IV. TRADE POLICIES BY SECTOR

(1) AGRICULTURE AND FISHERIES

(i) Agriculture

1. Agriculture and related-activities continue to be a key sector in the economy (Chapter I(2)). Agriculture accounted for 33% of employment in 2010 (36% in 2004).[1] The authorities reported an annual average growth rate of 2.6%.[2] The decline in employment in agriculture while output increased indicates improving productivity. However, this is still below other sectors of the economy and is probably a result of the small size of farms, which accounts for low levels of mechanisation (see below). Foreign participation in the farming sector is subject to significant barriers: there are restrictions on land ownership[3]; all farmers must be Filipino citizens[4]; and in the rice and corn sectors foreign equity participation in production, milling, processing, and trading (except retailing) is limited to 40%, except under exceptional circumstances.[5] Government policy is to be self-sufficient in the production of rice, sugar and corn and various measures are in place to achieve this.

2. Agricultural production in the Philippines is based on small family farms, which average 1.7 hectares. Although there are also large and medium-sized commercial farms, the number of small farms has increased under the Comprehensive Agrarian Reform Program (CARP), which was initiated in 1988 and is still being implemented. The CARP involves the physical distribution of agricultural land to landless farmers and farm workers as well as support services to lift the economic status of these beneficiaries.[6] The maximum award is three hectares.[7]

3. As reported in the Philippines Development Plan 2011-2016, the major challenges facing the agriculture sector include: the high cost of production inputs such as fertilizers and pesticides; inefficient supply chain and logistics systems; inadequate provision of irrigation infrastructure; a low rate of adoption of technologies (including mechanization); and limited access to formal credit and financing. The report also touches upon a variety of inappropriate policies and institutions. Among these are the weak agricultural extension services as a result of their devolution to local government units; significant financial losses resulting from government intervention in the rice sector (see below) and a corresponding lack of investment in research and development and in the commodities in which the Philippines has a comparative advantage. Progress in identifying strategic agriculture

[1] Bureau of Agricultural Statistics (2011).

[2] NEDA (2011).

[3] Foreigners (including corporations with 60% or less domestic equity) may not own farmland, but may lease it for 25 years (extendable for another 25 years) subject to area limitations.

[4] Under the Eighth Regular Foreign Investment Negative List, agriculture is among the professions reserved for Filipino citizens except in cases prescribed in law (Table AII.2).

[5] Under Presidential Decree No. 194 and its implementing guidelines, up to 100% foreign investment in the rice and corn industry may be permitted if it is deemed to be urgently needed. The foreign investor must submit a development plan to the National Food Authority (NFA), and at least 60% of the equity must be transferred to Filipino citizens over a 30-year period. NFA online information, "Important Features of P.D. 194 and the Guidelines Required in the Divestment of Foreign Equity". Viewed at: http://www.nfa.gov.ph/files/pd194-impfeat.pdf.

[6] As at December 2010, 83% of land acquisition and distribution had been completed (a total of 4.274 million hectares). Of this 56% was private agricultural land, and the remaining 44% included landed estates and government-owned lands.

[7] CARPER Law (RA 9700), Section 14. Viewed at: http://www.lawphil.net/statutes/repacts/ra2009/ra_9700_2009.html.

and fishery development zones (SAFDZs) has been slow. The Development Plan proposes a large number of goals and strategies to address these shortcomings.[8]

4. The Department of Agriculture (DOA) is responsible for agriculture in the Philippines, and the 1997 Agriculture and Fisheries Modernization Act (AFMA) (as amended by R.A. 9281) governs agricultural (and fisheries) policies.[9] Legislative developments over the review period have been the enactment of: the Organic Agriculture Act in 2010 to promote organic farming, and the Philippine Rubber Research Institute Act (2010) to develop the Philippine rubber industry, *inter alia,* through government support for research and development, seedling propagation, and the dispersal of rubber trees. The Agri-Agra Reform Credit Act (2009) requires all banking institutions (government and private) to set aside at least 25% of their total loanable funds for agriculture and fisheries credit in general, of which at least 10% for beneficiaries undertaking certain activities.[10] The Climate Change Act (2009), *inter alia*, mainstreams climate change into government policy formulation, establishes the framework strategy and programme on climate change, and creates the climate change commission. Incentives are offered under both the AFMA and the Organic Agriculture Act (see below).

5. The National Food Authority (NFA) buys rice and corn from domestic producers. It has the exclusive authority to import and export rice, although the private sector is increasingly involved (see below). When there is a shortfall in the market, the NFA may be instructed by the President (through the issuance of an executive order) to import sugar and corn to stabilize prices. It also issues export permits for corn when domestic consumption has been fulfilled. The Government, as part of efforts to trim the national budgetary deficit, has been looking at how to restructure, streamline or privatize certain activities of the NFA. As at November 2011, three bills were being considered in Congress, relating to changing is its powers, functions, and status.[11]

6. The Agro-Industry Modernization Credit and Financing Programme (AMCFP) is the Department of Agriculture's umbrella financing and credit guarantee programme for small-scale farmers and fishermen. It provides loans to finance activities within the agricultural value chain, including production, processing, trading, and marketing. The authorities indicated that interest rates are market-based to allow for the recovery of lending costs. The AMCFP is being funded from loan receivables from the Department of Agriculture's previously administered directed credit programmes. It has two modes of financing: either loan funds are sold wholesale to accredited retailers for relending to small-scale farmers and fishermen; or special time-deposits are placed in accredited cooperative banks for lending to small-scale farmers and fishermen.[12] The latter method eliminates the need for wholesalers, resulting in a lower interest rate.

7. The Philippine Crop Insurance Corporation, a government-owned and controlled corporation, provides insurance to farmers for losses resulting from natural disasters.

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[8] .NEDA (2011).

[9] Agriculture and Fisheries Modernization Act (R.A. 8435). Viewed at: http://www.da.gov.ph/n_agrilaws/ra/afma.pdf.

[10] R.A. No. 10000, the Agri-Agra Reform Credit Act (2009). Viewed at: http://www.atty.ws/2010-republic-acts/?p=8.

[11] Congress online information. Viewed at: http://congress.gov.ph/download/index.php?d=billstext. The respective House Bills are numbered 160, 1528 and 4284.

[12] Accredited retailers include rural and cooperative banks, farmer cooperatives and organizations, non-government organizations (NGOs), and people's organizations.

8. The Philippines ranks in the top ten in the world for producers of rice, bananas, and coconuts, and is the biggest world's producer of pineapples.[13] Crops account for 65% of the total value of agricultural production and livestock and poultry for 35%; paddy, pigs, and bananas are the most significant in value terms (Table IV.1).

