

II. TRADE AND INVESTMENT REGIMES

(1) TRADE POLICY OBJECTIVES, LAWS AND IMPLEMENTATION

1. The institutional framework for formulating and implementing trade policy in the Philippines remains largely the same as at the time of its previous Review.¹ For the most part, trade-related policies are set out in laws enacted through the regular parliamentary process: these laws often give either the President or the responsible Secretary (i.e. Minister) authority for specific trade-related matters, including the formulation of implementing regulations.

2. The National Economic and Development Authority (NEDA), the Philippines' economic development and planning agency, consists of the NEDA Board, which sets major policy directions for the Philippines, and the NEDA Secretariat, the Board's research and technical support arm. The NEDA Board is chaired by the President and mainly comprises selected Secretaries.² The Department of Trade and Industry (DTI) remains the Government's main regulatory body for trade, industry, and investment activities. The DTI chairs the Cabinet Committee on Tariff and Related Matters (CTRM), as well as the Technical Committee on WTO Matters (TCWM). Other agencies have trade-related responsibilities, in particular the Department of Finance and Department of Agriculture (Table II.1).

Table II.1
Main institutions involved in trade policy formulation and implementation, 2011

Department/organization	Trade-related functions
National Economic and Development Authority (NEDA)	Responsible for formulation of social and economic policies, plans, and programmes. The NEDA Board is chaired by the President and largely comprises Cabinet members. It is supported by 7 Cabinet-level inter-agency committees, including the Committee on Tariff and Related Matters (below)
Committee on Tariff and Related Matters (CTRM)	Inter-agency body, chaired by the DTI, charged with advising the President and the NEDA Board on tariff-related matters and on the effects on the country of various international developments; coordinates agency positions and recommends national positions for international economic negotiations
Technical Committee on WTO Matters (TCWM)	Government inter-agency body under the CTRM, chaired by the DTI. It recommends to the CTRM Philippine positions and strategies relevant to the country's implementation of its WTO commitments and continuing participation in the multilateral trading system. It has 15 member agencies. Four sub-committees on (a) agriculture, (b) industrial tariffs, (c) services, and (d) other rules and disciplines are responsible for WTO implementation issues
Tariff commission	Investigative and research functions related to the effects of tariff legislation and tariff relations between the Philippines and third countries. Recommends tariff revisions. Conducts formal anti-dumping, countervailing and safeguard investigations and recommends definitive measures. Undertakes investigations on petitions to change duty rates and duty classification. Issues tariff classification rulings
Department of Trade and Industry	Trade and industrial policies
Board of Investments	Regulation and promotion of investments in the Philippines. Responsible for preparing the annual Investment Priorities Plan. Promulgates rules and regulations to implement the provisions of the Omnibus Investments Code. Administers investment incentives

Table II.1 (cont'd)

¹ The only changes are the creation of an Accreditation Office in 2006, and the termination of the Garments and Textile Export Board, in 2005, which used to administer export quotas.

² NEDA online information. Viewed at: <http://www.neda.gov.ph>.

Department/organization	Trade-related functions
Bureau of Export Trade Promotion	Export promotion. Also provides secretariat support to the Export Development Council, a Government and private-sector partnership with responsibilities for export policies (under the Office of the President).
Bureau of International Trade Relations	Trade representation abroad, trade information and export promotion; conduct of Philippine trade and investment relations at bilateral, regional, and multilateral level
Bureau of Import Services	Administration of import regulations on selected items. Initiates and conducts preliminary investigations on dumping, countervailing and safeguard petitions to ascertain whether to impose provisional measures. Responsible for receiving the Tariff Commission's report from its formal investigation; takes decisions on imposition of definitive measures
Bureau of Product Standards (BPS)	Development and implementation of standards and technical regulations
Philippine Accreditation Office	Responsible for the accreditation functions of the BPS Accreditation Scheme and the BPS Laboratory Accreditation Scheme. Gives formal recognition to conformity assessment bodies after assessing their competence to carry out certification, inspection, testing, and calibration services
Bureau of Trade Regulation and Consumer Protection	Consumer protection and regulation of internal trade
Philippine International Trading Corporation	Trade and trade-related services to the private sector. Imports various commodities and products to stabilize supply and prices in the domestic market
Intellectual Property Office	Administration and implementation of the Intellectual Property Code
Office of Policy Research	Assists the DTI in coordinating and formulating general trade and industry policies. Provides technical support in the areas of policy research, preparation of official positions on policy issues, and legislative proposals. Coordinates with other government agencies and the private sector to ensure consistency in policies
Department of Finance	Formulation and implementation of fiscal policies
Bureau of Customs	Collection of import/export duties, and VAT and excise taxes
Department of Agriculture	Agricultural policies
Bureau of Plant Industry	Plant protection, quarantine, and inspection services
Bureau of Animal Industry	Administration of animal quarantine and inspection services
Bureau of Fisheries and Aquatic Resources	Administration of fish quarantine and inspection services
Bureau of Agricultural and Fisheries Product Standards	Development of standards and technical regulations
National Food Authority	Administration of rice price stabilization programme and imports of rice
Sugar Regulatory Administration	Monitoring of sugar supply and administration of sugar export quotas
Department of Tourism	Policy formulation and promotion of the tourism industry
Central Bank of the Philippines	Monetary and exchange rate policy

Source: WTO Secretariat, based on various Departments' online information.

