III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs registration, documentation, procedures, and valuation

1. Importers need to be registered with the Bureau of Customs (BOC) under the authority of the Department of Finance[1] (fees of PHP 1,000 in the case of new applications and PHP 500 for renewal). The BOC has automated its core processes through the Electronic-to-Mobile (E2M) system to streamline the payment and clearance processes at the Bureau of Customs.[2]

2. Importers (or customs brokers) are required to lodge an import entry electronically through the E2M system.[3] However, they must submit hardcopies of import documents and attachments to the Entry Processing Unit for verification. In general, all imports must be accompanied by a formal customs entry declaration form that can be submitted electronically through the E2M system; commercial invoice; bill of lading (or air waybill for cargo shipments); packing list; certificate of origin (if required); and import licence (if required) (section (iv) below). Imports must be marked with their country of origin in an official Philippine language. Once all regulations and requirements are met and duties and fees paid, goods are released via electronic notification.

3. Product-specific documentation is also required for some imports, including SPS certificates (section (vi)(b) below).[4] Moreover, certain imports are subject to mandatory certification (section (vi)(a) below), while some imports are strictly prohibited (section (iv) below).

4. Shipments continue to be classified according to risk: a high risk "red lane" (subject to physical examination and documentary review; requires an average of 1-2 days for clearance); a moderate risk "yellow lane" (documentary review; requires an average of four hours for clearance); and a low-risk "green lane" (not subject to any documentary review or physical inspection; requires an average of two hours for clearance). The BOC also uses the "super green lane" (SGL) for qualified importers, to provide immediate clearance.[5] According to information provided by the BOC, in 2010, 60% of all imports were classified as yellow, followed by red (23%), green (10%), and SGL (7%).

[1] Exceptions include importers in special economic zones, the Government, its agencies and bodies, foreign embassies, and international organizations with diplomatic status and/or recognized by the Government, such as the Asian Development Bank and the World Health Organization.

[2] The E2M system allows customs officers and traders to handle most of their transactions electronically (e.g. from customs declaration to cargo manifests and transit documents). It replaced the Automated Customs Operating System. The E2M does not deal with permits/licences issued by other government agencies.

[3] The lodgement of electronic entry is available in all ports and sub-ports nationwide.

[4] These agencies include the Philippine Coconut Authority, the International Coffee Organization Certifying Agency, the Bureau of Fisheries and Aquatic Resources, the Department of Environment and Natural Resources for logs and timber, the Bureau of Plant Industry, and the Sugar Regulatory Administration.

[5] To use the SGL an importer needs to: be accredited by BOC; be a registered user of remote lodgement facilities and holder of a certificate of registration; have actively imported for at least one year at the time of filing the application; be a regular importer of the same type of product(s); and be willing to undergo voluntary audit. Shipments qualify for SGL treatment only when they are in the list of possible imports (i.e. do not contain prohibited articles); are either freely importable commodities or, if regulated, are covered by a continuing import authority issued by the concerned government agency; and are subject to taxes and duties.

5. Under ASEAN, the Philippines is required to implement a "national single window" in order to expedite both intra and extra-ASEAN trade.[6]

6. In 2001, the Philippines adopted the transaction value as the basis for calculating the dutiable value of imports.[7] The Philippines no longer maintains a transition period to apply the computed value method.[8] It reserved the right (with no expiry date) to reverse the order of paragraphs 3 and 4 of Annex III.[9]

7. A Valuation and Classification Review Committee (VCRC) is organized in every district port to solve valuation and classification disputes.[10] The decision of the VCRC is appealable to the Central Valuation Classification Review and Ruling Committee (CVCRRC) within 15 days of receipt of the decision. The CVCRRC's decision is subject only to one motion for reconsideration, which should be filed within five working days of its receipt. If no motion is filed in time or if denied, the CVCRRC resolution becomes final. The aggrieved importer may pay under "formal protest". In the Port of Manila, an annual average of 100 valuation/classification disputes have been referred to the VCRC since 2005.

8. The Philippines discontinued preshipment inspection on 31 March 2000.[11] Nonetheless, in case of bulk and break-bulk cargoes a load port survey/discharge port survey is required under the Bulk and Break-Bulk Enhancement Programme implemented as from June 2010.

9. The Philippines is a member of the World Customs Organization (WCO). It acceded to the WCO's Revised Kyoto Convention in June 2010 but with certain reservations, including full adoption of post-entry auditing. It has been suggested that the Tariff and Customs Code of the Philippines (TCCP) needs to be revised to achieve full compliance with the Convention's provisions; this is being deliberated in Congress.

(ii) Rules of origin

10. The Philippines has notified the WTO that it does not have non-preferential rules of origin.[12]

11. The Philippines applies preferential rules of origin under its regional and bilateral trade agreements, i.e. Association of Southeast Asian Nations (ASEAN-ATIGA); ASEAN-Australia-New Zealand; ASEAN-China; ASEAN-India; ASEAN-Japan; ASEAN-Korea; and Philippines-Japan (Chapter II(2)). In general, the basic rule is a product wholly obtained or that has undergone substantial transformation in the country of export. Substantial transformation is defined as a change in tariff classification, value-added threshold, and specific process, which vary across agreements.

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[6] The national single window is a computer system by means of which traders/brokers can acquire, electronically, all the necessary supporting licences/clearances/permits for imports and exports declarations from their own premises, without having to physically visit the relevant issuing agencies.

[7] If the transaction value cannot be determined, substitute methods provided for in the WTO Agreement on Customs Valuation may be used (WTO document G/VAL/N/1/PHL/1, 5 October 2001). For a description of the challenges faced by customs officials to adopt the transactions value and how they overcame these challenges, see the case study by Ramon L. Clarete. Available at: http://www.wto.org/English/res_e/booksp_e/casestudies_e/case37_e.htm.

[8] According to the authorities, the computed value method was never used.

[9] WTO document G/VAL/2/Rev.24, 27 April 2007.

[10] All resolutions of the VCRC are signed by the District Collector as Chairman.

[11] WTO document G/VAL/W/63, 31 March 2000.

[12] WTO document G/RO/69, 3 February 2010.

For example, it confers origin status under the ASEAN Free Trade Area to goods that have an ASEAN content of at least 40% of their f.o.b. value.

(iii) Tariffs, other duties, and taxes

(a) MFN applied tariff structure

12. Goods imported into the Philippines may be subject to customs tariffs, excise duties, VAT, and various customs fees and charges for BOC services (section (g) below). The Philippines conducts a full review of its tariff every five years to assist business sectors in their long-term strategic plans. Two comprehensive reviews have been carried out since the last TPR of the Philippines: in 2007, the tariff rates of several products were modified[13]; and a review was recently concluded as part of the Government's assessment of its economic policy and line with its tariff commitments in the WTO and under preferential agreements.[14]

13. Under Sections 401 and 402 of the TCCP (as amended), concerned parties may request the Tariff Commission to conduct public hearings/consultations on proposed tariff modifications. In addition, in the interests of the economy, general welfare, and/or national security, the President may raise, reduce or remove import duties (including classification changes) upon the recommendation of the National Economic and Development Authority (NEDA). Rates may be lowered, or raised to a maximum of 100% *ad valorem*, in one or several stages; this could breach bindings, thereby undermining predictability. Nonetheless, the authorities maintain that WTO bindings have not been breached.

14. With the adoption of the 2007 ASEAN Harmonized Tariff Nomenclature (the AHTN Protocol)[15], the Philippines' tariff was simplified and now comprises 8,299 lines at the HS eight-digit level (compared with 10,688 in 2004), with rates ranging from zero to 65%. The share of duty-free imports increased from 3.7% in 2004 to 4.7% in 2011 (Tables III.1 and AIII.1). Rice and sugar receive the highest tariff protection. All tariffs (levied on the c.i.f. value of imports) are *ad valorem,* which enhances transparency. Overall, 56.3% of tariff lines are within the range >0-5% (Chart III.1).

Table III.1
Tariff structure, 2004 and 2011
(% unless otherwise indicated)

	MFN applied rate		
	2004	**2011**	**Final bound rate[a]**
Simple average	7.4	6.4	25.7
Agricultural products (HS01-24)	10.6	10.4	37.0
Industrial products (HS25-97)	6.9	5.7	23.2
WTO agricultural products	10.3	10.2	35.6
WTO non-agricultural products	7.0	5.8	23.3
Duty-free tariff lines (% of all tariff lines)	3.7	4.7	4.8
Simple average rate of dutiable lines only	7.7	6.7	26.9

Table III.1 (cont'd)

[13] Executive Order No. 574 of 4 November 2006.
[14] The President issued Executive Order No. 61 of 2011, which will enter into force after publication. Some of the main changes include merging of tariff lines and reduction of tariff duties.
[15] The transposition was from HS2002/AHTN2004 to HS2007/AHTN2007. The AHTN follows the six-digit commodity classification codes of the World Customs Organization's Harmonized System (HS) adding two more digits to the codes for subheadings used across ASEAN. It applies to intra and extra-ASEAN trade.

	MFN applied rate 2004	MFN applied rate 2011	Final bound rate[a]
Tariff quotas (% of all tariff lines)	0.6	0.9	..
Non-*ad valorem* tariffs (% of all tariff lines)	0.0	0.0	0.0
Domestic tariff "peaks" (% of all tariff lines)[b]	5.1	4.2	0.1
International tariff "peaks" (% of all tariff lines)[c]	7.5	4.5	82.8
Overall standard deviation of tariff rates	7.9	7.1	12.4
Coefficient of variation of tariff rates	1.1	1.1	0.5
Nuisance applied rates (% of all tariff lines)[d]	21.5	24.3	0.0
Total number of tariff lines	10,688	8,299	5,967
Ad valorem rates	10,688	8,299	5,967
Duty free	392	391	299

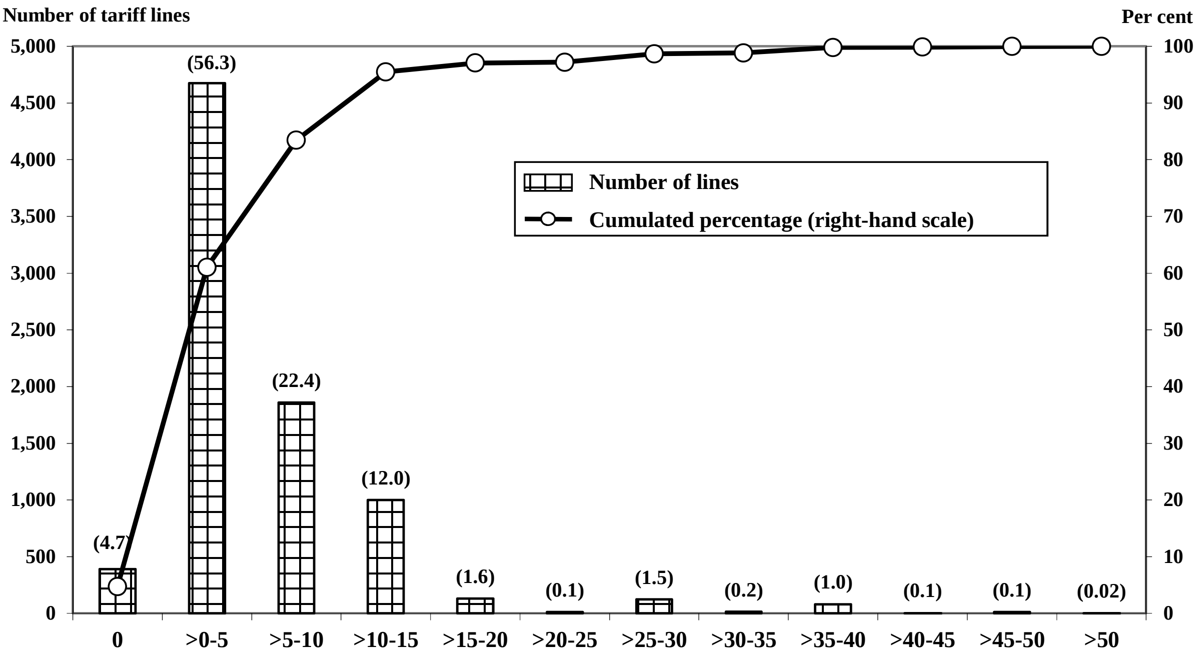
.. Not available.

a Final bound rates are based on the 2004 tariff schedule (HS02 nomenclature). Calculations on bound averages are based on 5,938 fully and 29 partially bound rates (representing 58.6 % of the total tariff). When using the 2002 tariff schedule, the binding coverage rises from 58.6% to 64.9% because of the difference in the number of tariff lines, i.e. 5,640 in 2002 and 10,688 in 2004.
b Domestic tariff peaks are defined as those exceeding three times the overall average applied rate.
c International tariff peaks are defined as those exceeding 15%.
d Nuisance applied rates are those greater than zero, but less than or equal to 2%.

Note: The 2004 tariff is based on HS02 nomenclature; the 2011 tariff is based on HS07.
Calculations for averages are based on national tariff line level (8-digit), excluding in-quota rates.

Source: WTO Secretariat calculations, based on data provided by the authorities.

Chart III.1
Breakdown of import duty rates, 2011



Note: Figures in parentheses indicate the share of total lines. Calculations exclude in-quota rates.

***Source*: WTO Secretariat calculations, based on data provided by the authorities.**

15. The simple average applied MFN rate is 6.4% (down from 7.4% in 2004). Tariffs average 10.2% (10.3% in 2004) on agriculture (WTO definition[16]), and 5.8% on non-agricultural products (7% in 2004). Using ISIC (Revision 2) definition (Table III.2), the least tariff protected sector is mining and quarrying (2.4%), followed by manufacturing (6.4%), and agriculture (7.7%).