Table IV.1
Agricultural production, 2010

Product	Value of production (PHP million, current prices)	% of total value of production
Crops, of which		
Rice, paddy	230,906.8	22%
Banana	106,485.7	10%
Coconut	81,273.9	8%
Corn	69,698.4	7%
Sugarcane	38,547.9	4%
All other[a]	147,387.9	14%
Livestock and poultry, of which		
Pigs	172,049.2	17%
Chickens	112,512.8	11%
All other[b]	77,425.5	7%
Total:	1,036,288.7	100%

a This includes pineapples, coffee, mangos, tobacco, abaca, peanuts, mongo, cassava, camote, tomatoes, garlic, onions, cabbages, eggplants, calamansi, and rubber.
b This includes carabao, cattle, goats, dairy, ducks, chicken eggs, and duck eggs.

Source: Bureau of Agricultural Statistics (2011), *Selected Statistics on Agriculture*. Viewed at: http://countrystat.bas.gov.ph/documents/ssa2011.pdf.

9. The simple average applied tariff on agricultural products (ISIC definition) for 2011 is 7.7%.[14] Applied tariffs range from 0-50%; with the highest tariff applied to corn (50%). The simple average bound tariff is 30.8%. Tariff quotas are maintained on 0.8% of 15 applied tariff lines (0.2% of total tariff lines). As noted in Chapter IV.2, cane sugar has an applied tariff of 65%, and rice and beet sugar an applied rate of 50%.

10. There has been significant agricultural liberalization under the ASEAN Free Trade Area (AFTA) (Chapter III, Table III.4). Under the Philippines' other FTAs, transition periods for tariff liberalization end between 2016 and 2022 (Chapter II, Table II.3).

11. Under the AFMA, all certified agricultural (and fisheries) enterprises are exempt from the payment of customs duties on imports of all types of agricultural and fisheries inputs, equipment and machinery until 2015.[15] These fiscal incentives are also available to organic farmers under the 2010 Organic Agriculture Act. In addition, agricultural (and marine) food products and agricultural inputs are exempt from VAT (at 12%) (Chapter III(1)(iii)(g)). VAT is zero-rated on the sale/purchase of bio-organic products (both inputs and produce).

12. Other measures to assist organic production, foreseen under the Organic Agriculture Act, include: provision of special rates by the Land Bank of the Philippines; subsidies for certification

[13] FAO Stat online database. Viewed at: http://faostat.fao.org.
[14] This average excludes the in-quota, and includes the out-of-quota rates.
[15] R.A. 9281. Viewed at: http://nafc.da.gov.ph/afma/PDF/ra9281.pdf.

fees and other support services to facilitate organic certification; and a seven-year income tax exemption, starting from the date of registration, for organic food and organic inputs or produce. In addition, local government units are charged with identifying local tax incentives.[16]

13. In its Uruguay Round schedule, the Philippines has included 118 tariff lines for which special safeguard measures may be taken. Over the review period, the Philippines has imposed a special safeguard measures on frozen chicken (affecting one tariff line). The measure was initially imposed in November 2004 and lifted in December 2006; it was reinstated in January 2007 and lifted in November 2009. Special safeguard measures on onions and shallots, imposed in December 2004, were lifted in January 2005.[17]

14. The Philippines notifications to the WTO are outstanding in a number of areas. There have been no notifications of either the volume of imports under tariff-quota commitments or domestic support during the review period.[18] The Philippines' most recent notification on export subsidies covers the period 2005-07; in this notification it reported that no export subsidies were provided.[19]

15. Most support to agriculture in the Philippines is effected through tariff protection, which has contributed to high domestic prices for key agricultural products. In addition, the Government intervenes in the market by controlling imports and exports of rice, buying from producers, stocking, and selling to wholesalers (see below). It has also invested considerable amounts in various programmes, particularly the Hybrid Rice Commercialization Program (HRCP). In 2007, estimated nominal protection rates (NPR) (i.e. domestic prices are higher than border prices) were 26% for beef, 27% for chicken and rice, 32% for corn, 80% for sugar, and 94% for pork. Coconut was an exception as NPRs were negative for coconut oil and copra.[20]

16. It has been reported that, since the Philippines last notification for domestic support in 2001, support for research, inspection services, and infrastructure improvements has increased substantially, to about PHP 1.5 billion, PHP 2.5 billion, and PHP 7.7 billion, respectively, in 2008. Over the 2001-08 period, support for input subsidies rose to PHP 3.6 billion. At the same time, despite increases in reference prices for rice and corn, the total value of support remains low compared with the value of agricultural production.[21]

(a) Selected sectors

Rice

17. The National Food Authority, provides price support to growers of rice. It buys paddy from farmers at a support price recommended by the Inter Agency Committee on Rice (composed of representatives from different government agencies) to ensure what it considers to be a fair return. Currently this support price is PHP 17 per kg. It then sells rice to accredited dealers at fixed prices

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[16] The Organic Agriculture Act (RA 10068). Viewed at: http://www.da.gov.ph/n_agrilaws/ra/ra100681.pdf.

[17] WTO documents G/AG/N/PHL/40, 4 October 2011, and G/AG/N/PHL/39, 19 January 2009. The SSG covered chicken products under HS 0207.1492, and onions and shallots under HS 0703.1000

[18] The latest notification on domestic support was for the period 2002-04 (WTO document G/AG/N/PHL/37, 16 January 2009). The latest notification on the volume of imports under tariff quota commitments is for 2004 (G/AG/N/PHL/34, 28 April 2006).

[19] WTO document G/AG/N/PHL/38, 14 November 2008.

[20] Cororaton (2008).

[21] Cororaton (2008).

(ranging from PHP 25 per kg (wholesale) to PHP 27 (retail)).[22] Farmers are not required to sell their paddy to the NFA and may sell directly to millers and traders. They also have the option to buy-back the same volume of rice sold to the NFA within six months and resell it, to benefit from any rice price increases above the NFA support price (Farmers Option Buy Back scheme).

18. The Philippines is one of a few countries that have benefitted from the Uruguay Round Agreement on Agriculture (AOA) special treatment clause (Annex 5), which has allowed it to maintain an import quota on rice, under certain conditions. In 2006, the Philippines negotiated the continuation of this regime until 30 June 2012. The Philippines must import a minimum of 350,000 tonnes of rice at an in-quota tariff rate of 40%. It is required to allocate country-specific quotas each year to: Australia (15,000 tonnes); China (25,000 tonnes); India (25,000 tonnes), and Thailand (98,000 tonnes).[23] Imports of rice above the 350,000 tonnes threshold are subject to the MFN duty rate of 50%. Over the review period, the Philippines' imports of rice have well exceeded the 350,000 tonnes minimum access commitments. In 2010 imports were (2.2 million tonnes); 2009 (1.6 million tonnes); 2008 (2.3 million tonnes); 2007 (1.8 million tonnes); 2006 (1.6 million tonnes); and 2005 (1.6 million tonnes).