3. As indicated by the authorities, all agencies and inter-agency bodies have contact points for non-governmental stakeholder inputs into the trade-policy-making process. Under the Tariff and Customs Code of the Philippines, the Tariff Commission is mandated to conduct public hearings on proposed tariff modifications and accession to trade agreements.³ In addition, private-sector and/or NGO participation is institutionalized within the TCWM's subcommittees on agriculture, services, industrial tariffs, and other rules and disciplines.

4. In May 2011 the DTI launched a One Country, One Voice advocacy and consultation mechanism to enable stakeholders to participate in trade-policy formulation and trade negotiations.

5. Procedures for the negotiation, ratification, and entry into force of international agreements are set out in the Department of Foreign Affairs (DFA) Office of Legal Affairs (OLA)

³ Tariff and Customs Code of the Philippines (as amended), sections 401 and 402. Viewed at: <http://www.chanrobles.com/republicactno1937book1.htm#BOOK%201,%20TITLE%202>.

Circular No.01-07. Presidential authorization must be obtained prior to any negotiations: this authorization, *inter alia*, establishes negotiating position parameters. Generally negotiations are conducted by the DFA, which is responsible for coordinating with other relevant agencies, obtaining the President's signature, and preparing for Senate ratification if needed. Domestic ratification is required in all cases except for agreements that implement existing agreements as well as foreign loan agreements. International agreements enter into force fully only upon compliance with domestic ratification requirements. The authorities indicated that if treaties are found to be in conflict with one another, the Philippines would seek to reconcile them by renegotiating or amending the earlier treaty (it is presumed that the newer treaty contains current Philippine policy). If this is not possible, one of the treaties would be terminated or suspended in accordance with the Vienna Convention on the Law of Treaties (Articles 30 and 59).

(2) TRADE AGREEMENTS AND ARRANGEMENTS

(i) Participation in the WTO

6. The Philippines, an original member of the WTO, grants at least MFN treatment to all trading partners. It is participant in the WTO Information Technology Agreement (ITA) and signatory to the GATS protocols on telecommunications (Fourth Protocol) and Financial Services (Fifth Protocol), which entered into force in 2006 and 2011, respectively. It is not a signatory to the Plurilateral Agreement on Government Procurement (GPA) or on Trade in Civil Aircraft.

7. Since 1995 the Philippines has been involved in five dispute settlement cases as complainant and six as respondent.⁴ Over the review period, new dispute settlement cases in which the Philippines has been involved directly relate to cigarettes and distilled spirits (Table II.2).

Table II.2
Philippines' involvement in WTO dispute settlement: new cases, 2005 to July 2011

Dispute	Raised by/against	Request for consultation	Panel established	Appeal/ implementation	Document series
Complaints by the Philippines					
Customs and fiscal measures on cigarettes from the Philippines	Thailand	7 February 2008	17 November 2008. Panel report circulated: 15 November 2010.	Appellate Body Report circulated 17 June 2011	DS371
Complaints against the Philippines					
Taxes on distilled spirits	United States	14 January 2010	20 April 2010 (was agreed that the panel established under DS396 would also examine the US complaint)		DS403

Table II.2 (cont'd)

⁴ The five cases in which the Philippines was complainant involved: Thailand, customs and fiscal measures on cigarettes (DS 371); Australia, measures affecting the importation of fresh pineapple (DS271); Australia, measures affecting the importation of fresh fruit and vegetables (DS 270); United States, import prohibition of certain shrimp and shrimp products (DS61); and Brazil, measures affecting desiccated coconut (DS22). The six cases in which it was respondent involved: United States, taxes on distilled spirits (DS403); European Union, taxes on distilled spirits (DS396); Korea, anti-dumping measures regarding polypropylene resins (DS215); United States, measures affecting trade and investment in the motor vehicle sector (DS195); United States, measures affecting pork and poultry (DS102 and DS74).

