly, it was argued that the term "retail business" as understood in marketing and economics, means the sale of final goods or goods which are ready for ultimate consumption; and that consumption is the use of goods and services to satisfy human, personal or household wants. Such concept excludes from retail business the sale of goods for resale or for industrial and production purposes, both of which are not intended for personal or household wants of the ultimate consumer. Supporting this view was evidence consisting of expert witnesses such as the testimony of Dr. Amado A. Castro, Dean of the School of Economics, University of the Philippines.

Thirdly, it was further argued that the definition of retail business under the statute did not cover all sales of goods for consumption "direct to the general public." Such portion of the definition would therefore further show, the argument continued, that the legislation did not intend to refer to sale in bulk of goods such as petroleum, tires, etc. to industrial and commercial users, for said industrial and commercial users are a special clientele and do not constitute "the general public."

Fourthly, it was pointed out that Republic Act No. 1180 is a penal legislation, since it carries with it penal sanctions for violation of the law, found in Section 6 thereof.[3] As a penal legislation, it should be restrictively interpreted, citing another well-known law of statutory construction.

2. Coverage or Non-Coverage of Americans and American-owned enterprises —

(a) Arguments for coverage

The reasons and arguments submitted to the effect that Americans and American-owned enterprises are covered by the prohibition from engaging in retail business under the law were as follows:

Firstly, we have to keep in mind the chronology of three acts, namely, the Philippine-American Executive Agreement of 1946, the Retail Trade Nationalization Law of 1954, and the Revised Agreement or so-called Laurel-Langley Agreement of 1955. The Philippine-American Executive Agreement of 1946 did not confer on Americans national treatment in business.[4] When the Retail Trade Nationalization Law was passed in 1954, it contained in Section 1, paragraph 2 thereof a provision stating: "Nothing contained in this Act shall in any way impair or abridge whatever rights may be granted to citizens or juridical entities of the United States of America under the Executive Agreement signed on July 4, 1946,

[3] "SEC. 6. Any violation of this Act shall be punished by imprisonment for not less than three years and not more than five years and by a fine of not less than three thousand pesos and not more than five thousand pesos. In the case of associations, partnerships or corporations, the penalty shall be imposed upon its partners, president, directors, manager, and other officers responsible for the violation. If the offender is not a citizen of the Philippines, he shall be deported immediately after service of sentence. If the offender is a public officer or employee, he shall, in addition to the penalty prescribed herein, be dismissed from the public service, perpetually disenfranchised, and perpetually disqualified from holding any public office."

[4] On July 4, 1946, — i.e., before the passage of the Retail Trade Nationalization Act. — an Executive Agreement (otherwise referred to as the *Bell Trade Agreement*) was signed between the United States and the Republic of the Philippines. The fourth paragraph of Article X of the Agreement provided:

> "4. If the President of the United States determines and proclaims, after consultation with the President of the Philippines, that the Philippines or any of its political subdivisions or the Philippine Government is *in any manner discriminating against citizens of the United States or any form of United States business enterprise*, then the President of the United States shall have the *right to suspend the effectiveness of the whole or any portion of this Agreement*. If the President of the United States subsequently determines and proclaims, after consultation with the President of the Philippines, that the discrimination which was the basis for such suspension (a) has ceased, such suspension shall end; or (b) has not ceased after the lapse of a time determined by the President of the United States to be reasonable, then the President of the United States shall have the right to terminate this Agreement upon not less than six months' written notice."

between that country and the Republic of the Philippines."[5] (Stress ours.) Since there was no national treatment conferred under the aforesaid 1946 Agreement, Republic Act No. 1180 actually reserved no rights in favor of the Americans to engage in retail business in the Philippines. And when the Revised Agreement of 1955[6] came, under which Americans and American-owned enterprises were arguably given national treatment in business in the Philippines, the same could not have extended to the area of retail business, since this new right to national treatment was expressly agreed to apply only against **new** limitations, that is, limitations made **subsequent** to the effectivity of the Revised Agreement. Since the limitation of the Retail Trade Nationalization Law was already existing at the time the Revised Agreement of 1955 took effect, it was argued, the same must be deemed continued even in the face of said Revised Agreement.