19. The NFA has control over imports of rice: it has the authority to import rice itself or to allocate import quotas to licensed importers (i.e. Filipino farmers, cooperatives, or private grains businesses).[24] The review period has seen much greater private participation in rice importing, in line with the government policy: all country-specific quota allocations are now imported by the private sector.[25] All out-of-quota rice is imported by the NFA directly. It is hoped that greater private sector participation will help the NFA to address some of its very substantial debts, which amounted to PHP 177 billion in 2010. The authorities noted that when the NFA imports directly, it has to resort to foreign borrowing and hence incurs significant interest rate repayments.

20. In 2010, the DOA launched a 2011-2016 Rice Self Sufficiency Roadmap (RSSR) which has evolved into the Food Staples Self-Sufficiency Roadmap. This programme has three components: (i) increasing and sustaining the gains of production through the use of production interventions and establishment of enabling mechanisms; (ii) management of consumption; and, (iii) diversification of staples.

Sugar

21. In 2010, the Philippines produced 1.7 million tonnes of raw sugar. In the same year it exported sugar to the United States (89,380 tonnes at a value of US$44,361,224) and to Japan (9,000 tonnes at a value of US$1.9 million). The Philippines benefits from a preferential quota allocation to the U.S. market, but since 2011 has also exported to the United States at the MFN rate. The authorities noted that exports enter Japan at the MFN rate.

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[22] NFA online information. Viewed at: http://www.nfa.gov.ph/index.php?id1=3&id2=1&id3=0 and http://www.nfa.gov.ph /index.php?id1=3&id2=4&id3=0.

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

[24] The legal basis for the NFA's authority is the National Grains Authority Act (Presidential Decree No. 4). Viewed at http://www.nfa.gov.ph/files/PD-04.pdf, as amended by the Agricultural Tariffication Act (Republic Act 8178). Viewed at: http://www.chanrobles.com/republicactno8178.htm.

[25] The NFA makes an announcement in January each year inviting the private sector to import. There is a maximum allocation per importer which, over the review period, has varied between 2,500 tonnes and 5,000 tonnes. Customs duties must be paid up-front. In some years a percentage of the quota has been set aside for Farmers Organizations. The rice must be imported by mid-year otherwise an escalating fine is applied.

22. As reported in the Philippines' previous TPR, the Sugar Regulatory Administration (SRA), an "attached agency" of the Department of Agriculture, manages sugar production and supply, through the "quedan system".[26] In addition to NFA's occasional role in importing sugar, SRA-registered international sugar traders may import and export sugar. The authorities noted that traders must receive clearance from the SRA to release the imported sugar from Customs. The SRA will either classify the sugar as "domestic" or "reserve". If classified as "domestic" it may be sold domestically. Reserve sugar must be stored and may only be released onto the domestic market once authorization has been obtained from the SRA for it to be reclassified from "reserve" to "domestic". The SRA authorizes traders to export once it has ensured that domestic demand has been satisfied.

23. Sugar remains highly protected. Imports are restricted by a tariff quota with in-quota rates for cane sugar of 50% and out-of-quota rates of 65%. A key challenge facing the sector is to prepare for sugar tariff liberalization under ASEAN Free Trade Area (AFTA). Liberalization will be completed in 2015, rather than in 2010, as a result of the Philippines' invocation of the Protocol to provide special consideration for rice and sugar.[27] The SRA has developed a Sugarcane Industry Roadmap (2011-2016), which identifies targets to increase land area for production, productivity, and yields. The Roadmap, envisages, *inter alia*, farm consolidations; the provision of R&D and extensions services; as well as infrastructural improvements, in particular farm to mill roads.[28] It is also envisaged that sugar mills will co-generate power to sell to the power grid, and be used as biofuel. With respect to the latter, the Philippines introduced mandatory incorporation of locally sourced biofuel into gasoline and diesel in 2007 (Box IV.1). However, the Philippines needs to enhance its refining capacity to satisfy the demand expected from this measure. The authorities indicated that there are three bioethanol production plants in the country with an annual total capacity of 79 million litres. Another plant is under construction which will have an annual capacity of 54 million litres; it is expected to be operational in mid 2012. However, the mandated requirement is well above domestic production levels (461 million litres), and the balance is being imported by oil companies.

Box IV.1

Biofuel Act: summary of main provisions

Bioethanol requirements

Gasoline

Requirement for 5% locally sourced bioethanol blend in gasoline by 2009, and 10% by 2011. If there is a supply shortage of locally produced bioethanol, oil companies may import bioethanol to the extent of the shortage as determined by the National Biofuel Board. A 2011 Department Circular subsequently mandated that the 10% bioethanol blend by volume should commence in August 2011, with 3 gasoline grades exempted until February 2012.

Diesel

Requirement for 1% biodiesel to be blended into diesel engine fuels. Within two years, consideration to be given to raising this to minimum 2% (in February 2009, the minimum biodiesel blend by volume was increased to 2%).

Box IV.1 (cont'd)

[26] The "quedan" system of production quotas is described in WTO (2005).

[27] On 21 May 2010, the AFTA Council endorsed the Philippines' request for a waiver of its commitments on sugar products through the invocation of the Protocol. Hence, tariffs on cane or beet sugar will be reduced from 38% in 2010 to 5% in 2015. See Tariff Commission online information. Viewed at: http://www.tariffcommission.gov.ph/eo_892.htm; and "ASEAN 2007 Protocol to Provide Special Consideration for Rice and Sugar". Viewed at: http://www.asean.org/22975.pdf.

[28] Department of Agriculture (2011).

Incentives
Specific tax
The specific tax on local or imported biofuels content to be zero (gasoline and diesel fuel components to be subject to prevailing tax rates).
VAT
Sale of raw material used in biofuels to be exempt from VAT.
Water effluents
Water effluents from the production of biofuels used as liquid fertilizer and for other agricultural purposes are exempt from waste water charges.
Financial assistance
Government financial institutions to give high priority to extend financing to Filipino citizens or entities in which at least 60% of the capital stock belongs to Filipino citizens and that will engage in biofuel-related activities.
Source: Biofuels Act 2006 (R.A. 9367). Viewed at: http://www.senate.gov.ph/republic_acts/ra%209367.pdf.