Dispute	Raised by/against	Request for consultation	Panel established	Appeal/ implementation	Document series
Taxes on distilled spirits	EU	29 July 2009	19 January 2010	Panel report circulated: 15 August 2011 Panel report is under appeal	DS396
Philippine participation as a third party					
Tariff treatment of certain information technology products	Chinese Taipei / EU	12 June 2008	23 September 2008 (joint request for establishment of panel)	Panel reports circulated: 16 August 2010	DS377
	Japan / EU	28 May 2008			DS376
	United States / EU	28 May 2008			DS375

Source: WTO Secretariat.

8. The Philippines has maintained a strong record on notifications to the WTO. However, notifications are lagging with respect to agriculture (special safeguard, domestic support, export subsidies and tariff quotas (see Chapter IV)), subsidies and countervailing measures, and state-trading activities. Since 2005, the Philippines has not notified any TBT-relevant bilateral or plurilateral agreements or any preferential or non-preferential rules of origin. The authorities indicated that there have not been "any new, or any changes to existing laws, regulations or administrative guidelines, which significantly affect trade in services", which the Philippines is obliged to notify under Article III:3 of the GATS (Table AII.1).

9. At the Hong Kong, China and Geneva Ministerial Conferences, the Philippines emphasized the development dimension of the Doha Development Agenda (DDA). It has, *inter alia*, stressed the need for agricultural reform; progress on implementation issues; and the importance of special and differential treatment for developing countries. It has indicated its support for the request-offer modality for services negotiations and the need for progress on the rule-making aspects of these negotiations. It has also expressed its preference for a voluntary system for the notification and registration of GI protection, and does not support the extension of such protection to other products.⁵

10. With respect to the DDA negotiations, the Philippines has, over the review period, contributed comments and textual suggestions to the trade facilitation Draft Consolidated Negotiating Text, focusing on transitional provisions for developing and least developed country Members as well as institutional arrangements.⁶ It has cosponsored proposals in the Negotiating Group on Market Access on procedures for the facilitation of solutions to non-tariff barriers as well as on international standardization.⁷ It has made joint proposals with NAMA-11 countries setting out its position, *inter alia*, on the formula for tariff liberalization, tariff bindings, and the need to ensure a balance in the outcomes of the NAMA and agricultural negotiations.⁸ Together with other developing countries it has also submitted a communication to the Council for Trade in Services on the categories of

⁵ Philippines' statements to the 2005 and 2009 WTO Ministerial Conferences, WTO documents WT/MIN(05)/ST/107, 16 December 2005; and WT/MIN/(09)/ST/77, 2 December 2009.

⁶ WTO document TN/TF/W/167, 6 January 2010.

⁷ WTO documents TN/MA/W/88, 23 July 2007 and TN/MA/W/142, 13 April 2011.

⁸ WTO documents TN/MA/W/87, 19 June 2007; TN/MA/W/86, 8 June 2007; and, TN/MA/W/79, 6 July 2006; TN/MA/W/68/Add.1, 8 May 2006; and TN/MA/W/68, 30 March 2006. The NAMA-11 Group consists of: Argentina, Venezuela, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa, and Tunisia.

natural persons for commitments under GATS mode 4.⁹ The Philippines has been active in the Committee on Trade and Environment in Special Session (CTESS).

(ii) Regional and bilateral free trade agreements

11. The Philippines is a founding member of the Association of Southeast Asian Nations (ASEAN). ASEAN's main focus is on establishing an ASEAN Community by 2015. This comprises three pillars: political-security, socio-cultural, and economic. A blueprint agreed in 2006, sets out targets and timelines for advancing the economic pillar (the ASEAN Economic Community (AEC)) by the 2015 deadline. Four overarching goals were identified in this blueprint: (i) to achieve an ASEAN single market and production base through the free flow of goods, services, investment, and skilled labour as well as the freer flow of capital. Twelve sectors were identified as priorities for integration¹⁰, and emphasis is placed on enhancing trade in, and the competitiveness of, ASEAN's food, agriculture, and forestry products; (ii) to enhance the ASEAN competitiveness through measures relating to competition policy, consumer protection, infrastructure development, taxation, and e-commerce; (iii) to promote the equitable economic development of ASEAN members by supporting small and medium-sized enterprises (SMEs) as well as technical and development cooperation; and (iv) integration into the global economy, to be achieved through a coherent approach towards external economic relations and enhanced participation in global supply networks.¹¹

12. Progress in achieving the free movement of goods aspect of the ASEAN Economic Community has been largely achieved. Attention is now focused on non-tariff barriers and trade facilitation measures.

13. In 2008, the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (CEPT-AFTA) was reviewed and enhanced into a more comprehensive legal instrument, the ASEAN Trade in Goods Agreement (ATIGA), signed in February 2009. The ATIGA preserves, consolidates, and streamlines all the provisions in the CEPT-AFTA, formalizes several Ministerial decisions, and incorporates new disciplines (Table II.3).¹²

14. ASEAN Members have been active in concluding free-trade agreements within the Asia-Pacific region. Over the review period, new ASEAN FTAs entered into force with Australia and New Zealand, China (services), India, Japan, and, Korea; and a bilateral agreement entered into force between the Philippines and Japan (Table II.3)¹³. ASEAN FTA negotiations are on-going with the European Union.