Table III.2
Philippines' tariff summary, 2011

	Number of lines	Average (%)	Range (%)	Standard deviation	Duty free (%)
Total	**8,299**	**6.4**	**0-65**	**7.07**	**4.7**
By WTO category					
WTO agricultural products	1,145	10.2	0-65	11.4	0.2
Animals and products thereof	125	22.9	1-45	17.1	0.0
Dairy products	35	3.5	1-7	2.5	0.0
Fruit, vegetables, and plants	295	9.9	1-40	8.9	0.0
Coffee and tea	40	16.9	3-45	17.2	0.0
Cereals and preparations	152	11.1	0-50	11.8	1.3
Oils seeds, fats, oil and their products	181	7.2	1-15	5.6	0.0
Sugars and confectionary	28	14.7	1-65	18.3	0.0
Beverages, spirits and tobacco	104	8.5	1-15	3.7	0.0
Cotton	5	2.6	1-3	0.9	0.0
Other agricultural products	180	4.5	1-35	6.0	0.0
WTO non-agricultural products	7,154	5.8	0-30	5.9	5.4
Fish and fishery products	206	8.7	1-15	4.2	0.0
Minerals and metals	1,263	4.9	0-17.5	4.3	5.5
Chemicals and photographic supplies	1,213	4.2	0-30	4.4	0.7
Wood, pulp, paper and furniture	381	6.1	0-22.5	5.0	5.8
Textiles	696	9.3	0-20	4.9	0.4
Clothing	254	14.8	1-15	1.6	0.0
Leather, rubber, footwear and travel goods	270	6.6	0-15	4.4	0.7
Non-electric machinery	1,188	2.4	0-20	3.0	9.4
Electric machinery	559	4.2	0-22.5	4.7	16.1
Transport equipment	413	13.8	1-30	11.2	0.0
Non-agricultural products	677	4.6	0-15	4.1	9.2
Petroleum	34	1.2	0-3	1.4	55.9
By ISIC sector					
ISIC 1 - Agriculture, hunting and fishing	474	7.7	0-50	8.9	3.4
ISIC 2 - Mining	112	2.4	0-7	1.5	0.9
ISIC 3 - Manufacturing	7,713	6.4	0-65	7.0	4.8
Manufacturing excluding food processing	6,859	5.8	0-30	5.9	5.4

Table III.2 (cont'd)

[16] WTO definition of agriculture: HS Chapters 01-24 less fish and fishery products (HS 0301-0307, 0509, 051191, 1504, 1603-1605 and 230120) plus some selected products (HS 290543, 290544, 290545, 3301, 3501-3505, 380910, 382311-382319, 382360, 382370, 382460, 4101-4103, 4301, 5001-5003, 5105-5103, 5201-5203, 5301 and 5302).

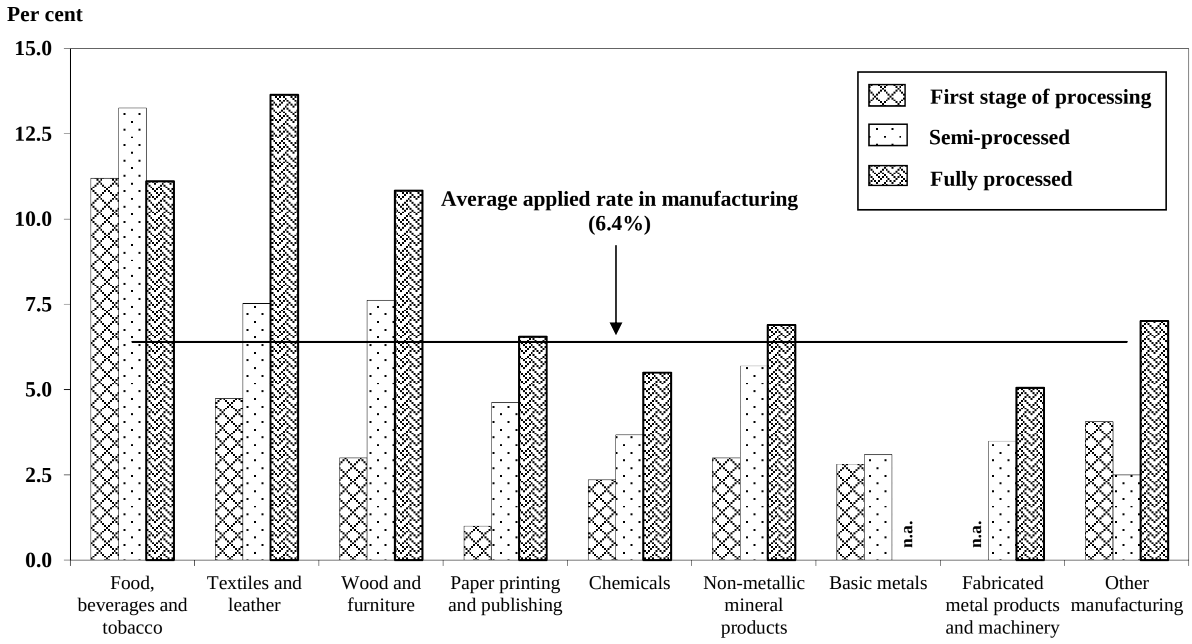
	Number of lines	Average (%)	Range (%)	Standard deviation	Duty free (%)
By stage of processing					
First stage of processing	885	6.7	0-50	9.2	2.5
Semi-processed products	2,163	4.9	0-65	5.1	3.4
Fully processed products	5,251	7.0	0-45	7.3	5.6
By HS section					
01 Live animals and products	344	10.6	1-40	11.8	0.0
02 Vegetable products	391	10.4	0-50	11.9	0.5
03 Fats and oils	150	7.5	1-15	5.7	0.0
04 Prepared food, beverages and tobacco	386	11.5	1-65	10.0	0.0
05 Mineral products	197	2.2	0-7	1.5	13.2
06 Chemicals and products thereof	1,098	3.3	0-30	3.4	0.8
07 Plastics, rubber, and articles thereof	392	7.2	0-15	4.8	0.5
08 Raw hides and skins, leather, and products thereof	84	7.1	1-15	5.8	0.0
09 Wood and articles of wood	136	7.3	0-15	4.8	10.3
10 Pulp of wood, paper and paperboard	224	4.7	0-15	4.2	3.6
11 Textiles and clothing	928	10.7	0-20	5.0	0.3
12 Footwear, headgear, etc.	63	9.5	1-15	5.4	0.0
13 Articles of stone, plaster, cement	185	7.0	0-15	4.7	1.1
14 Precious stones and metals, pearls, articles thereof	75	5.2	3-10	3.2	0.0
15 Base metals and articles thereof	825	5.2	0-17.5	4.5	7.3
16 Machinery, electrical equipment, etc.	1,805	2.9	0-22.5	3.7	12.9
17 Transport equipment	427	13.5	1-30	11.2	0.0
18 Precision equipment	339	2.5	0-10	2.0	9.1
19 Arms and ammunition	28	13.5	3-15	2.9	0.0
20 Miscellaneous manufactured articles	212	7.1	1-22.5	4.6	0.0
21 Works of art, etc.	10	7.6	7-10	1.3	0.0

Note: Calculations for averages are based on national tariff line level (8-digit), excluding in-quota rates.

Source: WTO Secretariat calculations, based on data provided by the authorities.

16. On aggregate, the tariff displays mixed escalation, negative from first-stage processed products (average tariff rate of 6.7%), to semi-finished goods (average rate of 4.9%), and positive from semi-finished to fully processed products (average 7%). This structure is strongly influenced by the high tariffs on raw agricultural products and, to a lesser extent, by the tariff structure in certain industries. At a more disaggregate level (Chart III.2), positive tariff escalation is most pronounced in textiles and leather, followed by wood and furniture, paper and printing, chemicals, and non-metallic mineral products, thereby providing higher levels of effective protection to those industries than that reflected by the nominal rates. Escalation is positive from first-stage processed goods to semi-finished products, and negative from semi-finished to finished goods, in food, beverages and tobacco.

Chart III.2
Tariff escalation by 2-digit ISIC industry, 2011



n.a. **Not applicable.**

Note: **Calculations exclude in-quota rates.**

***Source*:** **WTO Secretariat calculations, based on data provided by the authorities.**

(b) Bound tariff

17. In the Uruguay Round, the Philippines bound 58.6% of all tariff lines.[17] Binding coverage varies substantially across the HS: sections including vegetables, fats and oils, prepared foods, and textiles, are fully bound while others, including mainly industrial products, have either no or a low incidence of bound items.[18] Greater coverage of bindings could increase tariff predictability.

18. The simple average bound rate is 25.7%, i.e. 35.6% on agricultural products (WTO definition) and 23.3% on non-agricultural goods (Table III.1). All bound rates are *ad valorem*, and range from zero to 80%. The overall average MFN applied tariff, at 19.3 percentage points lower than the simple average bound rate, presents an element of uncertainty as it gives the authorities considerable scope to raise applied tariffs, which further undermines predictability. According to the authorities, the gap also provides some flexibility to policymakers.

[17] Based on the 2004 tariff schedule (HS02 nomenclature). On the basis of the 2002 tariff schedule the binding coverage rises from 58.6% to 64.9% because of the difference in the number of tariff lines, i.e. 5,640 in 2002 and 10,688 in 2004.

[18] Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetables textile fibres, footwear, headgear, fish, and paper.

(c) Tariff quotas

19. Tariff quotas represent 0.9% of total tariff lines (0.6% in 2004) (Table III.1). On 15 June 2007, under Executive Order No. 627, the Philippines reduced the in-quota tariff rate on rice from 50% to 40%, and MFN rates were reduced on certain agricultural products (i.e. mechanically deboned meats) to compensate WTO Members for the seven-year extension granted (until 30 June 2012) for the special treatment on rice (Chapter IV(1)(i)(a)).[19]

20. Tariff quotas, ranging from 30-50% (in-quota rates) and 35-65% (out-of-quota rates), have remained relative stable during the period under review (Table AIII.2). Cane and sugar beet lines have the highest rates, both in-quota (50%) and out-of quota (65%), followed by rice. However, several are inoperative following the lowering of the out-of-quota rate to equal the in-quota rate.[20] The system for administering tariff quotas still seems complex (section (v) below), and this may deter imports.[21] A substantial number of tariff quotas are regularly unfilled; more recently there have been no tariff-quota imports of sugar and potatoes, while utilization for coffee and corn (maize) has been less than three quarters.

(d) Variable levies and seasonal tariffs

21. No variable levies or seasonal tariffs have been applied since 1999, but provisions for their introduction still exist.[22]

(e) Concessional entry and exemptions

22. Sector-specific duty exemptions are provided for inputs under specific laws.[23] General exemptions are also granted upon fulfilment of particular conditions (Table III.3). In addition, the President may, upon NEDA's recommendation, allow any imports to enter duty free if in the "interest of national economic development".

(f) Tariff preferences

23. The Philippines has preferential trading agreements with 15 partners: the other nine parties of ASEAN[24], and six countries that have negotiated agreements with ASEAN (Australia and New Zealand; China; Japan[25]; Korea (Rep. of), and India). In 2011, the average preferential tariff (on all products) under these agreements ranged from 0.1% (ASEAN common effective preferential agreement) to 5.8% (agreement between ASEAN and India), i.e. below the simple average applied MFN rate of 6.4% in all cases (Table III.4). Moreover, preferential rates are always higher, on average, for agricultural products (WTO definition) than for non-agricultural goods. The Philippines

[19] The minimum access volume for rice also increased from 238,940 tonnes during June 2000 to June 2005 to 350,000 tonnes from July 2005 to 30 June 2012 (WTO documents G/MA/TAR/RS/99/Rev.1, 27 September 2006 and WT/Let/562, 8 February 2007).

[20] Includes certain items of poultry meat, coffee beans, and potatoes.

[21] For a description of the administration of tariff quotas, see WTO (2005), Box III.2.

[22] WTO (2005).

[23] These include the Agriculture and Fisheries Modernization Act of 1997, the Jewellery Industry Development Act of 1998, and the Philippine Fisheries Code of 1998.

[24] The other ASEAN members are Brunei Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam.

[25] In addition to the ASEAN-Japan trade agreement, the Philippines has its own bilateral trade agreement with Japan.

is committed to achieving free trade by specific dates under some of these agreements (Chapter II(2)(ii) and Table AII.1).

Table III.3
Goods subject to a conditional duty exemption, 2011

Product	Requirement
Aquatic products (e.g. fish, crustaceans, molluscs, marine animals, seaweeds, fish oil, roe)	Caught or gathered by fishing vessels of Philippine registry
Equipment for the use in the salvage of vessels or aircraft	Upon identification and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes, and other charges thereon
Cost of repairs, excluding the value of parts, made in foreign countries used in vessels or aircraft registered in the Philippines	Upon proof that adequate facilities for such repairs do not exist in the Philippines; or that the vessel or aircraft was compelled during the trip to make such repairs
Articles brought into the Philippines for repair, processing or reconditioning to be re-exported	Provided that a bond is given in an amount equal to one and one-half times the ascertained duties, taxes, and other charges thereon, and that they are exported within 6 months from the date of import
Medals, badges, and cups	Bestowed as trophies or prizes, or those received or accepted as honorary distinction
Personal and household effects belonging to returning residents of the Philippines	Items need to be formally declared and listed before departure and identified under oath before the Collector of Customs
Overseas contract workers' used house appliances	Quantity is limited to one of each in a calendar year
Articles used exclusively for public entertainment, and displayed in public expositions, or for competition exhibitions for prizes, and devices for projecting pictures	Upon examination and appraisal and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes, and other charges thereon, and provided that they are exported within 6 months from the date of import
Articles brought by foreign film producers directly and exclusively used for making or recording motion picture films in the Philippines	Upon examination and appraisal and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, and provided that they are exported within 6 months from the date of importation
Photographic and cinematographic films, undeveloped, exposed outside the Philippines by Filipino citizens or by companies of Philippine register where the principal actors and artists employed for the production are Filipinos	Upon affidavit by the importer and identification that such exposed films are the same films previously exported from the Philippines
Imports for the official use of foreign embassies and other foreign governmental agencies	Provided that those countries provide the same privileges to the corresponding agencies of the Philippines
Containers, holders, and other similar receptacles of any material including kraft paper bags to export locally manufactured cement, and corrugated boxes for bananas, pineapples, and other fresh fruits for export	Upon examination and appraisal and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, and that they are exported within 6 months from the date of import
The necessary supplies for the "reasonable requirements" of a vessel or aircraft on a voyage or flight outside the Philippines	Any surplus of such supplies arriving from foreign ports or airport is dutiable
Coffins or urns containing human remains, bones or ashes, used personal and household effects of the deceased person	Value must not exceed PHP 10,000
Samples of no commercial value and samples of medicines used to introduce new products to the Philippine market	Import must be authorized by the Department of Finance, and in the case of medicines by the Department of Health
Commercial samples	The value of each consignment should not exceed PHP 10,000 and upon the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes, and other charges thereon, and provided that they are exported within 6 months from the date of import
Animals (except race horses) and plants for scientific, experimental, propagation, botanical, breeding, zoological, and national defence purposes	Import must be undertaken by order of an authorized institution. Animals imported for breeding purposes must be of a recognized breed. The National Economic and Development Authority must certify that these animals and plants are necessary for economic development. The Bureau of Animal Industry of the Department of Agriculture needs to issue a permit prior to import

Table III.3 (cont'd)

Product	Requirement
Economic, educational, technical, vocational, scientific, philosophical, historical, cultural materials books and/or publications (subject to specification for advertising space), dictionaries and encyclopaedias, children's pictures/drawings/ or colouring books, globes, music printed or manuscript, etc.	Certification is required from the Department of Education
Philippine products exported from the Philippines and returned without any added value or any other improvement	Any article upon which drawback had been allowed should upon re-import be subject to a duty equal to the amount of the drawback
Aircraft, equipment and machinery, spare parts, aviation gas, fuel and oil, and any other articles or supplies imported by and for the use of scheduled airlines operating under Congressional franchise	Provided that such articles are not locally available in reasonable quantity, quality, and price and are necessary for the proper operation of the scheduled airline
Spare part of vessels or aircraft of foreign registry engaged in foreign trade when brought into the Philippines as replacements for emergency repair	Upon proof to the Collector of Customs that such spare parts shall be utilized to secure the safety of the vessel or aircraft, to enable it to continue its voyage or flight
Articles of easy identification exported from the Philippines for repair and subsequently re-imported	Upon proof that such articles cannot be repaired locally
Trailer chassis when imported by shipping companies for their exclusive use in handling containerized cargo	Posting of a bond in an amount equal to one and one-half times the ascertained duties, taxes, and other charges due
CBUs	Under the Motor Vehicle Development Programme preferential tariff rates are available on imports of CBUs on the basis of equivalent foreign exchange earnings
Inputs to be used by agriculture and fisheries enterprises	Items need to be included in Annex B of Executive Order No. 376 of 2004 which implements Section 1 of R.A. No. 9281 (Reinstating the Effectiveness of Tax Incentives of Section 109 of the Agriculture and Fisheries Modernization Act of 1997 up to 2015) and require a certificate of eligibility or accreditation from the Department of Agriculture and its agencies
Capital equipment to be used by tourism establishments	Equipment to be used only in medical and spa facilities
A 50% refund of the duty paid on petroleum oils, oils obtained from bituminous materials, and crude oils	If imported by non-electric utilities and sold directly or indirectly, in the same form or after processing, to electric utilities for the generation of electricity and for the manufacturing of city gas
A 99% refund on duties paid on imported fuel	Fuel must be used in domestic vessels engaged in trade
Imported articles donated to any duly registered relief organization to be donated to the needy	The Department of Social Welfare and Development needs to certify that an accredited institution imports the goods
Importation by and donations to qualified entities in the interest of national economic development (TCCP Section 105, last clause of the last paragraph) consisting of essential machinery and equipment, contraceptives or other goods subject to certain conditions	Certification is required by the National Economic and Development Authority (NEDA)

Source: Information provided by the authorities.