(ii) Fisheries

24. In 2010, 1.5 million people were employed in the fisheries industry.[29] Under the Constitution and Fisheries Code (R.A. 8550), fishermen must be Filipino citizens; the use and exploitation of fishery and aquatic resources is reserved exclusively to Filipinos; and foreign equity in the operation of deep-sea fishing vessels is capped at 40% (Table AII.2). Fish processing plants in special economic zones may be fully foreign owned.

25. In 2009, the value of fisheries production in the Philippines was nearly PHP 215 billion. During the review period, there has been a relative decline in the importance of the commercial catch and a corresponding increase in the relative share of aquaculture in total production (Table IV.2). All certified fisheries enterprises are exempt from the payment of customs duties on imports of all types of fisheries inputs, equipment, and machinery until 2015.[30] The Bureau of Fisheries has been constructing hatcheries for aquaculture purposes, in collaboration with local governments.

Table IV.2
Value of fish production, by type of fishing operation (2005-10)
(PHP million and %)

Date	Total (PHP million)	Commercial (% of total)[a]	Municipal (% of total)[b]	Aquaculture (% of total)[c]
2005	146,392.9	32	34	34
2006	163,374.4	30	36	34
2007	180,545.2	30	36	34
2008	215,813.5	29	33	38
2009	215,582.1	27	35	38
2010	221,050.8	27	35	38

a Production from commercial fishing vessels.
b Capture activities in various marine and inland bodies of water. Various marine bodies of water includes the municipal waters that are 15k from the shoreline. Only small-scale fishing is allowed in municipal waters and fishing boats should be less than 3 gross tonnes.
c Production from aquaculture activities.

Source: 2010 Philippine Statistical Yearbook.

26. Tariffs on fish (live, fresh, chilled, frozen, dried, etc.) range from 1% to 15% (2011). As reported in the Philippines' previous review, non-tariff barriers mainly restrict fish imports. Imports of fresh chilled or frozen fish are only allowed when certified as "necessary" by the DOA in

[29] Bureau of Agricultural Statistics online information. Viewed at: http://countrystat.bas.gov.ph.
[30] R.A. 9281. Viewed at: http://nafc.da.gov.ph/afma/PDF/ra9281.pdf.

consultation with the Fisheries and Aquatic Resources Management Council (FARMC). Fish imported for canning or processing does not require a certificate but must have a permit. The regulation of imported live exotic species and live prawn and shrimp is based on "import risk analysis" and existing biosafety laws (Chapter 3(1)(vi)(b)).

(2) MANUFACTURING

27. The Philippines' manufacturing industry mainly comprises: food and beverages, electronics, chemicals, petroleum refining, mineral processing, motor vehicles, and tobacco (Table IV.3).

Table IV.3
Manufacturing production, 2005-10
(PHP billion)

	2005	2006	2007	2008	2009	2010
Food and beverages	569	541	-	655	..	..
Radio, television and communication equipment	488	514	-	479	..	..
Coke, refined petroleum and other fuel products	341	400	-	461	..	..
Chemicals and other chemical products	221	203	-	216	..	..
Basic metals	146	213	-	196	..	..
Office, accounting and computing machinery	263	298	-	154	..	..
Electrical machinery and apparatus	122	128	-	140	..	..
Motor vehicles, trailers and semi-trailers	126	129	-	134	..	..
Non-metallic mineral products	86	85	-	91	..	..
Tobacco products	61	65	-	74	..	..
Other manufacturing	581	600	-	497	..	..

.. Not available.

Source: National Statistics Office (2008 and 2005), *Annual Survey of Philippine Business and Industry*; and (2006) *Census of Philippine Business and Industry*.

28. Based on COMTRADE data (SITC Rev.3), manufactured goods accounted for 85.1% of total merchandise exports in 2010. The Philippines' main exports were machinery and transport equipment, such as electronic integrated circuits, other electrical machines, and automotive products. In the same year, manufactures accounted for 66.8% of merchandise imports, principally office machines and telecommunications equipment. Investment in manufacturing is significant (Chapter I).

29. In 2011, the simple average applied tariff on manufactured products (ISIC definition) was 6.4%, with tariffs ranging from 0-65%. Cane sugar (with an applied tariff of 65%), rice and beet sugar (50%), and automotives, motorcycles, and waste materials (30%) are among the products receiving the highest tariff protection. Tariff quotas apply to 49 tariff lines, representing 0.6% of the total tariff.

30. A variety of incentives are offered to assist manufacturing industries. These include tax and other incentives offered by the Philippine Economic Zone Authority (PEZA) for enterprises operating in export processing zones (EPZs), and tax incentives from the Board of Investments (BOI) under the Omnibus Investment Code for enterprises producing non-traditional exports or engaged in sectors listed in the Investment Priorities Plan (IPP) (Chapter III(3)(i)).

31. The electronics industry includes mainly semiconductors, electronic data processing equipment, office equipment, telecommunications equipment, automotive, and consumer electronics.

Most of these industries are foreign-owned, with multinational companies assembling imported components in EPZs. The Government intervenes minimally in the sector.

32. Government assistance to the automotive sector is channelled through the Motor Vehicle Development Programme (MVDP). The objective of the Programme is to encourage domestic automobile production by imposing low tariffs (between 0 and 1%) on motor vehicle components and high tariffs on finished automobiles and motorcycles (between 15-30%). This programme was revised in 2010, but the revisions have not yet been implemented (see Chapter III(2)(vi)(b)). The authorities indicated that incentives offered under the Automotive Export Program expired in 2009. There are no foreign investment restrictions. Japanese firms dominate, mainly as joint ventures, some with majority equity.

33. Over the review period, the textiles and clothing industry has declined dramatically, with the abolition of the quota system in 2005, and its guaranteed access to the U.S. market. Whereas in 2005, textiles and clothing accounted for US$2.6 billion of export earnings and 311,000 employees, in 2010, it had declined to US$1.9 billion of export earnings and 150,000 employees. The United States remains the largest export market, taking 80% of Philippine apparel exports in 2009. A Garments Industry Transformation Plan, developed to revive the industry, is to be implemented by the newly created Garments and Textile Industry Development Office (GTIDO). The authorities indicate that barriers to the growth of the Philippines' garments and textile industry include tariff protection, GSP standards, and rules of origin restrictions in key exports markets.

34. Legislation has been in place since 2004 (the Footwear, Leather Goods and Tannery Industries Development Act) to support the development of small and medium-scale footwear, leather goods, and tannery industries. These industries have been identified as having potential to generate employment and increase exports.[31] A variety of incentives are offered to enterprises that have been accredited by the Philippine Economic Zone Authority (PEZA) and the Board of Investments (BOI). These include: zero duty on imports of capital equipment, and a tax credit on domestically purchased supplies, raw materials, and semi-manufactured products equivalent to 100% of the value of internal revenue taxes and customs duties due on imports of these items. At end 2011, five footwear enterprises were accredited under the Act, none of which had availed themselves of the available incentives. The authorities confirmed that, in spite of provisions in the Act, no sector-specific financing facilities are targeted solely at the footwear, leather goods, and tanneries industries.