⁹ WTO document TN/S/W/31, 18 February 2005.

¹⁰ These priority sectors are: electronics, e-ASEAN, healthcare, wood-based products, automotives, rubber-based products, textiles and apparel, agri-based products, fisheries, air travel, tourism, and logistics services (logistics services was added as a priority sector in 2007).

¹¹ For greater detail on specific measures and timeframes, see ASEAN (2008).

¹² The authorities note that these new disciplines include: negotiated MFN treatment; the establishment of an ASEAN Trade Repository; a dedicated chapter on trade facilitation, issuance of legal enactments in a timely manner, and streamlined and unified provisions on modification of concessions and trade remedies.

¹³ Two of these agreements have been considered by WTO Members: the ASEAN FTA with China (factual abstract and a presentation on services) and the bilateral FTA between the Philippines and Japan (factual presentation).

Table II.3
Overview of participation in FTAs, 2011

ASEAN Members	
Title	ASEAN Trade in Goods Agreement (ATIGA)
Parties	Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam
Date of signature/entry into force	January 1992/January 1992 (CEPT-AFTA), May 2010 (ATIGA)
Transition for full implementation (goods)	Transition period ended in 2010; 99.5% tariff lines are duty free; of the 44 lines still attracting tariffs, the highest rates are applied to rice
Services covered	Yes, under the ASEAN Framework Agreement on Services (AFAS) (Table IV.4)
Philippines merchandise trade with ASEAN (2010)	28.1% of total imports; 22.4 of total exports Main trading partners: Singapore: 9.3 % of total imports; 14.2% of total exports Thailand: 7.0 % of total imports; 3.5% of total exports
Selected additional measures relating to the free movement of goods under the AEC Blueprint	Elimination of non-tariff barriers (by 2012 for the Philippines); rules of origin reform; trade facilitation measures; customs integration; ASEAN Single Window; and harmonization of standards, technical regulations, and conformity assessment procedures
WTO document series	L/4581
ASEAN Members, Australia and New Zealand	
Title	Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area
Parties	ASEAN, Australia, New Zealand
Date of signature/entry into force	February 2009/January 2010
Transition for full implementation by Philippines(goods)	From 2020 (95.9 %) of tariff lines will be duty free; of the (337) of lines still attracting tariffs at the end of the transition period, the highest rates will be applied to corn
Services covered	Yes (Table IV.4)
Philippines merchandise trade with Australia and New Zealand (2010)	Australia: 1.5% of total imports; 0.7 % of total exports New Zealand: 0.7 % of total imports; 0.1 % of total exports
WTO document series	WT/REG284
ASEAN members countries and China	
Title	Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China
Parties	ASEAN, China
Date of signature/entry into force	Goods: November 2004 (amended 2010)/January 2005 Services: January 2007/July 2007
Transition for full implementation by Philippines (goods)	2018 Tariffs for lines in the Normal Track to be eliminated by 2012 (7,693 lines or 86.96% of the Philippines tariff) Tariffs in the Sensitive Track (931 tariff lines) are to be reduced to between zero and 5% by January 2018; Tariffs listed as highly sensitive (250 tariff lines) are to be reduced to not more than 50% by January 2015. 28 tariff lines are excluded from reduction commitments
Services covered	Yes (Table IV.4)
Philippines merchandise trade with China (2010)	8.5% of total imports; 11.1% of total exports
WTO document series	WTO/COMTD/N/20; S/C/N/463; WT/COMTD/51
ASEAN member countries and India	
Title	Agreement on Trade in Goods (falling under the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the Republic of India, 2003, as amended in 2009)

Table II.3 (cont'd)