(g) Other duties, fees, and taxes

24. Most imports, like domestically produced goods, are subject to a VAT rate of 12% (increased from 10% in January 2006).[26] Exempt items include: agricultural and marine food products; agricultural inputs; books, newspapers, and magazines; and passenger and/or cargo vessels of more than 5,000 tons. VAT is zero-rated on the sale and purchase of bio-organic products and coal, and petroleum products.

[26] R.A. No. 9337 of May 2005.

Table III.4
Summary analysis of the Philippines' selected preferential tariff averages, 2011

Description	No. of lines	MFN Applied (%)	ASEAN CEPA (%)	AK FTA (%)	AC FTA (%)	AANZ FTA (%)	AI FTA (%)	AJ CEPA (%)	PJ EPA (%)
Total	**8,299**	**6.4**	**0.1**	**2.0**	**2.1**	**1.8**	**5.8**	**3.1**	**2.3**
HS 01-24	1,271	10.4	0.5	4.4	4.3	4.2	9.9	6.3	4.7
HS 25-97	7,028	5.7	0.1	1.6	1.7	1.3	5.1	2.5	1.9
By WTO category									
WTO Agriculture	1,145	10.2	0.5	4.8	4.1	4.3	9.8	6.2	4.7
Animals and products thereof	125	22.9	0.9	13.3	13.4	12.8	21.8	14.3	12.4
Dairy products	35	3.5	0.0	0.0	3.5	1.5	3.3	2.4	2.1
Fruit, vegetables and plants	295	9.9	0.0	3.8	5.1	3.7	9.4	5.9	3.3
Coffee and tea	40	16.9	0.0	12.5	1.9	8.5	16.8	11.1	10.8
Cereals and preparations	152	11.1	2.3	5.2	3.9	5.2	10.4	8.0	6.5
Oil seeds, fats and oils and their products	181	7.2	0.0	4.2	0.2	1.8	7.1	3.8	3.2
Sugar and confectionary	28	14.7	5.5	11.3	10.4	10.6	14.1	12.2	8.3
Beverages, spirits and tobacco	104	8.5	0.0	0.5	0.7	2.1	8.1	4.6	3.5
Cotton	5	2.6	0.0	0.0	0.0	0.0	2.6	0.0	0.0
Other agricultural products	180	4.5	0.0	1.4	1.8	0.9	4.4	1.6	1.2
WTO Non-agriculture (incl. petroleum)	7,154	5.8	0.1	1.6	1.8	1.4	5.2	2.6	2.0
WTO Non-agriculture (excl. petroleum)	7,120	5.8	0.1	1.6	1.8	1.4	5.2	2.6	2.0
Fish and fishery products	206	8.7	0.0	1.0	3.7	2.3	7.8	4.7	2.9
Minerals and metals	1,263	4.9	0.0	0.9	0.5	1.6	4.4	2.7	2.5
Chemicals and photographic supplies	1,213	4.2	0.0	1.4	1.4	1.4	3.9	2.0	1.6
Wood, pulp, paper and furniture	381	6.1	0.0	0.8	0.5	1.5	5.3	3.0	2.9
Textiles	696	9.3	0.0	1.3	2.7	2.5	7.8	1.8	0.5
Clothing	254	14.8	0.0	5.2	3.2	4.9	13.0	1.3	0.0
Leather, rubber, footwear and travel goods	270	6.6	0.0	0.6	1.4	1.2	5.7	3.2	3.1
Non-electric machinery	1,188	2.4	0.0	0.3	0.4	0.2	2.1	0.8	0.7
Electric machinery	559	4.2	0.0	0.8	0.7	0.6	3.7	2.1	2.0
Transport equipment	413	13.8	0.0	10.9	12.4	1.4	13.4	11.5	7.2
Non-agriculture articles	677	4.6	0.5	0.7	0.6	0.7	4.0	1.8	1.7
Petroleum	34	1.2	0.0	1.2	1.2	0.4	1.2	0.4	0.4
By ISIC sector[a]									
Agriculture and fisheries	474	7.7	0.1	2.4	4.0	2.5	7.3	4.1	2.6
Mining	112	2.4	0.0	0.3	0.4	0.7	2.3	0.7	0.6
Manufacturing	7,713	6.4	0.1	2.0	2.0	1.7	5.8	3.1	2.4
Manufacturing excluding food processing	6,859	5.8	0.1	1.6	1.7	1.3	5.2	2.6	2.0
By HS section									
01 Live animals and products	344	10.6	0.3	3.6	6.8	4.3	9.8	6.0	4.5
02 Vegetable products	391	10.4	0.9	5.8	5.5	4.7	10.0	6.5	4.5
03 Fats and oils	150	7.5	0.0	4.8	0.2	1.9	7.4	3.9	3.4
04 Prepared food, beverages and tobacco	386	11.5	0.4	3.7	2.4	4.5	10.8	7.2	5.6
05 Mineral products	197	2.2	0.0	0.5	0.6	0.5	2.1	0.6	0.6

Table III.4 (cont'd)

Description	No. of lines	MFN Applied (%)	ASEAN CEPA (%)	AK FTA (%)	AC FTA (%)	AANZ FTA (%)	AI FTA (%)	AJ CEPA (%)	PJ EPA (%)
06 Chemicals and products thereof	1,098	3.3	0.0	0.4	0.4	0.5	3.0	1.1	0.8
07 Plastics, rubber, and articles thereof	392	7.2	0.0	3.4	3.6	3.3	6.6	4.4	3.8
08 Raw hides and skins, leather products	84	7.1	0.0	0.9	0.0	1.7	6.2	3.8	3.8
09 Wood and articles of wood	136	7.3	0.0	0.7	0.6	1.7	6.0	3.1	3.2
10 Pulp of wood, paper and paperboard	224	4.7	0.0	0.3	0.4	1.1	4.3	2.4	2.3
11 Textiles and clothing	928	10.7	0.0	2.3	2.8	3.1	9.1	1.5	0.2
12 Footwear, headgear, etc.	63	9.5	0.0	0.8	4.3	2.9	8.1	5.5	5.2
13 Articles of stone, plaster, cement	185	7.0	0.0	1.5	1.2	2.5	6.2	3.7	3.4
14 Precious stones and metals	75	5.2	0.0	0.5	0.0	0.8	4.5	1.8	1.8
15 Base metals and articles thereof	825	5.2	0.0	1.0	0.4	1.7	4.7	3.2	2.9
16 Machinery, electrical equipment, etc.	1,805	2.9	0.0	0.4	0.4	0.3	2.6	1.2	1.1
17 Transport equipment	427	13.5	0.0	10.6	12.1	1.4	13.1	11.2	7.0
18 Precision equipment	339	2.5	0.0	0.1	0.0	0.0	2.4	0.2	0.2
19 Arms and ammunition	28	13.5	13.1	13.5	13.5	4.4	11.6	8.8	7.6
20 Miscellaneous manufactured articles	212	7.1	0.0	1.0	0.3	1.4	6.0	3.8	3.7
21 Works of art, etc.	10	7.6	0.0	0.0	0.0	0.6	7.6	1.0	0.6
By stage of processing									
First stage of processing	885	6.7	0.4	2.4	3.4	2.4	6.4	3.5	2.5
Semi-processed products	2,163	4.9	0.1	1.2	1.3	1.5	4.4	1.7	1.2
Fully-processed products	5,251	7.0	0.1	2.3	2.2	1.8	6.3	3.6	2.8

a ISIC (Rev.2) classification, excluding electricity (1 line).

Note: Calculations exclude in-quota rates.
ASEAN - ASEAN common effective preferential agreement;
AK - ASEAN-Korea Free Trade Agreement;
AC - ASEAN-China Free Trade Agreement.
AANZ - ASEAN-Australia New Zealand Free Trade Agreement;
AI - ASEAN-India Free Trade Agreement;
AJ - ASEAN-Japan Comprehensive Economic Partnership Agreement;
PJ - Philippines-Japan Economic Partnership Agreement.

Source: WTO Secretariat calculations, based on data provided by the authorities; and Philippine Tariff Commission Online information. Viewed at: http://www.tariffcommission.gov.ph. [12 August 2011].

25. Imports continue to be subject to various customs fees and charges for BOC services, such as import processing, refund processing, documentary stamp tax, and registration fees. These fees range from PHP 250 to PHP 3,000. In addition, fees for laboratory tests range from PHP 500 to PHP 2,500.[27]

26. Excise taxes are levied on alcohol products, automobiles, jewellery, minerals, perfumes, cigarettes, and petroleum (Table AIII.3). Despite efforts to reform the excise tax regime, few changes have been achieved since 1999. In late 2011, excise tax rates on tobacco and alcohol products were increased.[28] Imported distilled spirits are subject to higher excise taxes than those produced

[27] The BOC laboratory is not operational; tests are being outsourced to other laboratories.
[28] This is expected to generate additional revenue of PHP 58.5 billion in 2012, rising to PHP 65.6 billion in 2014. Economist Intelligence Unit (2011).

domestically. In March 2010, the United States requested the establishment of a WTO panel on "Philippines-Taxes on Distilled Spirits" (Chapter II(2)(i)).[29]

(iv) Import prohibitions, restrictions, licensing, and quotas

27. Imports of certain goods are prohibited under the Tariff and Customs Code and various other laws (Table III.5). In general, imports of dangerous chemicals that are an unreasonable risk to health or the environment are restricted or prohibited. Imports of chlorofluorocarbons (CFCs), halons, carbontetrachloride (CTC), and trichloroethane were allowed until 2009.

Table III.5
Prohibited imports, 2011

A.	Products specifically listed under Section 101 of the Tariff and Customs Code:
Dynamite, gunpowder, ammunition and other explosives, firearms and weapons of war, and parts thereof, except when authorized by law;	
Written or printed articles in any form containing any matter advocating or inciting treason, rebellion, insurrection, sedition or subversion against the Government of the Philippines, or forcible resistance to any law of the Philippines, or containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines;	
Written or printed articles, negatives or cinematographic film, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immoral character;	
Articles, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or describes or gives directly or indirectly information where, how or by whom unlawful abortion is produced;	
Roulette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes or other articles when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof;	
Lottery and sweepstake tickets except those authorized by the Philippine Government, advertisements thereof, and lists of drawings therein;	
Any article manufactured in whole or in part of gold, silver or other precious metals or alloys thereof, the stamps, brands or marks or which do not indicate the actual fineness of quality of said metals or alloys;	
Any adulterated or misbranded articles of food or drug in violation of the provisions of the "Food and Drugs Act";	
Marijuana, opium, or any other narcotics or synthetic drugs which are or may hereafter be declared habit forming by the President of the Philippines, or any compound, manufactured salt, derivative, or preparation thereof, except when imported by the Government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medical purposes only;	
Opium pipes and parts thereof, of whatever material; and	
All other articles and parts thereof, whose importation is prohibited by laws and regulations issued by the competent authority (as amended by Presidential Decree No. 34).	
B.	Used clothing and rags (RA No. 4653).
C.	Toy firearms and explosives, which, even if dissimilar in other aspects, are replicas in appearance, measurements, colour and parts as its genuine counterpart firearms and explosives (LOI No. 1264).
D.	Hazardous wastes, even in transit into the Philippine territorial limits (Section 24 of the IRR of RA No. 6969).
E.	Polychlorinated biphenyls, chlorofluorocarbons, halons, carbontetrachloride and trichloroethane (Section 5 of DENR Administrative Order 2004-08).

Source: WTO document, G/LIC/N/3/PHL/8, 7 February 2011; and information provided by the authorities.

28. Fish products may be imported only when the importation has been certified as necessary by the Department of Agriculture to attain food security (section (vi)(b) below).

29. Imports of used vehicles (except certain buses, trucks, and special purpose vehicles) were banned in December 2002, including into free ports. The Supreme Court (SC) upheld this decision in February 2006. Nonetheless, the SC allows the use, storage, trade, and export of second-hand vehicles within the Subic Bay Free Port provided these cannot be exported.

[29] WTO document WT/DS403/series.

30. The import licensing regime is regulated by the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended, and Appendix 2 of the Manual of Regulations on Foreign Exchange Transactions.[30] Import licensing is intended, *inter alia*, to safeguard public health, national security and welfare, and to meet international treaty obligations regulating certain products (Table III.6).