35. The Government continues to use procurement of official uniforms containing Philippine tropical fabrics as well as and footwear and leather goods manufactured in the Philippines as a means to support local industries.[32]

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[31] In 2008, (the latest year for which data are available) the value of output for footwear, bags and luggage amounted to PHP 15 billion.

[32] Under the 2004 Tropical Fabrics Law (RA9242), the use of Philippine tropical fabrics is required for the official uniforms of government officials and employees. (R.A. 9242 and its implementing regulations. Viewed at: http://excell.csc.gov.ph/cscweb/RA9242.html). Procurement provisions relating to footwear and leather goods are set out in the Footwear, Leather Goods and Tannery Industries Development Act (R.A. No. 9290). Viewed at: http://www.tariffcommission.gov.ph/ra_9290.htm.

(3) SERVICES

(i) Services commitments under the GATS and FTAs

36. The Philippines has undertaken GATS commitments in 4 of the 12 sectors listed in the Services Sectoral Classification List (communications services, financial services, tourism services, and transport services) and in a total of 35 of its 156 subsectors (Table IV.4). Following domestic ratification, the Fourth Protocol to the GATS (basic telecommunications) entered into force on 25 April 2006 and the Fifth Protocol to the GATS (financial services) on 16 March 2011. The horizontal commitments the Philippines has taken under the GATS limit the positions foreigners may occupy in corporations; acquisition of land (market access, mode 3); access to domestic credit (national treatment, mode 3); and entry and temporary stay of natural persons supplying services (market access, mode 4). MFN exemptions have been taken for the entry and stay of natural persons supplying services; maritime transport services (liner cargo trade and cabotage); and commercial banking and investment houses.[33] The Philippines has submitted an initial conditional offer on services in the context of the Doha Development Agenda (DDA) negotiations.[34]

37. The Philippines also has services commitments under the ASEAN Framework Agreement on Trade in Services (AFAS), signed in December 1995 (see Chapter II). The AFAS aims to enhance cooperation in and substantially eliminate restrictions to trade in services among member states, with a view to realizing a free-trade area in services.[35] ASEAN has concluded seven packages of AFAS commitments through five rounds of negotiations since January 1996. In addition, there have been five packages of commitments in financial services and six on air transport. Individual commitments contain horizontal and sector-specific commitments and MFN exemptions[36]; the latest package was signed in February 2009.[37] The Philippines has also made services commitments under the ASEAN FTAs with Australia and New Zealand; China; and Korea, as well as through its Economic Partnership Agreement with Japan (Table IV.4).

Table IV.4
Summary of Philippines' specific commitments under the GATS and FTAs

	GATS	AFAS	ASEAN-Australia-New Zealand	ASEAN-China	ASEAN-Korea	Philippines-Japan
1. Business services		X	X	X	X	X
2. Communications services	X	X	X	X	X	X
3. Construction services		X	X	X	X	
4. Distribution services		X				X
5. Education services			X			X
6. Services related to the environment		X	X	X	X	X
7. Financial services	X	X	X		X	X
8. Social and health services		X				X

Table IV (cont'd)

[33] WTO documents GATS/EL/70, 15 April 1994, and GATS/EL/70/Suppl.2, 26 February 1998.
[34] WTO document TN/S/O/PHL, 15 June 2005.
[35] ASEAN Framework Agreement on Services (AFAS). Viewed at: http://www.aseansec.org/6628.htm.
[36] The horizontal commitments undertaken by the Philippines in its AFAS schedule are identical to those in its GATS commitments. Its MFN exemptions are also the same, with the exception of provisions on financial services.
[37] ASEAN Secretariat online information. Viewed at: http://www.aseansec.org/23986.htm.

	GATS	AFAS	ASEAN-Australia-New Zealand	ASEAN-China	ASEAN-Korea	Philippines-Japan
9. Tourism and travel related services	X	X	X	X	X	X
10. Recreational, cultural and sports services		X				
11. Transport services	X	X	X		X	X
12. Other services		X		X		X

Source: WTO documents GATS/SC/70, 15 April 1994 and MTN.GNS/W/120, 10 July 1991 (Services Sectoral Classification List); WTO Services Database; ASEAN online information. Viewed at: http://www.aseansec.org/23986.htm; http://www.asean.org/22262.htm; http://www.asean.org/19105.htm and; http://www.asean.org/23340.htm; and MOFA online information. Viewed at: http://www.mofa.go.jp/region/asia-paci/philippine/epa0609/annex6.pdf.

(ii) Financial services

38. At end 2010 there were 758 banks (an average of 9 banks per 100,000 population) and 119 insurance companies operating in the Philippines. The Philippine banking system's deposits amounted to 77% of GDP, and for the insurance industry the deposit to GDP figure was 1.04%. The small size of the insurance services market is, *inter alia*, attributed to a lack of priority being placed on insurance products by citizens, and a low financial literacy level among low-income households.[38] The insurance industry employed nearly 60,000 people (end 2010), and the banking industry just over 136,000 (mid 2011).

39. The Philippines is a signatory to the Fifth Protocol to the GATS (on financial services), which entered into force on 16 March 2011, following domestic ratification.[39] The Philippines' commitments cover insurance and insurance-related services, banking, and other financial services. Its GATS commitments on all financial services provided through mode 3 (commercial presence) are subject to a "public interest" test and the requirement for foreign institutions to demonstrate their capacity to contribute to the Philippines' development objectives. Moreover, it is stipulated that the Bangko Sentral ng Pilipinas (BSP) Monetary Board must ensure 70% of the banking system's resources or assets are held by domestic banks that are at least majority Filipino owned. For most financial services the Philippines' specific commitments require commercial presence and contain citizenship requirements and foreign equity limitations. In banking, prior authorization is required in the provision of certain services, and there are limitations on the number and location of foreign bank branches. With respect to the Philippines specific commitments on insurance, life and non-life insurance must be provided by companies authorized by the Insurance Commission to transact business in the country. However, this is not the case for reinsurance.[40] For market access through modes 1 and 2 for reinsurance and retrocession, the Philippines' specific commitments require that risks must first be offered to authorized insurance or reinsurance companies.

40. The Philippines' financial services commitments under the AFAS, ASEAN-Australia-New Zealand FTA (AANZFTA), the ASEAN-Korea Agreement on Trade in Services (AK-ATS), and the Philippines-Japan FTA are largely the same as those under the GATS, but with the higher thresholds for foreign capital participation in commercial banks.[41] In addition, the Philippines AFAS schedule

[38] NEDA (2011).