Secondly, it was argued that even assuming that Americans can invoke national treatment in the field of retail business, then by the very same reasoning of such national treatment as well as by the very express provision of Republic Act No. 1180, most of the American-owned enterprises in the Philippines do not qualify to engage in retail business because they are not 100% American-owned corporations. Republic Act No. 1180 requires that for enterprises to engage in retail business in the Philippines under its provisions, they must be 100% Filipino-owned. By parity of reasoning, therefore, if Americans are entitled to national treatment, then American-owned enterprises must also be 100% American-owned. Since most of the American-owned enterprises in the Philippines

[5] On June 19, 1954, the Retail Trade Nationalization Act (RA 1180) took effect. It provides that "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 retail business" (1st paragraph of Sec. 1, stress ours). And it further provides:

> "Nothing contained in this Act shall in any way impair or abridge whatever rights may be granted to *citizens and judicial entities of the United States of America* under the *Executive Agreement* [Bell Trade] *signed on July Fourth, nineteen hundred and forty-six* between that country and the Republic of the Philippines." (2nd paragraph of Sec. 1; bracketed words and underscoring ours.)

[6] This was another Agreement between the United States of America and the Republic of the Philippines (commonly referred to as the *Laurel-Langley* Agreement) which took effect on January 1, 1956, as a revision of the Bell Trade Agreement. The first paragraph of its Article VII provides:

> "1. The Republic of the Philippines and the United States of America each agrees *not to discriminate in any manner, with respect to their engaging in business activities*, against the citizens or any form of business enterprises 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, not 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." (Underscoring ours).

are less than 100% American-owned, although more than 90% or sometimes 99% American-owned, it is argued that the strict requirement of the law is not fulfilled in their case.

(b) Arguments for non-coverage

Those who argued that American and American-owned enterprises are not covered by the law advanced the reasoning that the Philippine-American Executive Agreement of 1946 already gave Americans national treatment in business and that the same was merely clarified and made more express in the Revised Agreement of 1955.

Secondly, they argued that under the doctrine of **de minimis non curat lex**, the American-owned enterprises which are about 99% American-owned should be considered as legally 100% American-owned, for purposes of the Retail Trade Nationalization Law.

IV. The Amendatory Law — Presidential Decree No. 714 —

The sharp debate that can be seen above on the principal issues stemmed from the very ambivalence of the law itself. There was therefore clearly a need for further legislation to spell out precisely what was meant by "retail business" under the law.

In the absence of such legislation, the Supreme Court was asked to lay down the precise lines of retail business as best it could from the various aids to statutory construction available to it.

It was in this context that the President of the Philippines, His Excellency President Ferdinand E. Marcos, in the exercise of his lawmaking powers under the Philippine Constitution, promulgated Presidential Decree No. 714. The decree reads as follows:

"MALACAÑANG
Manila

PRESIDENTIAL DECREE NO. 714

AMENDING REPUBLIC ACT NO. 1180 ENTITLED 'AN ACT TO REGULATE THE RETAIL BUSINESS.'

WHEREAS, the statutory definition in Republic Act No. 1180, otherwise known as the Retail Trade Nationalization Law, of the term 'retail business' is vague and ambiguous, and this ambiguity has given rise to conflicting theories as to its precise scope;

WHEREAS, it is believed to be not within the intendment of the said nationalization law to include within its scope sales made to industrial or commercial users or consumers;

WHEREAS, it is likewise in the interest of the national economy to exclude from the provisions of the said law the business of restaurants located in hotels, irrespective of the amount of capital, as long as the restaurant is merely incidental to the hotel business;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree:

Section 1. Section 4 of Republic Act No. 1180 is hereby amended to read as follows:

'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.

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

'(c) a manufacturer or processor selling to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or to produce or manufacture goods which are in turn sold by them.

'(d) a hotel-owner or keeper operating a restaurant, irrespective of the amount of capital, provided that the restaurant is necessarily included in, or incidental to, the hotel business.'

Section 2. This decree shall take effect immediately

One in the City of Manila, this 28th day of May, in the year of our Lord, nineteen hundred and seventy-five.