31. The Philippines' licencing system remains complex, and fees vary by product and are collected by the agency granting the licence.[31] There are non-automatic, automatic, and special licencing systems. Under the non-automatic licensing system, only persons, firms, and institutions registered as bona fide importers, domestic users, breeders, producers, traders, etc. are eligible to apply for licences; only the Government or its entities/agencies may import certain products (e.g. rice, which is largely state-traded (Chapter IV(1)(i)). Under the automatic system, all persons, firms, and institutions, are eligible to apply for licence as long as they meet the basic requirements/criteria. For certain imports, persons or firms must be registered. According to the authorities, this system aims to ensure that only qualified applicants are granted licences.[32]

Table III.6
Goods subject to regulation/import licensing

Commodity	Government agency/issuing permit/clearance
Essential chemicals & controlled precursors; and dangerous drugs (ketamine, pseudoephedrine, oripavine, and amineptine)	Philippine Drug Enforcement Agency (PDEA) and Dangerous Drugs Board (DDB)
Cyanide and cyanide compounds, mercury and mercury compounds, asbestos, and other ozone depleting substances	Department of Environment and Natural Resources (DENR) / Environmental Management Bureau (EMB)
Semi-synthetic antibiotics (all form and salts of ampicillin, amoxicillin, and cloxacillin)	Department of Health (DOH)/Food and Drugs Administration (FDA)
Wheat Flour	
Iodized Salt	
Coal and lignite, whether or not pulverized, but not agglomerated	Department of Energy (DOE)/Energy Resource Development Bureau (ERDB)
Colour reproduction machines	National Bureau of Investigation (NBI) and Cash Department of the Bangko Sentral ng Pilipinas (BSP)
Chlorates, nitrates and nitric acid	Philippine National Police (PNP)/Explosives Management Branch (EMB)
All fertilizers, pesticides and other chemical products that are intended for agricultural use	Fertilizer and Pesticide Authority (FPA)

Table III.6 (cont'd)

[30] Issued under Circular No. 645 of the BSP of 3 February 2009, as amended by Circular No. 698 of 5 November 2010.

[31] The products and the registration fees or charges are listed in WTO document G/LIC/N/3/PHL/8, Annex D, 7 February 2011.

[32] This section is based mainly on WTO document G/LIC/N/3/PHL/7, 27 October 2009.

Commodity	Government agency/issuing permit/clearance
Used motor vehicle under the no-dollar import programme that is owned and for personal use by a returning resident or immigrant with a gross vehicle weight (GVW) not exceeding 3,000 kilograms (kgs.) and must be left-hand drive Used trucks excluding pick-up trucks with GVW of 2.5 – 6 tons Used buses with GVW of 6 – 12 tons Brand new/Used automotive replacement parts and brand new motorcycle replacement parts [Note: All used motorcycle parts (except engine), including brand new motorcycle replacement chassis and frame, are not allowed for importation.] Used trucks for rebuilding purposes such as truck chassis, engine, body and cabin/cowl, transmission/drivelines, axles (front and rear) or steering system Used tyres Used motor vehicle importation through donation by local government units Importation by all instrumentalities of the government	Department of Trade and Industry (DTI)/Bureau of Import Services (BIS)
Used vehicles for the use of an official of the Diplomatic Corps	Department of Foreign Affairs (DFA)
All commodities originating from the following socialist and centrally planned economy countries (Albania, Angola, Ethiopia, Laos, Libya, Mongolia, Mozambique, Myanmar, Nicaragua, and North Korea)	Philippine International Trading Corporation (PITC)
Ships High speed craft Ship's Equipment/spare Parts Spare parts of foreign flagships undergoing emergency repair	Maritime Industry Authority (MARINA)
Atomic energy materials	Philippine Nuclear Research Institute (PNRI)
Legal tender Philippine currency in excess of PHP 10,000 Bank notes, coin of precious metal other than gold and of non-precious metal not being legal tender, coin blank essentially of gold, coin blank essentially of steel, coin blank essentially of copper, coin blank essentially of nickel, coin blank essentially of zinc, coin blank essentially of tin, and coin blank essentially of aluminium	Bangko Sentral ng Pilipinas (BSP)
Rice	National Food Authority (NFA)
Vessels or watercraft Marine engines, spare parts and other marine related products	MARINA
Wildlife – live, by-products and its derivatives	DENR / Protected Areas and Wildlife Bureau (PAWB)
Chainsaws	DENR / Forest Management Bureau (FMB)
Recyclable materials containing hazardous substances (i.e., scrap metals, solid plastic materials, electronic assemblies, used oil, fly ash and used lead-acid batteries)	DENR / EMB
Chemicals under the Philippine Revised Priority Chemical List (PCL) which are subject to PCL Compliance Certificate[a]:	DENR / EMB

a Antimony pentachloride; arsenic compounds; benzene; beryllium compounds; cadmium compounds; chlorinated ethers; 1,4-chlorobenzene; chloroform; chloropicrin; chromium compounds; 1,2-dibromoethane; 0-dichlorobenzene; 1,4-dichlorobenzene; 1,2-dichloroethane; diethyl sulfate; 1,2-diphenylhydrazine; ethylene dibromide; ethylene oxide; formaldehyde; glutaraldehyde; hhxachlorobenzene; hexachloroethane; hydrazine; 3-hydroxyphenol; lead compounds; mercaptobenzothiazole (MBT); mercaptan, perchloromethyl; methyl chloride; methylenechloride; mirex; pentachlorophenol; perchloroethylene; phenic acid; phosgene; phthalic anhydride; polybrominated biphenyls; selenium; tributyltin; and vinyl chloride.

Source: WTO document G/LIC/N/3/PHL/8, 7 February 2011, and information provided by the authorities.

32. Some licences are issued for a particular shipment only, with a validity period adequate to cover the import process. Others are issued with a validity period identical to that of the period

granted on the quota held. Validity ranges from one month to one year and may be renewable upon written application. Licences are in the name of the applicant-importer and are non-transferable. Import permit/clearance/authority is issued upon compliance with the conditions/requirements imposed.

33. Different licensing procedures are in place for non-quota goods and for products subject to quotas. For non-quota goods, applications must be filed at least two weeks prior to the loading date, where there is no quantitative limit on importation of products. Licences may be granted immediately. In case of denial or disapproval of an application, the applicant is informed of the reason for disapproval and may make a written appeal for reconsideration.

34. For products subject to quotas, there are licences for non-agricultural and agricultural products. For non-agricultural products, quotas are granted on the basis of an importer's past performance in relation to historical growth in sale. For agricultural products, there are regular and special licences. Regular licences are issued annually for tariff quotas at the start of the quota year. Special licences, which may be valid for less than a year, are issued for quotas reallocated from the surrendered volumes during the quota year, additional quotas created and allocated by government and any remaining quota allocated on a first-come-first-serve basis. Processing of special licences takes about one month.

35. Licensees who use less than the quota utilization threshold (set at 80%) are penalized; 50% of their unused and unsurrendered quotas is deducted from their next quota-year allocation on the first instance; 75% on the second instance; and 100% on the third instance. The list of licensees and their corresponding allocations are published in two newspapers of national circulation.[33]

36. The rice quota was to be phased out by 2005, but the Philippines was granted a seven-year extension (until 30 June 2012) in the WTO.[34] The Inter-Agency Committee on Rice and Corn, led by the Department of Agriculture, determines rice quotas. Imports of rice are allowed to the extent of the annual shortfall in production, which substantially exceeds the Philippines' minimum access volumes committed under the WTO.[35] The National Food Authority (NFA), a state-trading enterprise, maintains the sole right to import rice (section (3)(iii) below and Chapter IV(1)(i)(a)).

(v) Contingency trade remedies

(a) Anti-dumping and countervailing measures

37. No major changes have been made to the legislative and institutional framework for anti-dumping and countervailing measure since the Philippines' last TPR. The legislative framework comprises: the Antidumping Act[36] and its Implementing Rules and Regulations[37]; Revised Rules and

[33] According to the authorities, governments and export promotion bodies of exporting countries may have access to this information.

[34] WTO documents G/MA/TAR/RS/99/Rev.1, 27 September 2006, and WT/Let/562, 8 February 2007.

[35] According to the authorities, rice imports were about 4-7 times the annual quota during 2005-10.

[36] R.A. No. 8752, 12 August 1999, effective 4 September 1999.

[37] Joint Administrative Order No. 01 (IRR of R.A. No. 8752, 3 July 2000); took effect on 10 July 2000.

Regulations that Govern the Conduct of Antidumping Investigation by the Tariff Commission (TC)[38]; and Countervailing Duty Act[39] and its Implementing Rules and Regulations.[40]

38. The anti-dumping/countervailing legislation is administered by the Department of Trade and Industry (DTI) for non-agricultural products, and the Department of Agriculture (DOA) for agricultural goods. After ensuring that applications comply with documentary requirements, they determine whether a prima facie case exists to conduct a preliminary investigation regarding provisional measures. The TC conducts the formal (final) investigations and reports its decision on whether to impose definitive anti-dumping/countervailing duties to the DTI/DA, which issues a Department Order.[41]

39. Anti-dumping/countervailing duties are effective for five years and may be extended following a further determination of their continuing need. This review may be initiated by any interested party or by the TC before the sunset date (i.e. the fifth year). If the conditions requiring the imposition of anti-dumping/countervailing duty have ceased, the TC should recommend it be lifted. The authorities indicate that this has always been the case.

40. Since its last TPR in 2005, the Philippines has initiated three anti-dumping investigations (13 cases over 1999-03)[42], with one definitive measure applied against clear float glass from Indonesia. It has not initiated any countervailing actions since 1999.

(b) Safeguard measures

41. No significant changes have been made to the legislative and institutional framework for safeguards during the period under review. The legislative framework comprises: the Safeguard Measures Act[43] and its Implementing Rules and Regulations[44]; and Rules and Regulations Governing the Conduct of Formal Investigation by the TC.[45] It provides for the imposition of general safeguards, a quantitative restriction on agricultural products, and a special safeguard on agricultural goods.[46]

42. Domestic producers of "like or directly competitive products" or producers whose collective output constitutes a major proportion of total production may file petitions for the imposition of a general safeguard.[47] The DTI/DOA must determine whether a prima facie case exists to initiate a preliminary general safeguard investigation.[48] The TC conducts formal safeguard investigations and addresses requests for the extension and re-application of safeguard measures, their reduction, modification and/or termination. Under the Safeguards Measures Act, interested parties are allowed a five-day comment period.

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[38] Tariff Commission Order No. 00-01.

[39] R.A. No. 8751, 7 August 1999; took effect on 31 August 1999.

[40] Joint Administrative Order No. 02 (IRR of R.A. No. 8751, 18 September 2000); took effect on 25 September 2000.

[41] This is described in WTO (2005).

[42] Related to clear float glass (Indonesia), sodium tripolyphosphates (China), and mosquito coil (Indonesia).

[43] R.A. No. 8800, 19 July 2000.

[44] Joint Administrative Order No. 03 (IRR of R.A. No. 8800, 4 October 2000).

[45] Tariff Commission Order No. 00-02.

[46] This is described in WTO (2005).

[47] The President, the House or Senate Committee on Agriculture, the House or Senate Committee on Trade and Commerce, and the DTI or DOA may also file petitions.

[48] The procedures for preliminary and definitive general safeguard measures are described in WTO (2005).

43. For agricultural products, the authorities may apply a quantitative restriction where increasing the tariff is considered insufficient to redress or prevent serious injury. However, this option has not been used as no general safeguard has been imposed on agricultural goods since 1999.

44. A special safeguard may be imposed on specific agricultural goods marked in the Philippines Schedule when the imported volume exceeds its trigger level or when the actual c.i.f. price falls below a trigger price level.[49] A petition to impose a special safeguard measure may be filed with the DOA by any interested party; or the DOA may self-initiate the imposition of a special safeguard measure. The DOA must verify whether, in a given year, the commodity's cumulative imports have exceeded its trigger volume or (not concurrently), whether its c.i.f. price is below its trigger price.[50] Special safeguards may be maintained for one year and may not be used concurrently with a general safeguard measure. During the period under review, the Philippines imposed a special safeguard on frozen chicken (Chapter IV(1)(i)).[51]

45. Since 2001, the Philippines has initiated nine safeguard cases, imposing seven definitive measures against all countries (except for products originating from developing countries and separate customs territories with *de minimis* importation as determined by the DTI) (Table III.7). Once a safeguard has been terminated, the TC evaluates the effectiveness of the actions taken by the domestic industry to adjust to import competition. Since no safeguard actions have been terminated, to date no such evaluations have been made.

(c) Other measures

46. The President may impose an additional *ad valorem* duty not exceeding 100% on goods partly or wholly originating in or transported in a vessel of any country that discriminates against Philippine exports.[52] If discrimination persists or increases after the duty is imposed, the President may prohibit the importation of goods originating in or transported in vessels of that country, if in the national interest. This measure has not been used during the period under review.

Table III.7
Definitive safeguard measures in force, 2011

Product	Initiation of Investigation	Provisional duty	Definitive duty	Status
Ceramics floor and wall tiles	28 May 2001	9 January 2002 BOC CMC No. 4-2002	23 May 2002 BOC CMC No. 168-2002	Safeguard duty extended for three years on 12 January 2005 Extended for another 4 years (final extension, on 14/02/ 2008)

Table III.7 (cont'd)

[49] See WTO document G/SG/N/1/PHL/2, 9 July 2001 for goods eligible for special safeguards.

[50] Injury determination is not an element in the imposition of special safeguard measures. If a special safeguard is to be imposed because of an increase in import volumes, the duty may not exceed one third of the product's out-of-quota tariff rate. However, if the safeguard is based on price, the duty imposed is based on the difference between the c.i.f price and the trigger price.

[51] In the wake of a series of typhoons in 2009, the DOA temporarily lifted the special safeguard for 5,000 tonnes of imported chicken under HS 0207.1492.

[52] The authorities define "discrimination" as the unequal treatment of Philippine trade *vis-à-vis* that with other countries in the application of laws, administrative regulations and practices, customs procedures, duties and charges, and the classification of goods.

Product	Initiation of Investigation	Provisional duty	Definitive duty	Status
Glass mirror	14 April 2003	13 October 2003 BOC CMO No. 24-2003	7 June 2004 BOC CMO No. 16-2004	Safeguard duty extended for three years on 08/12/2006 During the second year of the extension period, DTI Order 01/09/2008 suspended imposition of duty until AGC resumes operation
Figured glass	14 April 2003	13 October 2003 BOC CMO No. 24-2003	7 June 2004 BOC CMO No. 16-2004	Safeguard duty extended for three years on 08/12/2006 During the second year of the extension period, DTI Order of 10/12/2007 suspended imposition of duty for figured glass until AGC resumes operation DTI Order of 13/01/2010 extended for another 4 years (final extension) but the imposition of the measure is still suspended until AGC resumes operation. Lifting of the suspension will be based on the results of TC's monitoring review
Clear float glass	30 April 2003	13 October 2003 BOC CMO No. 24-2003	7 June 2004 BOC CMO No. 16-2004	Safeguard duty extended for three years on 08/12/2006 Extended for another 4 years (final extension) on 22/02/2010
Tinted float Glass	30 April 2003	13 October 2003 BOC CMO No. 24-2003	7 June , 2004 BOC CMO No. 16-2004	Safeguard duty extended for three years on 08/12/2006 Extended for another 4 years (final extension) on 22/02/2010
Steel angle bars	11 August 2008	18 May 2009 BOC CMO No. 21-2009	30 September 2009 BOC CMO No. 42-2009	n.a.
Testliner board	16 November 2009	16 September 2010 BOC-CMC No. 177-2010	3 August 2011 BOC-CMO 29-2011	n.a.

n.a. Not applicable.

Source: Information provided by the authorities.