[39] WTO documents S/L/382, 8 March 2011, and WT/Let/759, 23 March 2011.

[40] WTO document GATS/SC/70/Suppl.3, 26 February 1998.

[41] Under the GATS, the thresholds for foreign capital participation in commercial banks are: (a) acquisition of up to 51% of the voting stock of an existing domestic bank, or (b) investing in up to 51% of the voting stock of a new locally incorporated banking subsidiary. Under the AANZFTA the thresholds are

contains commitments on bancassurance, stockbroker dealers and stockbroker dealer salesmen. It also has more liberal commitments on all forms of insurance, comprising higher foreign equity thresholds, and mode 4 commitments on the temporary stay of foreigners employed in technical positions.[42]

41. MFN exemptions under the GATS and the other FTAs contain reciprocity provisions with respect to commercial banks, investment houses, and financing companies.

(a) Banking services

42. The BSP is the Philippines' principal banking regulatory and supervisory body sector, and is responsible for competition policy issues within the sector. It derives its authority from the New Central Bank Act (RA 7653, 1993). There have been no changes to this Act over the review period, but amendments to it are pending in Congress. The BSP has some overlapping responsibilities with the Securities and Exchange Commission and the Insurance Commission with respect to quasi-banks.[43]

43. The Philippine Deposit Insurance Corporation (PDIC), an attached agency of the Ministry of Finance, is responsible for: providing deposit insurance; conducting bank examinations in coordination with the BSP; acting as receiver in the event of bank failure; and, under certain conditions, providing support to banks in danger of closing. Deposit insurance through the PDIC is compulsory for all banks, and deposits are insured up to a maximum of PHP 500,000 (up from PHP 250,000 in 2004). The PDIC's Deposit Insurance Fund (DIF) stood at PHP 66.03 billion in August 2011. Amendments to the PDIC Charter in 2009 have given the PDIC authority to: conduct independent special bank examinations; examine deposit accounts in ailing banks if there is a finding of unsafe banking practices; and to determine insured deposits.[44]

44. Banks in the Philippines may take one of a number of forms. Universal banks are commercial banks that have expanded functions, such as: performing activities of investment houses; investing in non-allied enterprises[45]; owning up to 100% of thrift banks, rural banks, or allied financial or non-financial enterprises, or 51% of insurance companies. Commercial banks may do likewise, but they may not own insurance companies, and their equity in other non-bank financial institutions (e.g. leasing and credit-card companies) is capped at 40%. Thrift banks comprise savings and mortgage banks, private development banks, stock savings and loan associations, and microfinance institutions.

55% and 51% respectively, under the AK-ATS they are 60% and 51%, and under the AFAS and the bilateral agreement between Japan and the Philippines they are 60% and 60%.

[42] Protocol to implement the first to fifth packages of commitments on financial services under the AFAS. Viewed at: http://www.asean.org/agreements/AEC/Finance/Protocol-5th.pdf; and http://www.asean.org/agreements/AEC/Finance/Protocol-5th-schedule.pdf.

[43] Quasi-banks engage in borrowing funds through issuing, endorsing, or accepting deposit substitutes for re-lending or purchasing receivables and other obligations (WTO, 2005).

[44] The PDIC's responsibilities are set out in RA 3591, as amended by R.A. 9576 (2009). Viewed at: http://www.pdic.gov.ph/index.php?nid1=10#sec2, and http://www.lawphil.net/statutes/repacts/ra2009/ra_9576_2009.html. With respect to its investigative function, the PDIC may undertake bank examinations with the prior approval of the BSP Monetary Board. If it finds that banks are performing unsound banking practices or acting illegally, then it must submit a report of the examination to the Monetary Board. The Monetary Board or the PDIC Board of Directors may take corrective action, which may include the imposition of a fine.

[45] A list of what constitutes a non-allied undertaking is provided in the Manual of Regulations for Banks. Viewed at: http://www.bsp.gov.ph/regulations/reg_MORB.asp.

Rural banks are privately owned and provide basic banking services in rural areas, as do Cooperative banks which are owned by cooperatives or federations of cooperatives.[46]

45. The banking sector is dominated by private domestically-owned and constituted institutions. While rural banks are significant in numerical terms, universal and commercial banks together account for the lion's share (89%) of total bank assets (Table IV.5).

46. There are three fully government-owned banking institutions: the Development Bank of the Philippines (DBP); Land Bank of the Philippines (LBP); and Al Amanah Islamic Development Bank of the Philippines. Together these account for 13% of the total assets of the banking sector. The DBP and LBP provide commercial banking services as well as development financing.[47] The Al Amanah Islamic Bank offers capital or project financing programmes (public and private sector). In 2007, the Government sold all of its remaining shares in the Philippine National Bank (PNB).[48] The Government owns 13.99% of Union bank, through the Philippines Social Security System; 95.59% of the Government Service Insurance System (GSIS) Family Savings Bank, through GSIS; and 100% of the Philippine Postal Savings Bank, through the Philippine Postal Corporation.

Table IV.5
Philippines' banking institutions, March 2011

Bank type	Number	Total assets (PHP billion)
Universal and commercial banks	38	6,048.3
Private	35	5,146.8
- domestic[a]	19	4,378.9
- foreign[b]	16	767.9
State owned	3	901.5
Thrift banks	73	569.3
Rural banks	595	164.7
Cooperative banks	40	15.4

a Banks constituted in the Philippines.
b Branches and subsidiaries of banks constituted abroad.

Source: Information provided by the authorities.

47. Banking services remain underdeveloped in certain parts of the country: around 37% of the Philippines' municipalities are either unserved or underserved in terms of access to basic infrastructure and services. Various reforms have been proposed in the Philippine Development Plan 2011-16, including the promotion of alternative means of delivering financial services in underserved parts of the country, and encouraging the development of new banking products and services aimed at the poor.[49] In this regard, authorities indicated that the BSP and the Department of Finance are developing e-banking and microfinance programmes.

48. According to the IMF and confirmed by the authorities, the Philippines banking system was resilient in the face of the global financial crisis: the major banks were well capitalized and liquid,

[46] BSP online information. Viewed at: http://www.bsp.gov.ph/banking/bspsup.asp; and WTO (2005).

[47] The DBP offers development financing in four areas: infrastructure and logistics; social services; micro, small and medium enterprises; and the environment. The LBP, being mandated to spur countryside development, mainly offers loans in the areas of agriculture, energy (including renewable energy and biofuels) and non-agricultural countryside development projects.

[48] The Government of the Philippines had a 12.5% share in the PNB.