Parties	ASEAN, India
Date of signature/entry into force	August 2009/May 2011
Transition for full implementation by Philippines (goods)	From 2022 87.5% of tariff lines will be duty free; of the 959 lines still attracting tariffs at the end of the transition period, the highest rates will be applied to meat or preserved or prepared meat of swine, turkey, and geese; onions; sweet potatoes; cabbages; and coffee
Services covered	No
Philippines merchandise trade with India (2010)	1.0% of total imports; 0.8% of total exports
WTO document series	WT/COMTD/N/35
ASEAN member countries and Japan	
Title	Agreement on Comprehensive Economic Partnership Among Japan and Member States of ASEAN
Parties	ASEAN, Japan
Date of signature/entry into force	March 2008/December 2008
Transition for full implementation by the Philippines (goods)	From 2018 97.1% of tariff lines will be duty free; of the 337 lines still attracting tariffs at the end of the transition period, the highest rates will be applied to motor vehicles other than passenger cars
Services covered	No
Philippines merchandise trade with Japan (2010)	12.5% of total imports; 15.2% of total exports
WTO document series	WT/REG277
ASEAN member countries and Korea	
Title	Agreement on Trade in Goods (falling under the 2005 Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Republic of Korea and ASEAN)
Parties	ASEAN, Korea
Date of signature/entry into force	Goods: 2006/2008 Services: 2008/2009
Transition for full implementation by Philippines (goods)	2016 Tariffs for tariff lines in the Normal Track to be eliminated by 2012 (7564 lines or 90.8% of the Philippines tariff) Tariffs in the Sensitive Track (558 tariff lines) are to be reduced to between zero and 5% by January 2016; Tariffs listed as highly sensitive (95 tariff lines) to be capped at 50%; reduced by 50%, or reduced by 20% by 2016. 152 tariff lines exempt from tariff reductions
Services covered	Yes (Table IV.4)
Philippines merchandise trade with Korea (2010)	6.9% of total imports; 4.4% of total exports
WTO document series	WT/REG287/N/1; WT/COMTD/N/33; S/C/N/559; S/C/N/560
Japan and the Philippines	
Title	Agreement between Japan and the Republic of the Philippines for an Economic Partnership
Parties	Japan, Philippines
Date of signature/entry into force	September 2006/December 2008
Transition for full implementation (goods)	2018 From 2018 98.6% of tariff lines will be duty free; of the 115 lines still attracting tariffs at the end of the transition period, the highest rates will be applied to vegetable products (47.2%)

Table II.3 (cont'd)

Services covered	Yes (Table IV.4)
Philippines merchandise trade with Japan (2010)	12.5% of total imports; 15.2% of total exports
WTO document series	WT/REG257

Note: Figures on transition periods for full implementation have been provided by the authorities. All figures are at the HS 8-digit level, and exclude in-quota tariff lines.

Source: WTO Secretariat.

(iii) Other agreements

15. The Philippines participates in intergovernmental arrangements for dialogue and cooperation with other Pacific Rim countries through the Asia Pacific Economic Cooperation (APEC) forum, and with Europe through the Asia-Europe Meeting (ASEM).¹⁴

16. APEC trade- and investment-related initiatives over the review period have included: the second Trade Facilitation Action Plan (TFAP II), which calls for the reduction of transaction costs by 5% over the period 2007-10; a Strategic Window Plan (2007), which provides a series of recommendations to assist member economies to develop single-window systems for trade transactions, with a longer term view of achieving interoperability between these systems within the region; and an Investment Facilitation Action Plan (2008).¹⁵ In pursuance of the goals of these initiatives, the Philippines has taken steps to improve the transparency of its trade and investment regimes, participated in APEC conformity assessment arrangements, and issued rules and guidelines to facilitate e-commerce.

17. The Philippines is a beneficiary of the GSP schemes of: Belarus, Canada, the European Union, Japan, Norway, the Russian Federation, Switzerland, Turkey and, the United States.¹⁶ The Philippines has ratified and acceded to the Global System of Trade Preferences.¹⁷

(3) FOREIGN INVESTMENT REGIME AND BUSINESS FRAMEWORK

18. In spite of the Government's concern about the Philippines sub-optimal record of attracting investment, compared with other ASEAN countries, and its determination to change this situation, there remain extensive constitutional and statutory limitations on foreign investment.¹⁸ This largely

¹⁴ APEC members are: Australia; Brunei Darussalam; Canada; Chile; China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; the Philippines; Russia; Singapore; Chinese Taipei; Thailand; and the United States.

ASEM Members are: Australia; Austria; Belgium; Brunei Darussalam; Bulgaria; Cambodia; China; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; India; Indonesia; Ireland; Greece; Hungary; India; Indonesia; Ireland; Italy; Japan; Republic of Korea; Laos; Latvia; Lithuania; Luxembourg; Malaysia; Malta; Mongolia; Myanmar; the Netherlands; New Zealand; Pakistan; the Philippines; Poland; Portugal; Romania; Russia; Singapore; Slovakia; Slovenia; Spain; Sweden; Thailand; United Kingdom; and Viet Nam.

¹⁵ APEC online information. Viewed at: <http://www.apec.org/en/About-Us/About-APEC/Achievements-and-Benefits.aspx>.

¹⁶ UNCTAD online information. Viewed at: http://www.unctad.org/en/docs/itcdtsbmisc62rev4_en.pdf.

¹⁷ UNCTAD online information. Viewed at: <http://www.unctadxi.org/templates/Pages1879.aspx>.