(vi) Standards and other technical requirements

(a) Standards, technical requirements, and certification

47. The Bureau of Product Standards (BPS), a governmental body under the DTI, is responsible for developing and implementing Philippine National Standards (PNSs), and is the WTO-TBT national inquiry point.[53] BPS has been actively involved in establishing mutual recognition agreements within APEC and ASEAN, and at the bilateral level. As a member of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), BPS participates in the development of international standards.

48. PNSs are based on international standards whenever appropriate. However, not all are aligned with international standards, due mainly to "long standing business practices", climatic conditions, no specific international standards, and the need for higher requirements than international

[53] At end October 2011, the Philippines had made more than 150 notifications to the WTO Committee on Technical Barriers to Trade.

standards. At end-October 2011, there were 7,547 PNSs; the share aligned with international standards had increased to 78.5%, from 75.7% in October 2004.[54]

49. PNSs are voluntary, unless declared mandatory through Department Administrative Orders (DAO). At end-October 2011, there were 85 mandatory PNSs (i.e. technical regulations).[55] Importers of products covered by mandatory PNSs are issued an Import Commodity Clearance (ICC) once the BPS has determined that imports meet the relevant Philippine national standard. Nevertheless, imports, including those certified abroad as meeting international standards, may be subject to sample testing by BPS; non-compliant imports are denied entry. BPS also conducts random checks at retail outlets to ensure that imports consistently meet Philippine standards.

50. BPS implements the Philippine Standard (PS) Quality Scheme, and the Safety Certification Scheme and the ICC Certification Scheme. Under the PS scheme, the BPS issues a licence allowing a company to affix the PS Quality and/or Safety Mark to its products, after inspections to determine that the products meet the relevant PNS.[56] The BPS enforces/implements a maintenance scheme for its PS Quality and/or Safety Mark licensees by regularly monitoring and conducting annual surveillance audits of licensed products. Foreign companies may apply for PS Quality and Safety Certification through a BPS recognized counterpart national standards body or an inspection and/or certification body. At end-October 2011, 1,045 firms had been awarded the PS Mark, of which 95 were from Indonesia, Japan, Malaysia, and others.

51. In 2006, the Philippine Accreditation Office (PAO) was established as a separate body from BPS to handle the accreditation of certification bodies, inspection bodies, testing and calibration laboratories, and medical laboratories.[57] The PAO replaced the BPS Accreditation Scheme (BAS) and Laboratory Accreditation Scheme (BPS-LAS) as the national accreditation body. It operates under the supervision of the DTI Undersecretary for Consumer Welfare and Trade Regulation Group. At end-October 2011, the PAO had accredited 5 certification bodies for Quality Management System, Environmental Management System, and Hazardous Analysis Critical Control Point; 148 testing laboratories; 20 calibration laboratories; 4 medical laboratories; and 2 inspection bodies.[58]

(b) Sanitary and phytosanitary measures

52. The Department of Agriculture (DA) remains the national enquiry point to the WTO.[59] The Philippines has made some 200 notifications to the WTO Committee on Sanitary and Phytosanitary Measures, covering an array of measures, including imposition of temporary import

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[54] For a description on how standards are set and revised, see WTO (2005).

[55] Mandatory standards apply, *inter alia*, to: automotive and motorcycle batteries, electrical wires and cables, fire extinguishers, household appliances, lighting fixtures, matches, mechanical equipment, Portland cement, pneumatic tyres, and sanitary ware. These products are subject to local inspection to assess compliance.

[56] As of October 2011, 85 products were covered by the PS Mark, including air conditioners, batteries (automotive and motorcycle), brake fluids, cement, circular lamps, cooking ranges, electric fans, fire extinguishers, flat irons, fuses, LPG cylinders, lamps (circular/fluorescent), lamp holders, and matches.

[57] Department Administrative Order No. 04 of 2006.

[58] PAO is a signatory member of: the Pacific Accreditation Cooperation Multilateral Recognition Arrangement (PAC MLA) for Quality Management Systems and Environmental Management Systems; International Accreditation Forum Multilateral Recognition Arrangement (IAF MLA) for Quality Management Systems and Environmental Management Systems; Asia Pacific Laboratory Accreditation Cooperation Mutual Recognition Arrangement (APLAC MRA) for Testing and Calibration; and International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA) for Testing and Calibration (DTI online information. Viewed at: http://www.dti.gov.ph/index.php?p=609).

[59] WTO document G/SPS/ENQ/26, 11 March 2011.

restrictions, on grounds of food safety, animal health, and plant protection, and their termination.[60] The Philippines is member of the Codex Alimentarius Commission, the International Plant Convention (IPPC), and the World Organization for Animal Health (OIE).[61]

53. Imports of agricultural products, live animals, plants, fish, their products and by-products must be accompanied by a sanitary, phytosanitary or health certificate from the country of origin, and are subject to inspection upon arrival.[62] An additional import permit is required for meat and meat products, fish and fish products, and for all agricultural products. The Bureau of Animal Industry (BAI), the Bureau of Fisheries and Aquatic Resources (BFAR), and the Bureau of Plant Industry (BPI), all under the DA, issue these permits, generally taking into account only SPS regulations. However, in some cases domestic supply is also considered. For example, fish products may be imported only when certified by the DA as necessary to attain food security. Packaged food imports may be confiscated unless registered with the Food and Drug Administration (FDA).[63]

54. All meat and meat products require a Foreign Meat Inspection Certificate signed by an authorized veterinarian. Such imports are also subject to inspection and require a Veterinary Quarantine Clearance issued by the BAI prior to shipment. Imports of meat must originate in a foreign meat establishment recognized as an exporting entity by the Veterinary Administration and accredited in the Philippines.[64] The importation of live animals and meat products is allowed as long as SPS requirements are complied with. The Philippines prohibits imports from certain countries on grounds of Avian Influenza[65], Foot and Mouth Disease[66], and Bovine Spongiform Encephalopathy.[67]

55. Wildlife (live, by-products, derivatives and/or stuffed products) products are under import restrictions/prohibitions.[68] Each shipment requires a permit or licence issued by the Protected Areas and Wildlife Bureau (PAWB) or the Department of Environment and Natural Resources (DENR) Regional Offices. Wildlife imports are also subject to issuance of veterinary (for animal products) and/or phytosanitary (for plant products) certificates from the BAI and the BPI.

56. Imports of fish products are highly regulated; if allowed, each shipment requires a permit or licence issued by the BFAR. Fish imports are subject to a physical examination and microbiological analysis upon arrival. If deemed safe, a Fishery Sanitary and Phytosanitary Certificate is issued to release imports.[69] Imports of live exotic species and live shrimp and prawn are restricted on the basis of an import risk analysis.[70] In 2007, the import restriction on pacific white shrimp was lifted from

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[60] WTO document G/SPS/N/PHL/series.

[61] WTO document G/SPS/GEN/49/Rev.10, 4 March 2010.

[62] Administrative Order No.18 of 2000.

[63] WTO (2005).

[64] WTO (2005).

[65] Afghanistan; Albania; Austria; Azerbaijan; Bangladesh; Benin; Bosnia and Herzegovina; Bulgaria; Cambodia; Canada (Manitoba); China (P.R.); Chinese Taipei; Côte d'Ivoire; Croatia; Czech Republic; Denmark; Egypt; France; Georgia; Germany; Greece; Haiti; Hong Kong, China; Hungary; India; Indonesia; Iran; Iraq; Israel; Japan; Kazakhstan; Korea (Rep. of); Laos PDR; Lebanon; Liechtenstein; Mongolia; Myanmar; Nepal; Niger; Pakistan; Paraguay; Poland; Portugal; Romania; Russian Fed.; Kingdom of Saudi Arabia; Serbia; Slovakia; Slovenia; Spain; Sweden; Switzerland; Thailand; Togo; Turkey; Ukraine; United Kingdom; and Viet Nam.

[66] Bulgaria; China (P.R.); Egypt; Hong Kong, China; Chinese Taipei; Korea (Rep. of); and Lebanon.

[67] Liechtenstein; Portugal; Spain; Switzerland; and United Kingdom.

[68] Department of Environment and Natural Resources Administrative Order No. 55 of 2004.

[69] Fisheries Administrative Order No. 195 of 1999.

[70] Fisheries Administrative Order No. 207 of 2001, and Order No. 221 of 2003.

certified breeding facilities; and, in 2009, the import restriction on broodstock and post-larvae of specific pathogen free/specific pathogen resistant black tiger shrimp was also removed.[71]

57. Plants and plant products to be used as food, feed or processing may be imported only after approval by the BPI; requirements vary by product. Some products require only an SPS certificate while others are also subject to inspection and verification upon arrival.

58. All imported plants and plant products of GM origin must be authorized by the BPI and must be accompanied by a certificate of GMO content issued by an authorized body from the country of origin or by an accredited laboratory.[72] The BPI issues an Approval Registry for plants and plant products that have undergone an approval process. These plants require only an import permit and/or phytosanitary certificate for release from Customs. The BPI randomly checks imported plant products to assess GM content, particularly for commodities known to be genetically modified overseas.

59. Prohibited/restricted fruits, vegetables, plants, and plant products are listed in Tables AIII.4 and AIII.5.

(c) Labelling and marking requirements

60. The Philippines continues to prescribe minimum labelling requirements for all imported and locally manufactured products as specified in the Consumer Act.[73] If an imported good is covered by mandatory certification of the BPS and certified to have passed the standard prescribed by the BPS, the label must contain the Import Commodity Clearance (ICC) Mark or PS Quality/Safety Mark if the manufacturer of the product is a PS license holder . Domestically produced goods, regulated by BPS, must have the PS Quality/Safety Mark. Articles that cannot be marked prior to shipment, such as crude substances, and products imported for private use and not for resale in their imported form, are exempt from marking requirements.[74] In 2008, the DTI issued mandatory parallel translation in English or Filipino language on the product label or packaging.[75]

(vii) Government procurement

61. No major changes have been made to the government procurement regime in the Philippines since its previous TPR. The regime basically comprises: the Government Procurement Reform Act (GPRA)[76], its revised implementing rules and regulations, and related subordinate legislation. It regulates all government procurement, including purchases by government-owned corporations, of goods, services, infrastructure projects, and consulting services, regardless of the source of funds, whether local or foreign. Government procurement represents a major economic activity, amounting

[71] Fisheries Administrative Order No. 230 of 2009.

[72] WTO document G/SPS/N/PHL/41, 22 April 2002.

[73] These include the registered trade or brand name, the registered trade mark, the registered business name, the address of the manufacturer, importer or re-packer in the Philippines, the general make or active ingredients, the net quantity of contents, and the country of manufacture, if imported.

[74] WTO (2005).

[75] Department Administrative Order No. 01 of 2008.

[76] The GPRA (R.A. No. 9184 of 10 January 2003) replaced over 100 laws, rules, and regulations, with a single unified regime.

to PHP 121 billion per year on average during 2004-07, i.e. around 3% of GDP and 15% of the total budget.[77]

62. The Government Procurement Policy Board (GPPB) handles all procurement matters affecting the national interest. All government agencies are mandated to procure their common-use supplies from the Procurement Service-Department of Budget and Management (PS-DBM). The GPRA has anti-corruption provisions, such as penalties and sanctions (administrative, civil, and criminal), with a minimum penalty of six years in prison. Nonetheless, corruption, inefficiency and disorganization still exists and, according to one estimate, an average of 20-30% of every contract goes to leakages, or about PHP 30 billion annually.[78] As a result, a public awareness campaign and a professionalization programme are being implemented.[79] Moreover, the Procurement Transparency Board was established in September 2007 to evaluate, comment on, record, and monitor contracts entered into by the various procuring entities (e.g. national government agencies, government-owned and/or controlled corporations (GOCCs), government financial institutions, state-universities and colleges, and local government units) involving an amount of PHP 100 million and above.[80] Procurement opportunities, results thereof, and other related information must be posted on the Philippine Government Electronic Procurement System (PhilGEPS) bulletin board.

63. Each procuring entity must establish a single Bids and Awards Committee (BAC).[81] Prior to issuing an invitation to bid, the BAC must hold a pre-procurement conference; however, this is optional for contracts below PHP 2 million for goods, PHP 1 million for consulting services, and PHP 5 million for infrastructure projects. The aim of the pre-procurement conference is to assess the readiness of the procuring entity to procure, including the determination of availability of funds and compliance of the relevant documents with the GPRA.[82]

64. The GPRA incorporates most international procurement practices, including competitive bidding as a default mode, the mandatory use of standard bidding documents, as well as an electronic procurement system (since 2001), which has enhanced transparency/efficiency and reduced costs. Nevertheless, some features of the GPRA have been criticized[83]: (i) imposition of an approved budget for the contract (ABC), which sets a price bid ceiling and limits foreign-funded contracts[84]; (ii) absence of an independent complaints review body; and (iii) eligibility screening, which has contributed to the low number of competing bidders (an average of three per contract).

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[77] World Bank (2008).

[78] World Bank (2008).

[79] For example, the certification of procurement professionals by the Civil Service Commission. In 2007, a Sub-Working Group on Procurement was established under the auspices of the Philippine Development Forum Working Group on Governance and Anti-Corruption.

[80] Executive Order No. 662.

[81] The BAC advertises and/or posts the invitation to bid, conducts pre-procurement and pre-bid conferences, determines the eligibility of prospective bidders, receives and evaluates bids, undertakes post-qualification proceedings, and recommends the award of contracts to the head of the procuring entity. It may also recommend the use of alternative procurement methods.

[82] See WTO (2005).

[83] World Bank (2008).

[84] Any bids that are above the ABC are automatically rejected. The authorities' rationale for this rule is that it has helped contain the incidence of corrupt and collusive activities. However, it limits international bidding since international firms face higher costs than local ones and ABC does not always take this into account.

65. Competitive bidding is the default method of procurement; alternative methods may be used only in highly exceptional cases and upon approval by the procuring entities.[85] There is no threshold for public/competitive bidding. The alternative procurement methods are: limited source bidding (selective bidding); direct contracting (single-source procurement); repeat order; and negotiated procurement (e.g. shopping and low-value procurement[86]). In all instances, the procuring entity must ensure that the "most advantageous price" for the Government is obtained. According to the authorities, the bid with the lowest cost to the Government is deemed to be the bid with the "most advantageous price".

66. The Philippines' procurement regime allows for the participation of foreigners. For procurement of goods, they may be eligible: (i) when provided for under any Treaty or International or Executive Agreement[87]; (ii) when the foreign supplier is a citizen, corporation or association of a country included in Annex "I" of the laws or regulations issued by the GPPB granting reciprocal rights or privileges; and (iii) when the goods sought are not available from local suppliers. For infrastructure projects, foreigners may be eligible to participate when provided for under any Treaty or International or Executive Agreement.[88] For consulting services, foreigners may be hired if Filipino consultants do not have the expertise to render the service required, as determined by the Head of the procuring entity.