[49] NEDA (2011).

and asset quality was generally high.[50] BSP measures taken to address some strains in the distribution of liquidity included: an expansion in the allowable collateral for the BSP repo facility and a relaxation in the valuation of this collateral; an increase in the budget of the BSP's rediscounting window; a reduction in the deposit reserve requirement; dollar liquidity in the spot and swap markets; a reduction in the policy interest rate; and relief to banks through allowing reclassification of financial assets measured at fair value in accordance with international best practice. The authorities noted that while there have been bank closures following the crisis, were not crisis-related, since they mainly affected thrift and rural banks, neither of which have foreign clients, nor deal with foreign exchange transactions.

49. As noted in the Philippines' previous Review, the BSP prevented the opening of new bank offices and branches from September 1999, and the entry of new banks from 13 June 2000, to slow down the expansion of the banking system and to consolidate the industry. The moratorium on new banks remains in place. However, in an effort to make the financial system more competitive, in 2005 restrictions on new bank offices and branches were lifted for all areas of the country with the exception of Metro Manila. In July 2011, the BSP started a two-phased lifting of prohibitions on bank branching in Metro Manila.[51]

50. The Strengthening Program for Rural Banks, launched by the PDIC and BSP in August 2010, is a two-year programme to encourage weaker rural banks to merge with stronger ones. The incentives offered are: financial assistance from the PDIC and regulatory relief from the BSP.[52] As at September 2011, 16 applications, involving 28 rural banks had been submitted to the PDIC.[53]

51. Foreign investment in the banking sector in the Philippines is governed by the Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and for Other Purposes (R.A. 7721 of 1994), which sets out the conditions and legal structures permitted for the commercial presence of foreign banks.[54] Under the law (Sections 3 and 8), 70% of the assets of the entire banking system must be held by domestic banks. In principle, three forms of foreign entry are allowed: (i) establishment of a branch with full banking authority; (ii) investment of up to 60% of the voting stock of a new banking subsidiary; and (iii) investment of up to 60% of the voting stock of an existing domestic bank.[55] In practice, the first and second options are not available: a limit was fixed on the number of banks that could set up branches with full banking authority, and this limit has been satisfied, and, as above-mentioned, a moratorium on new banks remains in place.[56]

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[50] IMF (2010).

[51] BSP online information. Viewed at: http://www.bsp.gov.ph/publications/media.asp?id=392&yr=2005 and http://www.bsp.gov.ph/regulations/regulations.asp?type=1&id=2757.

[52] PDIC online information. Viewed at: http://www.pdic.gov.ph/files/PDF%20SPRB%20Implmenting%20Guidelines.pdf.

[53] As reported by the authorities, of these 16 applications, 4 have been approved by the PDIC; two are in the process of initial evaluation; one has been deferred; three have been referred to the PDIC's electronic matching facility and six were either denied or unqualified.

[54] R.A. No. 7721. Viewed at: http://www.bsp.gov.ph/downloads/laws/RA7721.pdf.

[55] Under the Thrift Bank Act, R.A. No. 9706 (1995), there was a ten year window for full foreign ownership of thrift banks. This window closed in 2005.

[56] As set out in implementing regulations to R.A. 7721 (1994), the BSP Monetary Board may only authorize ten new foreign banks to establish branches with full banking authority. Each foreign bank is entitled to three branches. However, should they wish to do so, three additional branches may be established provided that they remit to the new branch the U.S. dollar equivalent of PHP 35 million per additional branch, and provided further that the locations of these three are to be assigned by the Monetary Board (BSP circular No. 51, "Rules and Regulations Implementing Republic Act No. 7721. Viewed at: http://www.bsp.gov.ph/

52. Except for cooperatives, whose ownership is limited to Filipino citizens, there are no restrictions on the type of bank that foreigners may invest in, and foreign banks are permitted to perform the same functions, enjoy the same privileges, and are subject to the same limitations as imposed on domestic banks of the same category.[57]

53. The minimum capital requirements are PHP 4.95 billion for a universal bank, and PHP 2.4 billion for a commercial bank. For a thrift bank, the requirement ranges from PHP 250 million to PHP 1 billion and for a rural bank, from PHP 5 million to PHP 100 million, depending on the location of the head office. At end-December 2010, the average risk-based capital adequacy ratio for all banks was 17% on a consolidated basis, and 16% on a solo basis.

(b) Insurance services

54. In 2010, 119 companies were providing insurance or reinsurance services in the Philippines compared with 132 at the time of the Philippines' previous Review. Seventeen of these are foreign-owned companies, which account for 59% of total insurance sector premiums (at end 2011) and for the most part, have chosen to incorporate domestically rather than establish through a branch (Table IV.6).

Table IV.6
Market structure of insurance companies, 2005-10

Insurance company type	2005	2006	2007	2008	2009	2010
Composite (offering both life and non-life)	**3**	**3**	**3**	**3**	**3**	**4**
Domestic[a]	2	2	2	2	2	3
Foreign						
- Domestically incorporated	1	1	1	1	1	1
- Branch	-	-	-	-	-	-
Life	**33**	**33**	**32**	**32**	**35**	**30**
Domestic	24	25	23	25	27	**22**
Foreign						
- Domestically incorporated	8	7	8	6	7	7
- Branch	1	1	1	1	1	1
Non-life	**94**	**93**	**87**	**85**	**84**	**84**
Domestic	84	83	80	78	76	76
Foreign						
- Domestically incorporated	5	5	4	4	5	5
- Branch	5	5	3	3	3	3
Professional reinsurer	**2**	**1**	**1**	**1**	**1**	**1**
Domestic	2	1	1	1	1	1
Total:	**132**	**130**	**123**	**121**	**120**	**119**

- Nil.

a Domestic means at least 60% Filipino-owned.

Source: Insurance Commission online information. Viewed at: http://www.insurance.gov.ph/_@dmin/upload/statistics/Key_data%202009.pdf; and http://www.insurance.gov.ph/_@dmin/upload/statistics/Key%20Life%20Insurance%20Statistics%202010.pdf.

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regulations/regulations.asp?type=1&id=1492). The Manual of Regulation for Banks (Section X102.2(b)) states that the suspension of the grant of new banking licences extends to the organization and incorporation by foreign banks of new commercial banking subsidiaries.

[57] Sections 4 & 5 of the Rural Bank Act, which originally stated that rural banks should be fully owned by Filipinos and should likewise have a Filipino Board of Directors, was amended with the entry into force of R.A. 7721.