(Sgd.) FERDINAND E. MARCOS
President
Republic of the Philippines

By the President:
(Sgd.) ALEJANDRO MELCHOR
Executive Secretary"

V. **Perspective Under The Recent Amendment —**

A. Scope of term "retail"

Presidential Decree No. 714 has therefore resolved the doubts as to the scope of the term "retail" under the law in question. The Supreme Court cases raising this issue have been rendered moot and academic. The amendment is, moreover, in line with the purpose of the law when it was first enacted and is responsive to the prevailing facts.

The leading Philippine Supreme Court ruling on the Nationalization of Retail Trade Law, is **Ichong v. Hernandez,** 101 Phil. 1155 decided in 1957. Said case stated that the problem sought to be remedied by the passage of the Act was alien control and dominance of the following manner:

> "Food and other essentials, clothing, almost all articles of daily life reach the residents mostly through him [alien retailer]. In big cities and centers of population, he has acquired not only predominance, but apparent control over distribution of almost all kinds of goods, such as lumber, hardware, textiles, groceries, drugs, sugar, flour, garlic, and scores of other goods and articles."[7]

The purpose or intent of Congress in passing Republic Act No. 1180 was thus merely to cover sale of goods for personal and household consumption and not to extend the coverage to sale of goods for industrial, commercial and agricultural users. This can be verified by reference to the prevailing evil at the time the law was passed which was undeniably alien dominance in the area of sale of goods for personal and household consumption and the rationale of Congress in passing and adopting such a law was that channels of distribution of goods that touch the daily needs of the people in their homes such as food, clothing, medicines, and other goods of daily personal and household use, should not be in the stranglehold and clutches of aliens but rather should be placed in Filipino hands. There was then no agitation, no fear, no concern of alien ownership of channels of distribution of goods for industrial and commercial uses.

[7] At page 1168.

Furthermore, Congress must have intended to convey its meaning when it included in the definition of retail business the term "direct to the general public" in further restricting the scope of retail business by relating it only to the act of habitually selling goods, merchandise and articles for consumption "direct to the general public." The phrase "direct to the general public" was, in our view, precisely intended to show that retail business under the law means sale of final goods to final consumers. Industrial and commercial users do not come within the scope of "the general public." For sale to industrial and commercial users is none other than an indirect sale to the general public because the goods are not used by them to satisfy their wants but rather to produce goods or services to satisfy the wants of the general public. And, further, these industrial and commercial users are a special clientele, a distinct group that cannot be equated with the term "the general public."

As regards the argument that Republic Act No. 1180 itself mentions partnerships and corporations and thus allegedly gives rise to the inference that it meant to cover the multi-million peso enterprises which are industrial and commercial users of goods, it is to be remembered that when the law mentions partnerships and corporations, it speaks of the **sellers** and not the **buyers** of the goods. It therefore intended to cover multi-million peso partnerships and corporations **selling** goods for consumption. It cannot be used as an argument that Congress thereby intended to cover the multi-million peso corporations who are **buyers** of the goods.[8]

[8] 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.

The license of any person who is not a citizen of the Philippines and of any association, partnership or corporation not wholly owned by citizens of the Philippines to engage in retail business, shall be forfeited for any violation of any provision of laws on nationalization, economic control, weights and measures, and labor and other laws relating to trade, commerce and industry.

No license shall be issued to any person who is not a citizen of the Philippines and to any association, partnership or corporation not wholly owned by citizens of the Philippines, actually engaged in the retail business, to establish or open additional stores or branches for retail business.

As far as buyers of the goods are concerned, the law merely mentions "the general public." Thus, this very argument proves the contrary, namely, that it is only sale to "the general public" that constitutes retail business under the law. And thus, as long as it is habitual sale of goods for consumption to the general public, it will be retail business whether or not the seller is an individual, a partnership or a corporation. The recent amendment to the law has further confirmed that sale to industrial or commercial users of articles for consumption — under the terms of the exception given by the amendment — does not constitute retail business under Republic Act No. 1180.

B. Coverage, **Vel Non**, of American Firms

As regards Americans and American-owned enterprises, it is submitted that Americans were exempted from the coverage of Republic Act No. 1180 because of the provisions of the Revised Agreement of 1955. Said Revised Agreement mentioned that it applies only to **new** limitations. Considering however that Republic Act No. 1180, although enacted in 1954, granted foreign corporations the right to engage in retail trade up to 1964, the limitation really took effect in 1964 and not in 1954. Consequently, the Revised Agreement of 1955 operated to exempt Americans and American-owned enterprises from the coverage of Republic Act No. 1180. This Revised Agreement of 1955 is however now under-renegotiation as its term was due to expire in 1974.