67. Nevertheless, foreigners' participation in the procurement of goods remains restricted, and seems to depend upon the source of the funds for the project and the domestic availability of the procured goods and services. The Constitution provides for a strong preference to procure domestically. It requires the State to give preference to qualified Filipinos (section 10), and to promote the preferential use of Filipino labour, domestic materials, and locally produced goods, as well as to adopt measures that help make them competitive (section 12). For example, the Government continues to procure official uniforms containing Philippine tropical fabrics as well as footwear and leather goods manufactured in the Philippines as a means to support local industries (Chapter IV(2)). For foreign-assisted projects, overseas firms may bid, but there is a 15% price preference for domestic suppliers.[89] For other procurement projects, such as those funded domestically, only firms with at least 60% or 75% Filipino ownership or interest, depending on the type of procurement, may participate. However, if the goods are not available locally, or where there is a need to prevent unfair competition, foreign suppliers may be invited to participate.[90] In addition, in the interest of efficiency and timely delivery of goods, the procuring entity may give preference to the purchase of domestically produced and manufactured goods, supplies, and materials that satisfy the specified or desired quality.

68. The Philippines is neither a signatory nor an observer to the WTO Plurilateral Agreement on Government Procurement.

[85] These methods are described in WTO (2005), Table III.5.

[86] Shopping can be used in case of unforeseen contingency and in case of procurement of common-use supplies not available from PS-DBM. The threshold for shopping and small value procurement is PHP 500,000.

[87] Section 4 of R.A. No. 9184 and its implementing rules and regulations.

[88] Section 4 of R.A. No. 9184 and its implementing rules and regulations.

[89] The 15% price preference for domestic suppliers applies only when the procurement rules identified for the foreign-assisted project allow the application of such preference.

[90] The foreign firm must originate in a country that gives the Philippines the same privileges.

(viii) Local-content requirements

69. In 2007, the Philippines introduced mandatory incorporation of locally sourced biofuel into gasoline and diesel (Chapter IV(1)(i)).

70. In 2000, the Philippines abolished the requirement for soap and detergent manufacturers to use at least 60% of locally produced input (cocochemical surfactant).[91]

71. In 2003, the Philippines eliminated the following local content and foreign exchange balancing requirements: Car Development Programme, Commercial Vehicle Development Programme, and Motorcycle Development Programme.[92]

72. Executive Order No. 776 of 1982 allows the importation of semi-synthetic antibiotics only in quantities and types not produced in the Philippines. It is no longer implemented, since the local company Chemfields was closed in the mid-1990s; there is no local manufacturer of semi-synthetic antibiotics.[93]

(ix) Other measures

73. The Philippine International Trading Corporation (PITC) administers the Philippines' Countertrade Programme.[94] From its inception in 1989 until 2010, the PITC administered countertrade transactions valued at US$436.5 million (including debt-for-goods arrangements). The key beneficiaries were exports (e.g. agriculture products, metals, fertilizers, rubber, coconut-based products, handicraft, and garments) and services (e.g. engineering, information technology, accounting, legal, project management, and public relations).[95]

74. On 12 April 2010, the Food Terminal Incorporated, under the NFA, was authorized to include pork in its commodity coverage of basic food items, to stabilize its supply and prices through, *inter alia*, limiting pork imports to 5,000 tonnes.[96]

75. The Philippines does not apply any sanctions other than those adopted by the United Nations Security Council, or regional organizations of which it is member. The authorities indicate that no agreements have ever been concluded with foreign governments or foreign firms to restrict exports to the Philippines. It does not maintain any compulsory reserve stocks, and has never taken any measures for balance-of-payment purposes.

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[91] The use of hard surfactants is prohibited due to environmental concerns but soft surfactants that are not necessarily coconut-based are allowed (R.A. No. 8970 of 2000).

[92] WTO documents G/TRIMS/N/1/PHL/1, 25 April 1995 and G/C/38, 24 October 2003.

[93] All imports of semi-synthetic antibiotics are, *inter alia*, required to pass the National Single Window prior to FDA recommendations for release at the port of entry, subject to the BOC regulations.

[94] Executive Order No. 120 of 1993. The programme involves the purchase or importation by the Government of foreign capital equipment, machinery, products, technology, supplies, and services worth at least US$1 million.

[95] PITC, a government-owned and controlled corporation (GOCC), was created in 1973 under Presidential Decree No. 252 to trade with socialist and other centrally-planned economy countries. On 25 January 1977, PITC was given a broader mandate to be the prime mover in the expansion of Philippine trade worldwide. Since then, it has also been involved, *inter alia*, in exports, EXIM services, countertrade/special trading arrangements, bulk importation, procurement for government institutions, marketing, and dealerships.

[96] All imports are eligible for application of the Tax Expenditure Subsidy Scheme. Outstanding volumes not allocated under the minimum access volume pertaining to pork are distributed to the private sector on the basis of the Philippines' minimum access commitments (Executive Order No. 875).

(2) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation

76. Registration and documentation requirements for exporters are similar to those for importers (section (1)(i) above).[97] Regulated exports require export clearance (section (iv)(a) below); certificates of origin are required for exports under preferential arrangements; and other permits and licences may be required for exports that are regulated or prohibited.

(ii) Export taxes

77. Only plantation (non-native) logs are subject to an export tax (20% of f.o.b.).[98] The authorities indicate that the export tax on non-native logs is imposed to ensure an adequate, stable, and sustainable supply of domestic timber. However, export taxes are distorting and implicitly subsidize downstream processors by providing logs at below world prices, thereby encouraging domestic value added, which may be an inefficient use of resources if this is reliant on the subsidy. The authorities indicate that revenue from the export tax is minimal.

(iii) Minimum export prices

78. Minimum export prices continue to apply for rice and corn; according to the authorities, they are generally based on world prices. Minimum export prices could have similar economic effects to export taxes.

(iv) Export prohibitions, restrictions, and licensing

(a) Export prohibitions and restrictions

79. Prohibited and regulated exports include endangered wildlife species and live animals (Table AIII.6). Textiles and clothing are no longer regulated following the removal of export quotas in 2005. The authorities indicate that exports of naturally growing timber are also banned for environmental reasons. Exports are prohibited or regulated on grounds of national interest, security, and public health, and to fulfil the requirements of international agreements and conventions (e.g. CITES). Regulated exports require prior export clearance from the relevant government agencies.

80. Exports of rice, corn, and sugar remain restricted. In order to ensure food security and price stability, these commodities may be exported only if there is a surplus, according to the authorities. Fish exports are also regulated on grounds of domestic food security. Exports, when allowed, require a permit issued by the DOA. Permits are granted on a per-shipment basis. A sanitary certificate must also be issued on a per-shipment basis. In addition, only fish products that have been processed in fish-processing establishments certified by the BFAR as compliant with the Sanitation Standard Operating Procedures and Hazard Analysis and Critical Control Point system, may be exported.

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[97] Exporters are not required to be registered with the BOC but with other accrediting offices such as Philexport and DTI.

[98] The regulatory agency is the DENR, and implementation is by the Department of Finance. Under Section I of Executive Order No. 26 of 1986.

(b) Export quotas

81. The President may, when recommended by NEDA, impose an export quota on any good, taking into account factors such as the domestic demand, the world price, and the preferential treatment granted to Philippine exports by foreign governments.[99]

82. Exports of sugar are subject to bilateral restraints, for example, the Philippines is allocated a sugar export quota by the United States.

(v) Export operations of state enterprises

83. Rice and corn exports remain controlled by the NFA. The private sector is allowed to export rice and corn only for market testing and research purposes.

(vi) Export support

(a) Export subsidies and assistance

84. According to the authorities, no export subsidies were provided during the period under review.

85. Under Executive Order No. 554 of 2006, fees and charges were eliminated on export clearances, inspections, permits, certificates and other documentation requirements, except those imposed by specific laws or arrangements.[100] It is still being implemented with the aim of improving competitiveness.

86. In response to the global economic crisis of late 2007, in 2008, the Philippine Government allotted a portion of its Economic Stimulus Fund to fund training assistance for laid-off workers and provided financial assistance to exporters and small and medium-sized enterprises (SMEs). The Fund was eliminated on 31 December 2010.[101]

(b) Duty and tax concessions

87. The Motor Vehicle Development Programme (MVPD), under Executive Order No. 156 of 2002, provided, *inter alia*, for the removal by 30 June 2003 of export-balancing and local-content requirements.[102] In June 2010, under Executive Order No. 877-A, the MVDP was revised, *inter alia*, to promote domestic automobile production, spur exports, and make the Philippines a regional hub for auto parts and components. Some of the key features of the new MVPD are: (i) favours local completely knocked-down (CKD) auto parts and components against imports[103]; (ii) tightens the rules

[99] Philippine Tariff Commission (2001), Volume I - Section 515. However, according to the authorities, Section 515 does not apply.

[100] Excluded from the scope of Executive Order No. 554 are, for example, export fees and charges resulting from import quotas (e.g. sugar) in other countries; items banned for exports; exports of logs, copper, and coffee; and those covered by international agreements to which the Philippines is a signatory.

[101] Business support organizations, local government units, and industry associations were the main channels of this part of the Fund.

[102] The MVPD under Executive Order No. 156 is explained in WTO (2005), pp 89-90.

[103] Various incentives are provided to encourage local assembly, such as low tariffs on components. A 1% tariff applies to CKD kits imported by MVPD-registered participants, excluding CKDs of alternative fuel vehicles, which are duty-free. In addition, vehicle imports are subject to 12% VAT, and progressive excise taxes based on the vehicle price.

on imports of used engines, which in the past were freely importable; (iii) continues the prohibition on imports of used motor vehicles; (iv) takes advantage of regional trade agreements[104]; (v) creates the Motor Vehicle Industry Council[105]; and (vi) establishes an industry fund to promote R&D and upgrading of equipment and facilities. The new MVPD will enter into force after adoption of the implementing rules and regulations.

88. The Export Development Act (EDA) still provides for corporate tax credits for annual increases in export revenues.[106] Nonetheless, according to the authorities, it has never been implemented due to administrative and budgetary constraints. Currently, an amendment to the EDA is being considered. Under the Omnibus Investment Code (OIC), which is administered by the Board of Investments (BOI), tax incentives are available to producers of non-traditional exports and for activities that support exporters.

Drawbacks

89. Duties paid on imported materials used to manufacture or process exports may be fully refunded following exportation. Exports must take place within one year of importing the materials, and the BOI must certify upon importation that locally produced competitive substitutes were unavailable.[107]

Customs Bonded Manufacturing Warehouse (CBMW) Scheme and bonded smelting warehouses

90. The CBMW Scheme allows for the tax-free and duty-free importation of raw materials used to manufacture goods exported within one year.[108] The importer must post a re-export bond equivalent to the assessed taxes and duties. A similar scheme exists for ores and crude metals, which, if used to manufacture exports, may be imported into a bonded smelting warehouse free of duty.[109]

Export processing zones (EPZs)

91. The Philippine Economic Zone Authority (PEZA) has jurisdiction over all economic zones proclaimed under its mandate. Enterprises need to be exporters of manufactured products or of IT-enabled services, and must physically locate their activity inside PEZA economic zones. 100% foreign ownership is allowed. Incentives include: income tax holiday (ITH) or exemption from corporate income tax for four years, renewable for a maximum of eight years; after the ITH period, payment of the special 5% tax on gross income, in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, spare parts, supplies, and raw materials; domestic sales allowance of up to 30% of total sales; exemption from export taxes, wharfage dues, imposts, and fees; zero VAT rate on local purchases, including telecommunications, electricity, and water; exemption from payment of local government fees (e.g. Mayor's permit, business permit, health certificate fee, sanitary inspection fee, and garbage fee); simplified import and

[104] Japan and ASEAN nations benefit from duty-free tariffs on CKDs.
[105] The Council consists of nine government representatives and four industry representatives.
[106] The tax credit is 2.5% for a 5% increase in annual export revenue, 5% for a 10% increase, 7.5% for a 15% increase, and 10% for increases above 15%. Enterprises earning at least 50% of their normal operating revenue from exports are entitled to incentives from the Board of Investments and the Philippine Economic Zone Authority.
[107] Philippine Tariff Commission (2001), Volume I - Section 106.
[108] Philippine Tariff Commission (2003), Volume II - Section 2002.
[109] Philippine Tariff Commission (2003), Volume II - Section 2005.

export procedures; employment of foreign nationals; and special visas for foreign investors and immediate family members.

(vii) Export performance requirements

92. Tax incentives provided by the BOI under the Omnibus Investment Code (OIC) to non-traditional exporters are contingent on export performance. The export performance requirement is higher for foreign-owned enterprises (70% of production) than for Philippine-owned companies (50%). According to the Export Development Act (EDA), enterprises generating at least 50% of normal operating revenue from exports are entitled to incentives under the EDA.

(viii) Export finance, insurance, and guarantees

93. The Trade and Investment Development Corporation of the Philippines (TIDCORP, also known as the Philippine Export-Import Credit Agency, or PhilEXIM), is the government export-credit agency attached to the Department of Finance, and under the supervision of the BSP (central bank). It aims to stimulate exports of goods and services by facilitating access to credit, especially for SMEs, and to boost employment. TIDCORP provides exporters with loans, guarantees, insurance, and technical cooperation, and pre-shipment export finance guarantees (PEFG) to SMEs.[110] This has improved access to credit by providing an alternative to the traditional collateral required by banks. The Corporation also provides a post-shipment risk guarantee (PERG) in case exporters are not paid. TIDCORP's Term Loan Guarantee Programme (TLGP) covers medium- and short-term loans extended to SMEs for the acquisition of fixed assets and/or for use as working capital. Guarantee and credit facilities are also available to large exporters (assets above PHP 100 million).[111] TIDCORP also offers export credit insurance (ECI) to Philippine-based exporters. This is designed to allow exporters to provide credit to buyers by insuring them against non-payment by foreign customers due to commercial and political risks.

(ix) Export promotion and marketing assistance

94. The Center for International Trade Expositions and Missions (CITEM), an export promotion agency under the DTI, promotes the Philippines' products and services worldwide through trade fairs and missions and other export promotion programmes and activities held locally and abroad.[112]

95. The Bureau of Export Promotion (BETP), also an export promotion agency under the DTI, provides various assistance and services to the local exporting community. It renders frontline advisory services, conducts market information sessions, undertakes profiling of selected key exports industries, and extends support to regional offices pertinent to trade matters. In doing so, it is the lead agency for export-related business matching sessions, which could either be in the form of servicing trade inquiries or conducting trade missions. Backed by an on-line database, most of its research work is geared toward crafting special studies, country trade regulations reports, and other export development and promotion projects.

[110] This guarantee covers 90% of loans taken by SMEs to finance pre-shipment working capital.

[111] For example, TIDCORP's General Facility Programme (GFP) guarantees up to 100% of their loans to finance exports, manufacturing, and services rendered to promote exports and import-substitution industries.