¹⁸ The DTI has reported that the investment rate in the Philippines is among the lowest in ASEAN (see: [http://www.dti.gov.ph/uploads/DownloadableForms/ComPLAN%202010%2020\(portrait\)_for%20WEB.pdf](http://www.dti.gov.ph/uploads/DownloadableForms/ComPLAN%202010%2020(portrait)_for%20WEB.pdf)).

reflects the situation prevalent at the time of the last Review of the Philippines. The authorities confirmed that there have been no concrete initiatives to relax or remove any of these restrictions.

19. The main laws regulating foreign investment in the Philippines remain the 1991 Foreign Investments Act (FIA), as amended by Republic Act 8179, the Omnibus Investment Code (OIC) and their respective implementing regulations.¹⁹ There have been no changes to these acts or regulations over the review period.

20. The FIA provides for the formulation of a Foreign Investment Negative List (FINL), which enumerates economic activities in which foreign equity is either prohibited or limited to a certain percentage. The FINL has a List A and a List B. List A sets out the areas of activity reserved to Philippine nationals under the Constitution and specific laws. List B contains areas of activity and enterprises where foreign ownership is regulated for reasons of national security, defence, risk to health and morals, and protection of small and medium-sized enterprises (SMEs). List A includes: mass media; practice of professions; retail trade enterprises with paid up capital of less than US\$2.5 million; cooperatives; small-scale mining; private radio communications networks; recruitment; contracts for locally funded public works; advertising; exploration and utilization of natural resources; land ownership; public utilities²⁰; educational institutions; the rice industry; government procurement; deep sea fishing; financing companies, and investment houses (Table AII.2).

21. Since the last Review of the Philippines, the FINL has been amended so that the practice of "guidance counselling" is now limited to Filipino citizens. Investments in gambling are now permitted but only if they are covered by investment agreements with the Philippine Amusement and Gaming Corporation (PAGCOR) operating within special economic zones administered by the Philippine Economic Zone Authority.²¹ In addition, use of marine resources has been extended to include small-scale use of natural resources in rivers, lakes, bays, and lagoons.

22. Under the Lending Company Regulation Act of 2007, foreign-owned voting stock in lending companies is limited to 49%. The percentage of voting stock must reflect the citizenship of stockholders, whether individual or corporate investors. In the case of corporate investors, the

The President, in his 2010 State of the Nation Address, pledged to boost investment. Viewed at: <http://www.gov.ph/2010/07/26/state-of-the-nation-address-2010-en/comment-page-2/>.

¹⁹ The OIC sets out the responsibilities of the Board of Investments (BOI); investment incentives; the rights of investors relating to repatriation of investments; remittances; and investor rights relating to expropriation and requisition of investments. The FIA sets out registration requirements; contains a list of investment areas reserved to Philippine nationals (FINL); and sets out how this may be amended. The FIA's provisions do not apply to financial services.

²⁰ FDI restrictions on public utilities are set out in Article XII Section 11 of the 1987 Philippine Constitution. These are elaborated on in the Commonwealth Act No. 146 (as amended), Section 13(b) (otherwise known as the Public Service Act). This states that the term "public service" includes every person that now or hereafter may own, operate, manage or control in the Philippines...any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railway, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, wire or wireless communication system, wire or wireless broadcasting stations and other similar public services.

²¹ The change with respect to gambling was based on the recommendation of PAGCOR, which was of the view that it would help attract more foreign investment in gaming activities under its supervision and contribute to increased government revenue.

percentage of voting stock must reflect the citizenship of the individual stockholders in the corporation. Foreign nationals are only allowed to own voting stock if their country of nationality accords reciprocal rights to Filipinos with respect to lending companies within their jurisdictions. The authorities noted that this provision has yet to be added to the FINL.

23. For activities not included in the FINL, full foreign ownership is permitted, including foreign investment in export enterprises (those which export 60% or more of their output). Companies must be registered, but prior authorization is not required. Small and medium-sized domestic market enterprises with paid-in equity capital of less than the peso equivalent of US\$200,000 are reserved to Philippine nationals. However a minimum paid-in capital of US\$100,000 is allowed to non-Philippine nationals if companies involve advanced technology as determined by the Department of Science and Technology; or, if they employ at least 50 direct Filipino employees.

24. During its previous Review, the Philippines was urged by some Members to relax these foreign investment barriers. In particular it was suggested that the Philippines might consider reducing the paid-up capital requirement for 100% foreign-owned retail trade enterprises from US\$2.5 million to US\$200,000; and, removing the 40% foreign equity limitation for private land ownership.²²

25. The Philippines offers an array of investment incentives, administered by the respective IPAs for listed activities within the annual Investment Priority Plan (IPP) (Chapter III(3)(i)). Foreign industry associations have urged the Government to rationalize these incentives and the Government is also cognizant of the need to re-evaluate them.²³ The authorities reported that a Bill has been passed by the House of Representatives to integrate and consolidate the country's various investment and incentive measures under one law and thereby to provide consistent policies.²⁴ As at November 2011, this Bill was under consideration in the Senate.