Apart, therefore, from the definition of "retail" which is the subject of the recent amendment to the law, there has been this matter of the so-called business parity [to distinguish from the parity rights granted under the ordinance appended to the Philippine Constitution which referred to natural resource exploitation and which, by the way, has expired] granted under the **Laurel-Langley** Agreement or Revised Agreement of 1955.

On this point, subject to the caveat that the **business parity** given to Americans and American-owned firms was due to expire and is now subject of negotiations between the Philippines and the United States, we can point out its historical background.

To begin with, **even before** the effectivity of the **Laurel-Langley Agreement** on January 1, 1956, the Philippine Department of Foreign Affairs had already taken the position that American citizens and juridical entities wholly owned by them are exempt from the coverage of Republic Act No. 1180, and this position was concurred in by the Secretary of Justice (Hon. Pedro Tuazon) in his Opinion No. 175, Series of 1954, wherein he made observations to the effect that "every indication points to the idea" that the proviso in RA 1180 (Sec. 1, 2nd paragraph) that nothing contained in the 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 **Bell Trade** Agreement, was "conceived and adopted with the definite object of excluding American citizens and business entities" from the operation of the Act; that "Congress must have been well aware that the Government of the Philippines could not discriminate against

American citizens in any business enterprise without running the risk of the President of the United States suspending and eventually terminating the effectiveness" of the Bell Trade Agreement; that "Congress must have realized that Republic Act No. 1180 if applied to United States citizens would be regarded by the United States Government as a form of discrimination against them"; and that, "in the light of contemporary events," it is justifiable to assume that the aforesaid proviso of RA 1180 was precisely introduced to "forestall the sure abrogation of the treaty (Bell Trade) with the United States if American citizens were barred from the retail business."

After the effectivity of the Laurel-Langley Agreement, the same above-stated conclusion that American citizens and juridical entities wholly owned by them are exempt from the coverage of RA 1180 was reiterated by Secretary of Justice Juan R. Liwag in his Opinion No. 71, Series of 1963.

But then, in the case of "Philippine Packing Corporation vs. Teofilo Reyes" (Civil Case No. 57417), Judge Jarencio of the Court of First Instance ruled **inter alia** that "The petitioner and all United States citizens and business enterprises similarly situated are covered" by the provisions of RA 1180. Explaining his ruling, Judge Jerencio said:

> "The Court has carefully considered the contention of the petitioner and arguments adduced in support thereof. But it cannot agree with the petitioner that Sec. 1 of Rep. Act No. 1180 does not apply to United States citizens and business enterprises. The Executive Agreement of July 4, 1946 between the Philippines and the United States does not contain any specific provision giving to United States citizens and business enterprises the same rights as Filipino citizens and corporations to engage in the retail business. The provisions of the second paragraph (of Sec. 1) of Rep. Act No. 1180 to the effect that nothing in said Act shall in any way impair or abridge whatever rights may be granted to citizens and juridical entities of the United States under the Executive Agreement signed on July 4, 1946, does not create an exemption in favor of United States citizens and business enterprises from the operation of the law. It only provides that rights granted to United States citizens and juridical entities under the aforementioned Executive Agreement shall not be 'impaired' or 'abridged.' If the intention of Rep. Act No. 1180 was to exempt United States citizens and juridical entities from the operation of said law, it was very easy for Congress to state that the Act shall not apply to citizens and juridical entities of the United States, thus leaving no room for doubt as to the intention of the law...
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> "Art. X, par. 4 of the Executive Agreement of July 4, 1946, in effect, provides that the Philippines shall not discriminate against the citizens of the United States and any form of United States business enterprise, otherwise the President of the United States may suspend the operation of said Agreement or any portion thereof. The Executive Agreement does not state or specify whether such discrimination against United States citizens and business enterprises is in favor of other aliens or in favor of Filipino citizens. The reasonable and logical inference and interpretation is that the Philippines agreed not to discriminate against United States citizens and business enterprises in favor of other aliens. It does not mean that the Philippines had renounced its inherent right as a sovereign