[112] Other marketing assistance provided include the Catalog-Online, an exclusive virtual showroom of Philippine export products and services, and CITEM Trade Opportunities Programme (CTOP), which is a trade referral system for foreign buyers and Philippine exporters.

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Incentives

96. The Philippines has a long history of providing incentives (mainly tax) to selected activities. The main strategy has been to channel investments into sectors considered desirable for meeting key objectives, such as generating exports and employment. Thus, the incentive system attempts to direct investments into eligible priority areas, a form of selective government intervention.[113]

97. Incentives are regulated by the Omnibus Investment Code (OIC) of 1987 (as amended) with implementing rules and regulations.[114] In general, under the OIC, only enterprises that are registered with the BOI, and produce non-traditional exports or are engaged in a sector listed in the Investment Priorities Plan (IPP) are entitled to tax exemptions and to some non-tax incentives. However, even if the activity is not listed in the IPP, an enterprise may be eligible to receive incentives if it exports at least 70% of production (foreign-owned enterprises), or 50% (Filipino-owned enterprises, i.e. at least 60% domestic equity). In 2011, the IPP included: (a) "contingency list", i.e. projects and/or activities affected by the global economic crisis[115]; (b) "regular list", i.e. 9 priority investment areas[116]; (c) "export activities", i.e. manufacture of export products/services, and activities in support of exporters; (d) "mandatory list", i.e. activities that require their inclusion in the IPP as provided for under existing laws[117]; and (e) "Autonomous Region of Muslim Mindanao (ARMM) list".[118]

98. The tax incentives available under the OIC to BOI-registered firms include, *inter alia*: 4-6 year corporate tax holidays depending upon the enterprise type and project location[119]; tax credit for taxes and duties paid on raw materials, supplies, and semi-manufactured products used in the manufacture of exports; and tax credits for breeding stocks and genetic materials. BOI-registered firms located in less developed areas may be eligible to claim up to a full tax deduction for infrastructure expenditure and labour costs of hired workers. Other tax incentives are also available to regional headquarters and regional operating headquarters located in the Philippines, and under some 44 special investment incentives laws.[120]

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[113] WTO (2005).

[114] Executive Order No. 226.

[115] Projects that at least retain investments and either maintain the current number of workers, reinstate laid-off workers to equal their pre-crisis number, or increase the current number of workers. This list also covered new projects of micro and small enterprises pursuant to R.A. No. 9501. BOI (2010).

[116] These are: agriculture/agri-business and fisheries; infrastructure; manufactures; business process outsourcing; creative industries; strategic activities; green projects; disaster prevention, mitigation and recovery projects; and R&D and innovation.

[117] Revised Forestry Code (PD No. 705); Mining Act (R.A. No. 7942); Book Publishing Industry Development Act (R.A. No. 8047); Downstream Oil Industry Deregulation Act of 1998 (R.A. No. 8479); Ecological Solid Waste Management Act of 2000 (RA No. 9003); Clean Water Act of 2004 (R.A. No. 9275); Magna Carta for Disabled Persons (R.A. No. 7277); Renewable Energy Act of 2008 (R.A. No. 9513); and Tourism Act of 2009 (R.A. No. 9593).

[118] These are: export activities; agriculture/agri-business/aquaculture and fisheries; basic industries; consumer manufactures; infrastructure and services; industrial service facilities; engineering industries; energy-related activities; trade and investment enterprises located in the East ASEAN Growth Area; tourism, health and education services and facilities; and halal industry.

[119] Enterprises are classified as "pioneer", "non-pioneer" or "expanding". A pioneer enterprise introduces new technology to the Philippines, engages in agriculture, forestry or mining to pursue national goals, or produces non-conventional fuels or equipment utilizing such energy sources.

[120] See WTO (2005).

99. Over the last decade, the Government has been attempting to reform the tax incentives system by rationalizing and harmonizing over 100 investment incentives laws under one law.[121] This would list the priority areas and the incentives to be granted to investors registered with the various investment promotion agencies. According to the authorities, the proposed incentive system would be: (a) highly focused to ensure that only those economic activities in which the country has a comparative advantage are promoted; (b) efficient enough to promote both optimal allocation of resources and neutrality in terms of use of the limited resources; (c) time-bound to ensure viability of the investing firm; and (d) simple enough to administer and monitor to address revenue leakages.

100. Certain initiatives have been taken recently to promote a more convenient system of applying for registration, reporting, and receiving incentives: (i) exemption from application and registration fees for micro enterprises and 75% reduction in application and registration fees for small enterprises; (ii) reduced application fees for incentives; (iii) one-day processing of application for registration *vis-à-vis* the regular 20 working days processing time from official acceptance of the application; (iv) exemption from the 25% minimum equity requirement to finance registered projects for micro and SMEs; and (v) simplified application requirements for incentives.

(a) Non-tax incentives

101. BOI-registered enterprises investing in sectors listed in the IPP also benefit from non-tax incentives. They may employ foreign nationals in supervisory, technical or advisory positions for five years from date of registration.[122] In addition, they may import equipment on consignment for a period of ten years from their date of registration, subject to posting a re-export bond, and may operate bonded manufacturing/trading warehouses. They also benefit from simplified customs procedures to import equipment, spare parts, raw materials, and to export.[123]

Small and medium-sized enterprises (SMEs)

102. The SME sector is considered the backbone of the economy.[124] In 2011, it comprised 99.6% of all registered firms and employed three quarters of the labour force. In principle, SMEs are reserved to Philippine nationals. However, foreign participation is allowed if the enterprise uses advanced technology (as determined by the Department of Science and Technology (DOST)), directly employs at least 50 employees, and has a minimum paid-up capital of US$100,000. The Barangay Micro Business Enterprise Act of 2002, provides incentives to promote the establishment of micro business enterprises. These include income tax exemptions, exemption from the coverage of the Minimum Wage Law, access to a special credit window, and training and marketing assistance programmes. Local governments are also encouraged to reduce or exempt such enterprises from local taxes, fees, and charges.

[121] Over the last decade, Congress has been deliberating on various bills to rationalize the fiscal incentives structure, but has failed to approve final legislation for the President to sign. It is currently discussing House of Representatives Bill No. 4152, which aims to rationalize the grant and administration of fiscal incentives by, *inter alia*, providing guidelines for: tax incentive provisions for all investments promotion agencies; IPP; fiscal incentives to registered export enterprises; fiscal incentives to registered domestic enterprises; incentives to strategic projects; and streamlining the institutional structure governing tax incentives.

[122] The positions of president, general manager, and treasurer are not subject to this limitation.

[123] A one-stop import and export documentation system has been established to facilitate imports of equipment, spare parts, and raw materials, as well as exports.

[124] Micro enterprises have assets of up to PHP 3 million and employ from 1 to 9 employees; small enterprises from PHP 3 to PHP 15 million and from 10 to 99 employees; and medium enterprises from PHP 15 million to PHP 100 million and from 100 to199 employees.

103. The Small Business Corporation (SB Corporation), an agency attached to the DTI and under the supervision of the BSP, provides credit guarantees and financing facilities to support SME development. The SB Corporation provides funds either directly or through the banking system.

(ii) Competition policy and price controls

104. The Philippines does not yet have a general competition law, but instead has several laws dealing with competition (Table III.8). Several bills dealing with competition are being deliberated in the Congress. Competition has also been included in some of the Philippines' regional trade agreements; at ASEAN level, there are the Regional Guidelines on Competition Policy, and the Handbook on Competition Policy and Law for Business.[125] The ASEAN-Australia New Zealand Free Trade Agreement, in its Chapter 14, targets cooperation in the promotion of competition, economic efficiency, consumer welfare, and the curtailment of anti-competitive practices. Cooperation in competition issues is envisaged under the ASEAN-Japan Comprehensive Economic Partnership Agreement, Chapter 8 (Article 53). The Philippines-Japan Economic Partnership Agreement, Chapter 12 (Articles 135-137), provides for the promotion of competition and cooperation on promoting competition by addressing anti-competitive activities.[126]

105. On 9 June 2011, the Department of Justice was designated as the Competition Authority with the following responsibilities[127]: investigate all cases involving violations of competition laws and prosecute violators to prevent, restrain, and punish monopolization, cartels, and combinations in restraint of trade; enforce competition policies and laws to protect consumers from abusive, fraudulent, or harmful corrupt business practices; supervise competition in markets by ensuring that prohibitions and requirements of competition laws are adhered to, and to this end, call on other government agencies and/or entities for submission of reports and provision for assistance[128]; monitor and implement measures to promote transparency and accountability in markets; prepare, publish, and disseminate studies and reports on competition to inform and guide the industry and consumers; and promote international cooperation and strengthen Philippine trade relations with other countries, economies, and institutions in trade agreements.

106. The Philippine Development Plan 2011-2016 recognizes the need to enact an anti-trust/competition law to further promote competition in the economy. Nonetheless, some existing legislation would conflict with the introduction of a general competition law; for example, the imposition of price ceilings on certain goods and commodities in times of national emergencies under the Price Act would run counter to a general competition law.[129]

[125] Both documents were launched by ASEAN in August 2010.

[126] Some of these agreements also provide for capacity building and technical cooperation.

[127] Executive Order No. 45.

[128] Some of the key agencies are: the BSP; the Insurance Commission; the NFA; the Sugar Regulatory Administration; the Philippine Coconut Authority; the Board of Investments; the National Telecommunications Commission; the Land Transportation Franchising and Regulatory Board; the Civil Aeronautics Board; the Maritime Industry Authority; the Philippine Ports Authority; and the Department of Energy, the Energy Regulatory Commission.

[129] Price ceilings are applicable only in areas declared as or placed under a state of calamity, emergency, martial law, rebellion, or war, or when the privilege of the writ of habeas corpus is suspended in that area. They remain effective only for the duration of the condition that brought them about. According to the authorities, this mechanism prevents anti-competitive behaviour in times of emergencies (e.g. price manipulation) which traders may employ.

Table III.8
Laws dealing with competition, 2011

Law	Description
1987 Constitution	Prohibits anti-competitive practices; however, monopolies are not prohibited *per se*, only when public interest so requires; prohibits acts that restrain trade or unfair competition
Revised Penal Code (Article 186)	Defines and penalizes monopolies and acts that restrain trade; penalties include imprisonment and fines ranging from PHP 200 to PHP 6,000
Civil Code (RA No. 386)	Allows for the collection of damages arising from unfair competition
Corporation Code of the Philippines	Provides the rules regarding mergers and consolidations, and the acquisition of all or substantially all the assets or shares of stock of corporations.
Securities Regulation Code (RA No. 8799)	Prohibits fraud, manipulations, and insider trading; it aims to protect investors, ensure full and fair disclosure about securities, minimize if not eliminate insider trading and other fraudulent or manipulative devices and practices that create distortions; it prescribes, *inter alia*, the pre- and post-registration requirements for the issuance of securities and market participants, and identifies prohibited acts and prescribes the penalties
Price Act (RA No. 7581)	Declares that cartels, hoarding, and profiteering are illegal; it only applies only to specific goods covered by the legislation
Consumer Act (RA No. 7394)	Imposes penalties for such behaviour as deceptive, unfair and unconscionable sales practices, in both goods and credit transactions
Department of Trade and Industry, Department Administrative Order No.8	Prohibits chain distribution plans and pyramid sales schemes in the sale of consumer products
Intellectual Property Code (RA No. 8293)	Allows for civil actions and penalties arising from breaching patent and trade mark laws; penalizes copyright infringement

Source: Information provided by the authorities.

107. The Price Act allows for price ceilings to be imposed on certain goods and commodities in times of national emergency declared by President. The DTI monitors prices of commodities subject to the legislation.[130] The National Price Coordinating Council, chaired by DTI, implements the price controls, in conjunction with other government departments. The Department of Agriculture monitors prices of beef and poultry meat, rice, corn, cooking oil, fresh, dried fish and other marine products, fresh eggs, fresh and dried pork, fresh milk, fresh fruit and vegetables, root crops, sugar, coffee, fresh dairy products, fertilizer (chemical and organic), pesticides, herbicides, poultry, swine and cattle feeds, and veterinary products for poultry, swine, and cattle. The Department of Health monitors pharmaceutical prices. The Department of Environment and Natural Resources monitors prices of firewood, charcoal, plywood, plyboard, nipa shingles, and sawali. The prices of certain goods, such as cement, are regulated on grounds of public interest.

108. The National Food Authority (NFA) stabilizes paddy prices at the farm level and rice prices at the consumer level (Chapter IV(1)(i)).

[130] These include "basic necessities" (i.e. canned fish and other marine products, processed milk, coffee, laundry soap, detergent, candles, bread, and salt), and "prime commodities" (i.e. fish sauce, flour, processed and canned pork, processed and canned beef and poultry meat, noodles, vinegar, soy sauce, soap, paper, school supplies, cement, clinker, G.I. sheets, hollow blocks, construction nails, batteries, electrical supplies, light bulbs, and steel wires).

(iii) State-trading, state-owned enterprises, and privatization

109. The Philippines has notified only the NFA as a state-trading enterprise as defined in GATT Article XVII and the Understanding on the Interpretation of Article XVII.[131]

110. Presidential Proclamation No. 50 of 1986 laid down the policy to promote privatization through an orderly, coordinated, and efficient programme for the prompt disposition of the large number of non-performing assets of government financial corporations and certain government-owned or controlled corporations (GOCCs), which were found unnecessary or inappropriate for government to maintain. It also created the Committee on Privatization and the Asset Privatization Trust. Executive Order No. 323 of 2000 created an Interagency Privatization Council and a Privatization and Management Office, under the Department of Finance, to continue the privatization of government assets and corporations through the sale of assets and shares of stocks, lease, build-operate-transfer (BOT) schemes, and joint-ventures. Under R.A. No. 7886, a minimum of 10% of the sale of assets in corporate form are reserved for small local investors, to develop the domestic capital market. Assets should be sold through public auction, and negotiated sale may be pursued only in case of a failed bid process.[132] Under R.A. No. 7661, sales of assets are published in at least three newspapers of general circulation for three consecutive days.[133]

111. Since 1986, 85 GOCCs have been sold, as well as other government-owned assets, including Philippine National Oil Company-Energy Development Corporation, Petron Corporation, Philippine Shipyard Corporation, Philippine National Bank, Philippine Associated Smelting and Refining Corporation, and shares in Meralco and in the Philippine Telecommunications Investment Corporation. In 2010, government assistance to GOCCs was PHP 21 billion (PHP 7 billion in September 2004). The total deficit of GOCCs rose from PHP 19.2 billion in 2000 to PHP 71 billion in 2010, led by the NFA, Power Sector Assets and Liabilities Management (PSALM) Corporation, and National Irrigation Administration.