26. There are investment provisions in several of the Philippines' FTAs or economic cooperation agreements. Negotiations to elaborate investment rules are in train between ASEAN and India, and ASEAN and Japan.²⁵ The ASEAN-India Investment Agreement negotiations are expected to be concluded by end 2011, while those with Japan are still in their early stages. The Philippines has concluded three new bilateral investment treaties over the review period, with Japan, Syria, and Turkey (Table II.4).

²² WTO document WT/TPR/M/149/Add.1, 17 August 2005. In this document it is noted by the Philippines that despite the 40% foreign equity limitation for private land ownership, Republic Act 7652 (The Investor's Lease Act) allows foreigners to lease lands for an initial period of 50 years with the possibility of extension for an additional 25 years, subject to conditions. For tourism projects, private land may only be leased to foreigners for investments of a minimum of US\$5 million.

²³ See Statement by the Foreign Chambers of Commerce of the Philippines on the Proposed Rationalization of Fiscal Incentives Legislation submitted to the House Ways and Means Committee on November 20, 2007. Viewed at: <http://www.jccipi.com.ph/0710-2.pdf>; and the President's State of the Union address 2010.

²⁴ House Bill 4935, The Investments and Incentives Code of the Philippines.

²⁵ ASEAN-India Framework Agreement on Comprehensive Economic Cooperation (2003) (Article 5). Viewed at: <http://www.asean.org/15278.htm>; Agreement on Comprehensive Economic Partnership among Japan and Member States of ASEAN (Article 51). Viewed at: <http://www.mofa.go.jp/policy/economy/fta/asean/agreement.pdf>; Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Republic of Korea and ASEAN (Article 2.3). Viewed at: http://www.fta.go.kr/pds/fta_korea/asean/20100413_asean.pdf.

27. The aforementioned investment agreements contain provisions on investor-state dispute settlement. The investor has the option to submit the dispute through the Philippines national court system or to an international arbitration body.

28. The Board of Investments (BOI) and 12 investment promotion agencies (IPAs) are charged with developing investment promotion strategies. Collectively the IPAs have produced a Philippines Investment Promotion Plan (PIPP) (2010-14).²⁶ Under the Plan, promotion activities are to be focused on sectors that have already been shown to be viable (business process outsourcing (BPO); electronics/semi-conductors; and energy/electricity) as well as sectors identified as offering future potential (agri-industry, logistics, mining, shipbuilding, and tourism) (Chapter IV).

Table II.4
Philippines' participation in investment-related agreements, November 2011

<p>Free-trade agreements containing investment provisions and investment agreements falling within the context of economic cooperation agreements</p> <p>Framework Agreement on the ASEAN Investment Area (AIA); ASEAN-Australia-New Zealand FTA (Chapter 11); Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China; ASEAN-Korea Investment Agreement; and Agreement between Japan and the Republic of the Philippines for an Economic Partnership (Chapter 8)</p> <p>Bilateral investment treaties</p> <p><i>In force (date of entry into force):</i> Argentina (2002); Australia (1995); Austria (2003); Bahrain (2002); Bangladesh (1998); Belgium and Luxembourg (2003); Cambodia (2001); Canada (1996); Chile (1997); China (1995); Czech Republic (1996); Denmark (1998); Finland (1999); France (1996); Germany (2000); India (2001); Indonesia (2002); Italy (1994); Iran (2002); Japan (2008); Republic of Korea (1996); Kuwait (2000); Mongolia (2001); Myanmar (1998); Netherlands (1987); Pakistan (2000); Portugal (2003); Romania (1998); Russian Federation (1998); Kingdom of Saudi Arabia (1996); Spain (1994); Switzerland (1999); Syria (2010); Chinese Taipei (1992); Thailand (1996); Turkey (2009); United Kingdom (1981); Venezuela (2000); and Viet Nam (1993)</p> <p><i>Concluded or signed but not yet in force:</i> Equatorial Guinea; Lao People's Democratic Republic; and Sweden.</p> <p><i>Under negotiation:</i> Bulgaria; Belarus; Greece; Hungary; Israel; Latvia; Lithuania; Lebanon; Malaysia; Morocco; Norway; Oman; Panama; Poland; Slovak Republic; Slovenia; and United States</p> <p>Membership of international arbitral conventions/bodies</p> <p>Contracting State to the International Centre for the Settlement of Investment Disputes (ICSID); and signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)</p> <p>Other</p> <p>Member of the Multilateral Investment Guarantee Agency (MIGA)</p> <p>Double taxation treaties</p> <p>Austria; Bahrain; Bangladesh; Belgium; Canada; China; Czech Republic; Denmark; Finland; France; Germany; India; Indonesia; Italy; Japan; Republic of Korea; Netherlands; Pakistan; Romania; Russia; Spain; Sweden; Switzerland; Thailand; United Kingdom; and Viet Nam</p>
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Source: Board of Investments (BOI).

29. Foreign companies may do business in the Philippines through the establishment of a subsidiary (i.e. domestic corporation), branch, representative office, or regional operating headquarters. The Corporation Code of the Philippines governs the establishment of domestic corporations and branches. Under the Code, branches must deposit securities with the Securities and Exchange Commission (SEC) consisting, for example, in Philippine Government bonds or shares of stock in domestic corporations.²⁷ Foreign investors may also be organized as general and limited partnerships in accordance with the provisions of Title IX of the Civil Code of the Philippines.²⁸

²⁶ PIPP viewed at: <http://www.boi.gov.ph/pdf//publication/pipp/PIPPFR.pdf>.

²⁷ Corporation Code of the Philippines, Title XV (Foreign Corporations). Viewed at: <http://www.chanrobles.com/legal5title15.htm#TITLE%20XV>.

²⁸ The Civil Code of the Philippines (R.A. No. 386, 1949). Viewed at: <http://www.chanrobles.com/civilcodeofthephilippinesfulltext.html>.

Depending on the entity's type of business, specific laws may also apply. The Securities Regulation Code governs the establishment of representative offices and regional operating headquarters.²⁹

30. Initiatives over the review period to improve the climate for business and investment in the Philippines include a programme of public-private partnerships (PPP) launched by the new Government in 2010 to encourage private investments, *inter alia*, in major infrastructure initiatives. In 2011, live PPP schemes included two road projects and the Puerto Princessa Airport Development Project.³⁰

31. In 2007, the BOI launched a Strategic Investor Aftercare Program (SIAP). This is a focal point for existing investors to voice any concerns, including with respect to their interactions with other government agencies. According to the BOI, 72% of the 131 issues brought to the SIAP by investors in 2009 were resolved.³¹ The National Economic Research and Business Assistance Centre (NERBAC), which falls under the DTI, continues to help start-up companies transact with government agencies. It has created a network and scheme with all agency representatives involved in the licensing and registration of a business. NERBAC has 24 offices operational nationwide.³²

32. The DTI, together with other government agencies, has made significant progress in streamlining the registration of business names. The average processing time has been reduced from 4-8 hours to 15 minutes and the online application form is now one page long, rather than eight, due to a reduction in the information fields required (from 36 to 9). Business name registration has also been localized, and e-payment options for business name registration are being considered. The Government of the Philippines is developing the Philippine Business Registry (PBR), and online system which aims to connect all agencies related to business registration and licensing.

33. In 2007, the Government enacted an Anti-Red-Tape Act (Republic Act No. 9485). This requires each national and local government agency to develop a citizens charter containing the procedures for obtaining government services and the performance level that the public should expect. The authorities reported that by mid 2011, 94% of local government units had launched their respective citizens charters and public assistance desks.³³ However, the World Bank has noted that implementation varies between cities, and a national enforcement mechanism has yet to be established.³⁴

34. National Competitiveness Council (NCC) was established in 2006. The mission of this public-private sector task-force is to build up the long-term competitiveness of the Philippines through policy reforms, project implementation, institution-building, performance monitoring, and goal setting.³⁵ The authorities noted that the NCC has been working to improve procedures for the entry

²⁹ Securities Regulation Code (R.A. No. 8799). Viewed: <http://www.chanrobles.com/republicactno8799.htm>.

³⁰ Status updates on the live PPP projects can be viewed at: <http://ppp.gov.ph/ppp-projects/live-ppp-projects-2>, and the list of projects at preparatory and development stages can be viewed at: <http://ppp.gov.ph/ppp-projects/prospective-projects/>.

³¹ Board of Investments (2009).

³² NERBAC online information. Viewed at: <http://www.nerbac.biz>.

³³ DILG (2011).

³⁴ World Bank's (2010b).

³⁵ The NCC has seven areas of focus: developing competitive human resources; instituting efficient public and private sector management; creating effective access to financing; improving transaction costs and flows; providing a seamless infrastructure network; developing energy cost competitiveness and self-sufficiency; and addressing special concerns in the legislature, ombudsman, and the judiciary.

and exit of business persons; trade facilitation; consistency of business rules and simplification of business procedures; and harmonization of incentives.

35. Fighting corruption is a key priority for the new administration. This was highlighted by the President, in his State of the Nation address in July 2010. The Government's Philippine Development Plan for the period 2011-16 identifies various strategies to improve the efficiency of the public service, *inter alia*, through the streamlining and automation of bureaucratic procedures.³⁶

³⁶ NEDA (2011).