(iv) Intellectual property rights

(a) Overview

112. The Philippines' comprehensive legal framework on IPRs has remained basically unchanged since its last TPR. It comprises mainly the Intellectual Property (IP) Code and its implementing rules and regulations (R.A. No. 8293 of 1998), including patent, trade mark, and copyright laws. The IP Code has been amended several times, including through the Act Providing for the Protection of Layout Design (Topographies) of Integrated Circuits (R.A. No. 9150 of 2001); the Act to Provide Protection to New Plant Varieties (R.A. No. 9168 of 2002); and the Act on Universally Accessible Cheaper and Quality Medicines (R.A. No. 9502 of 2008). Utility models and industrial designs are protected under the patent law. In 2001, the Philippines' IPR legislation was reviewed by the WTO TRIPS Council.[134] On 30 March 2007, the Philippines accepted the Protocol Amending the TRIPS Agreement.[135]

[131] WTO document G/STR/N/4-7/PHL, 24 September 2002.
[132] Commission Audit Circular No. 89-296.
[133] The first publication is at least ten days prior to the scheduled biding date or date of negotiation.
[134] WTO document IP/Q-Q4/PHL/1, 18 February 2004.
[135] WTO document WT/Let/573, 4 April 2007.

113. The main institution responsible for administering and implementing the IP Code is the Intellectual Property Office (IPO).[136] The National Committee on Intellectual Property Rights (NCIPR) was established in June 2008 to strengthen both inter-agency collaboration and the enforcement of IPRs (section (g) below).

114. The IP Code does not expressly prohibit or allow parallel imports of goods and services containing any form of IPRs. Nonetheless, parallel importation of patented drugs and medicines is allowed.[137]

115. The Philippines has signed various IPR conventions and treaties (Table III.9).

Table III.9
Membership in international IPR conventions and treaties, 2011

Name	Date of membership
Paris Convention on the Protection of Industrial Property (1883)	27 September 1965
Berne Convention for the Protection of Literary and Artistic Works (1886)	1 August 1951
Convention establishing WIPO (1967)	14 July 1980
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)	25 September 1984
Budapest Treaty on the International Recognition of the Deposit of Microorganism for Purposes of Patent Procedure (1977)	21 October 1981
Patent Cooperation Treaty (1970)	17 August 2001
WIPO Copyright Treaty	4 October 2002
WIPO Performers and Phonograms Treaty	4 October 2002

Source: Information provided by the authorities.

(b) Patents

116. A patent takes effect on the date of the publication of the grant of the patent in the IPO Gazette. The term of a patent is 20 years from the filing date. A patentable invention is "any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable".[138] The law lists non-patentable inventions (e.g. discoveries, scientific theories, and mathematical methods). Drugs and medicines excluded from patent protection include the mere discovery of a new form or new property of a known substance, which does not result in the enhancement of the known efficacy of that substance, or the mere discovery of any new property or new use for a known substance or the mere use of a known process, unless such known process results in a new product that employs at least one new reactant. Also excluded from patent protection are schemes, rules, and methods of performing mental acts, playing games or doing business, and computer programs; methods for the treatment of human or animal body by surgery or therapy and

[136] The IPO has the mandate to: examine applications and issue registrations for patents and trade marks; register technology-transfer agreements; promote the use of patent information as a tool for technology development; adjudicate contested proceedings affecting intellectual property rights; and coordinate with government agencies and the private sector on the formulation and implementation of plans and policies to strengthen protection of IPRs (Section 5 of the IP Code).

[137] The limitation on patent rights applies after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention (Section 72.1 of the IP Code).

[138] An invention can be related to a product, or process, or an improvement of any of the foregoing.

diagnostic methods practiced on the human or animal body; and plant varieties or animal breeds or essentially biological process for the production of plants or animals.[139]

117. Patent owners have the right to assign, or transfer by succession the patent, to conclude licensing contracts for the patent, and to exclusively use the patented good or process.[140] However, the law places limitations on the patent rights[141], and confers prior user right.[142] Under specific circumstances, a government agency or third person authorized by the Government may exploit the invention even without agreement of the patent owner. In addition, any interested party may, upon payment of the required fee, ask for the cancellation of a patent on grounds that the invention is not patentable, that the patent does not disclose the invention in a manner sufficiently clear that it could be carried out by anyone else, and that the patent is contrary to public order or morality. The inventor or the person that commissions the work has the right to own the patent. Patents are granted using the first-to-file rule, and the right of priority is applied.[143]

118. Compulsory licensing may be granted without the patent owner's agreement on specific grounds, including: national emergency; public interest, in particular, national security, nutrition, or health; or where a judicial or administrative body has determined that the patent owner is exploiting the patent in an anti-competitive manner.[144] Adequate compensation has to be paid to the right holder according to the circumstances of each case.[145]

(c) Copyright and related rights

119. The IP Code protects literary and artistic works, which include audio-visual and cinematographic works, computer programs, derivative works, performances, sound recordings, broadcasts, and neighbouring rights.[146] These works do not require registration to be granted protection because works are protected by the sole fact of their creation.[147] However, the deposit of literary and artistic works at the National Library and/or the Library of the Supreme Court is required to complete these libraries' records.[148] The IP Code stipulates an author’s copyright or economic

[139] Section 22 of the IP Code, as amended by RA No. 9502.

[140] Section 71.2 of the IP Code.

[141] The patent owner has no right to prevent, *inter alia*, the use of a patented product, which has been put on the domestic market; the private or non-commercial use of such a product; and the use of a product for experiments or for use in the medical profession and by pharmacies.

[142] Any person, who was using the invention prior to the filing date or priority date of the application when the patent was granted has the right to continue using it.

[143] A patent application is published in the *IPO Gazette* together with the search document established by or on behalf of the IPO citing any documents that reflect prior art, after the expiration of eighteen months from the filing or priority date. After publication of the patent application, any interested party may inspect the application documents filed with the IPO and make observations concerning the patentability of the invention. The right to the patent belongs to the person who filed the application at the earliest filing date or the earliest priority date. Hence, if a person has previously applied for the same invention in another country, which affords similar privileges to Filipino citizens, the date of filing the foreign application is considered as the day of filing in the Philippines. If a patent is not granted, the applicant may appeal the decision to the Director of the Bureau of Patents. The Director's decision may be appealed to the Director-General, and his decision may be appealed to the Court of Appeals. Final appeal is to the Supreme Court (Sections 7, 51, 52, and 71.2 of the IP Code).

[144] Section 93 of the IP Code.

[145] Sections 74 and 93 of the IP Code.

[146] Sections 172.1, 173.1, 203, 204 208 and 211 of the IP Code.

[147] Section 172.2 of the IP Code.

[148] Section 191 of the IP Code.

rights.[149] The author has the ownership of copyright over the work. In case of works of joint authorship, the co-authors are the original owners of the copyright.[150] In case of work created by an author during and in the course of his employment, the copyright belongs to: the employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities, and materials of the employer; and the employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.[151] Terms of protection have not changed during the period under review; they vary according to the protected item.

120. Copyright is granted if the work was first published in the Philippines or first published in another country but published within 30 days in the Philippines, if the author is a national or if producers of audio-visual work have their headquarters or habitual residence in the Philippines.[152] Protection is granted to national performers; foreign nationals are protected only if performing in the Philippines or if their performance is incorporated in a sound recording that is protected by the IP Code or the sound is carried by a broadcast protected under the IP Code.[153] Protection for sound recordings is granted if produced by nationals and first published in the Philippines.[154] The provisions of the IP Code apply to broadcasts made by broadcasting organizations whose headquarters are situated in the Philippines, and broadcasts via transmitters situated in the Philippines, and broadcasts via transmitters situated in the Philippines.[155] National treatment is provided to performers, producers of sound recordings, and broadcasting organizations, by virtue of international conventions or other international agreements to which the Philippines is a party.

(d) Trade marks

121. A trade mark must be registered in the Philippines to be protected. A foreign trade mark owner may claim priority filing date.[156] Marks that can be registered include visible signs capable of distinguishing goods (trade marks) and services (service marks).[157] Applications for registration of a trade mark are filed with the IPO Bureau of Trademarks.[158] A collective mark may be registered if it is capable of distinguishing the origin of any other common characteristic, including the quality of goods and services of different enterprises that use the sign under the control of the registered owner of the collective mark.[159] Trade names should be registered with IPO to be protected, and business names are protected as long as they are registered with the DTI.[160]

[149] These consist of the exclusive right to carry out, authorize or prevent: reproduction of the work; dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work; first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership; rental of the original or a copy of the work; public display of the original or a copy of the work; public performance of the work; and other communication to the public of the work (Section 177 of the IP Code).

[150] In case of no agreement, the rules on co-ownership apply (Sections 178.1, 2 of the IP Code).

[151] Section 178.3 of the IP Code.

[152] Section 221 of the IP Code.

[153] Section 222 of the IP Code.

[154] Section 223 of the IP Code.

[155] Section 224 of the IP Code.

[156] Sections 122 and 131 of the IP Code.

[157] Section 121.1 of the IP Code.

[158] See WTO (2005).

[159] Section 121.2 of the IP Code.

[160] Section 165.2 of the IP Code.

122. Protection of a trade mark is granted for ten years, and registration may be renewed (indefinitely) for periods of ten years.[161] The owner of a mark has the exclusive right to prevent third parties from using identical or similar signs when such use results in confusion.[162] A mark may be transferred with or without the transfer of the business using the mark.[163] Marks, with the exception of collective marks, may also be subject to licensing contracts.[164]

123. Pre-grant opposition and post-grant cancellation proceedings are available under the IP Code. Any person who believes that he would be damaged by the registration of a mark may file an opposition within 30 days of publication of the mark in the *IPO Gazette*.[165] A petition to cancel the registration of a mark may also be filed by any person who believes that he/she will be damaged by registration of the mark. The petition to cancel may be filed within five years of registration of the mark, or at any time if the registered mark becomes generic, or has been abandoned, or if the registration was obtained fraudulently, or if the registered mark is being used to misrepresent the source of the goods or services.[166] Between 1999 and October 2011, 21,859 marks had been cancelled. All registered trade marks are published in the *IPO Gazette*.

(e) Utility models, industrial designs and layout designs

124. Registration with the IPO Bureau of Patents is necessary to protect utility models, industrial designs, and layout designs. An invention qualifies for registration as a utility model if it is new and industrially applicable[167], while an industrial design may be registered if it is new or original.[168] Layout-designs must be original in order to be registered.[169] A utility model registration expires, without possibility of renewal, at the end of seven years after the date of the filing of the application with the possibility of two renewals for five-year periods.[170] Registration of an industrial design is for five years from the filing date of the application.[171] Protection is granted to layout-designs for a non-renewable period of ten years from the date of the first commercial exploitation, anywhere in the world, or from the filing date of the application, if the layout has not been previously exploited.[172]

(f) Plant varieties

125. New plant varieties may be protected if they have been exploited in the Philippines for more than a year prior to the date of filing an application to the National Plant Variety Protection Board[173], or if they have been exploited in another country (where the application has been filed) for more than four years or, in the case of vines and trees, for more than six years prior to the filing date.[174] According to the law, a plant is not considered new if it has been in the market five years prior to the

[161] Section 122 and 131 of the IP Code.
[162] Section 147 of the IP Code.
[163] Section 149 of the IP Code.
[164] Section 150 of the IP Code.
[165] Section 134 of the IP Code.
[166] Section 151 of the IP Code.
[167] Section 109.1 of the IP Code.
[168] Section 151 of the IP Code.
[169] Section 113.2 of the IP Code, as amended by R.A. No. 9150.
[170] Section 109.3 of the IP Code.
[171] Section 118.1 of the IP Code.
[172] Section 118.5 of the IP Code, as amended by R.A. No. 9150.
[173] If an application is rejected, the Board informs the applicant; however, the Board's decision is final, and in general, the applicant has no possibility of appeal. See WTO (2005).
[174] Section 5 of R.A. No. 9168.

approval of the Act.[175] As in the case of the application for a patent, the first to file and the priority date rules apply. Trees and vines are protected for 25 years from the date of grant of the certificate while other types of plants are granted protection for 20 years.[176] Compulsory licences may be granted under specific conditions and plant variety protection may be cancelled on specific grounds. The Board has the jurisdiction to issue compulsory licences and to cancel certificates. The Board's decision to cancel a certificate may be appealed.

(g) Enforcement

126. Since its last TPR, the Philippines has made efforts to improve its enforcement of IPRs, including through the establishment, in June 2008, of the National Committee on Intellectual Property Rights (NCIPR) to coordinate the various institutions involved.[177] The NCIPR comprises the DTI as Chair, IPO as Vice-Chair, and members from: the Department of Justice, Department of the Interior and Local Government, Bureau of Customs (BOC), National Telecommunications Commission, National Bureau of Immigration (NBI), Philippine National Police (PNP), Optical Media Board (OMB), National Book Development Board, Bureau of Food and Drugs, and other agencies as determined by the Chair. In addition, international cooperation and public outreach campaigns have been organized to educate businesses, consumers, judges, prosecutors, and government officers. Specific legislation has also been passed to address copyright infringement, such as the Anti-Camcording Act.[178]

127. From 2005 to 21 September 2011, the combined enforcement operations of NBI, BOC, OMB, and PNP, under the NCIPR, resulted in the confiscation of pirated and counterfeit goods amounting to PHP 23.8 billion (PHP 3.8 billion during 1 January to 21 September 2011).[179]

128. Sanctions for infringements of IPRs are: (i) for patents, administrative and civil cases may be filed, and repetition of the offence constitutes a criminal action.[180] Upon conviction, at the discretion of the court, an infringer may be imprisoned for six months to three years and/or fined PHP 100,000 to PHP 300,000[181]; (ii) for trade marks, the courts may award damages, impose a penalty of imprisonment from two to five years, and/or a fine ranging from PHP 50,000 to PHP 200,000[182]; (iii) for copyrights, fines and imprisonment depend upon the number of times the offence is

[175] Section 5 of RA No. 9168.

[176] Holders of certificates have the right to, *inter alia*, produce and reproduce, propagate, sell, export, import, and stock plants. The holder's rights extend to: any varieties that are derived from the protected variety; varieties that are not distinct from the protected varieties; and varieties whose production requires the repeated use of the protected variety. The Act stipulates exceptions to holders' rights when the variety is used for non-commercial or experimental purposes, to breed other distinct varieties, and for use by small farmers.

[177] Executive Order No. 736, 21 June 2008.

[178] RA No. 10088 of 2010. The Anti-Camcording Act was enacted as a means to curb illegal camcording activities. It prohibits and penalizes the unauthorized use, possession and/or control of audiovisual recording devices for the unauthorized recording of cinematographic films and other audiovisual works and/or their soundtracks in an exhibition facility.

[179] Recycling was used to convert junk compact discs into everyday items, including household products, building materials, and auto parts. These methods are cost efficient and environment-friendly.

[180] Section 84 of the IP Code.

[181] Section 84 of the IP Code.

[182] Section 170 of the IP Code.

committed[183]; and (iv) for plant varieties, imprisonment for three to six years and/or fines of at least PHP 100,000 or up to three times the profit derived from the infringement are envisaged.[184]

[183] Section 217 of the IP Code.
[184] Section 56 of R.A. No. 9168.