55. Through the Government Service Insurance System (GSIS), the Government of the Philippines owns 24.25% of the National Reinsurance Corporation, which provides life and non-life insurance services for domestic and regional clients. Reinsurance companies doing business in the Philippines are required to cede to the Corporation at least 10% of outward reinsurance placements.[58] Under the Property Insurance Law (R.A. 656), the GSIS, has responsibility for administering the General Insurance Fund, which provides insurance coverage for government assets and properties.[59] According to an external source, a 1994 order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from the GSIS at least to the extent of the Government's interests: this is considered by private insurance firms to be a significant market-access barrier.[60] At end-December 2010, the total risks underwritten by the GSIS amounted to PHP 867.26 billion.

56. There have been no changes to the institutional and regulatory framework governing insurance services in the Philippines since its last Review. The Insurance Commission (IC) is responsible for regulating the sector: including licensing companies and persons; surveillance; adjudication of claims and complaints; and approval of insurance premiums and products. The governing legislation is the 1978 Insurance Code.[61] Amendments to the Code are pending with Congress: these relate mainly to prudential and solvency requirements.

57. In order to provide insurance services in the Philippines, companies must obtain a licence (Certificate of Authority) from the IC. Licensing requirements also apply to individuals in various insurance-related jobs. Foreign insurance companies may operate as branches, subsidiaries or joint ventures, provided they have been in the top 200 world foreign companies for the past ten years.[62] There are no limits on foreign equity participation.[63]

58. Motor car third party liability insurance is compulsory as well as passenger personal accident insurance for public utility vehicles. Tariffs are evaluated and approved by the IC upon recommendation of the Philippine Insurers and Reinsurers Association (PIRA).

59. New minimum capitalization requirements were introduced in 2006 for existing insurance and reinsurance companies, with compliance deadlines ranging from 2006 to 2011 (Table IV.7).[64] The authorities indicated that the minimum paid-up capital requirements differ depending on the percentage of foreign equity participation because the Government wishes to ensure that foreign investors are committed to staying in the country, and that they are bringing in new investment funds and not funds sourced through domestic borrowings. More stringent requirements for the start-up

[58] Presidential Decree No. 1270, Section 4. Viewed at: http://www.chanrobles.com/presidential decrees/presidentialdecreeno1270.html.

[59] The GSIS's main responsibility is to provide social security benefits to Government employees.

[60] USTR (2011).

[61] 1974 Insurance Code. Viewed at: http://www.insurance.gov.ph/htm/pd612.htm.

[62] This requirement is set out in IC Department Order No. 100-94, October 24, 1994.

[63] WTO (2005).

[64] Prior to 2006, the minimum paid-up capital requirements for insurance companies were: (a) PH P250 million and a contribution of PHP 50 million to a surplus fund, where foreign equity was 60% or more; (b) PHP 150 million and a contribution of PHP 50 million to a surplus fund, where foreign equity was more than 40% but less than 60%; and PHP 75 million and a contribution to a surplus fund, where foreign equity was less than 40%. For reinsurance companies, the minimum paid-up capital was PHP 500 million where foreign equity was 60% or more; PHP 300 million where foreign equity was more than 40%, but less than 60%; and PHP 150 million where foreign equity was 40% or less.

operations were set at PHP 1 billion for life and non-life insurance companies (regardless of level of foreign equity participation) and PHP 2 billion for reinsurance companies[65].

60. Foreign companies and foreign reinsurance companies must deposit with the IC approved securities valued at PHP 300 million and PHP 500 million, respectively, for each branch.[66] The Philippines maintains security funds of PHP 5 million each for life companies and non-life companies. Insurance companies make a one-time contribution to this fund in an amount proportional to their net worth during the year of assessment. The security funds are used for payments to claimants and reinsurance companies in the event of insolvency of an authorized insurance company.

Table IV.7
Minimum paid-up capital requirements for existing insurance and reinsurance companies, 2011

Minimum statutory net worth (PHP Million)	**Minimum paid-up capital (PHP Million)**				
	Insurance (life and non-life)				Reinsurance
	Wholly Filipino-owned	foreign equity ≤ 40%	foreign equity > 40% but < 60%	foreign equity at least 60%	
100	50	-	-	-	-
150	75	-	-	-	-
200	100	100	-	-	-
250	125	-	-	-	-
300	-	150	150	-	-
350	175	-	-	-	-
400	-	200	200	-	-
500	250	250	250	250	-
600	-	300	300	300	-
700	-	-	350	350	-
750	-	-	-	-	375
850	-	-	-	425	-
1,000	-	-	-	500	500
1,250	-	-	-	-	625
1,500	-	-	-	-	750
2,000	-	-	-	-	1,000

- Nil.

Source: IC online information. Viewed at: http://www.insurance.gov.ph/_@dmin/upload/reports/DO%2027-06.pdf.

61. Taxes levied on life insurance companies include a 2% premium tax, a documentary stamp tax (for insurance policies over PHP 100,000) ranges from PHP 10 to PHP 100 depending on the value of the policy. Life insurance is VAT exempt. Non-life insurance is subject to 12% VAT and a documentary stamp tax of 12.5% of the premium value. Local governments also levy a fire services tax for fire policies, ranging from 0.5% to 1%. These taxes are applied equally to domestic and foreign companies.

[65] Insurance Commission online information. Viewed at: http://www.insurance.gov.ph/_@dmin/upload/reports/DO%2019-06.pdf.
[66] WTO (2005).

62. Reinsurance services may be obtained from abroad upon the authorization of the IC. The reinsurer must have a resident agent registered with the IC.

63. Since 2009, the IC has been responsible for licensing and regulating pre-need companies, which partially compete with insurance (previously they were regulated by the Securities and Exchange Commission (SEC)). The pre-need industry provides for payments at the time of need for memorial or burial services, education or pensions. Under the Pre-Need Code of the Philippines, new pre-need companies must have a minimum paid-up capital of PHP 100 million. Rates for existing companies may be lower depending on the number of different plans sold. Companies must also make monthly deposits into a trust fund for each pre-need plan in order to ensure that the benefits promised under the contract may be met. At least 10% of the trust fund must be invested in government securities. Liquidity reserves must be sufficient to cover at least 15% of the trust fund but in no case less than 125% of the amount of the availing plans for the succeeding year.[67] The authorities confirmed that there are no restrictions on foreign equity participation in pre-need companies.

(iii) Telecommunications

64. Telecommunications in the Philippines is entirely private-sector driven: the Government does not have a stake in any telecommunications company. In 2008, the Philippines was ranked 90th out of 159 countries in the ITU's ICT Development Index.[68] The share of communications services (postal telecommunications) in GDP was 3.1% in 2010.

65. The Philippines is a signatory to the Fourth Protocol to the GATS, which entered into force in April 2006. It also has telecommunications commitments under the ASEAN Framework Agreement on Trade in Services (AFAS), the ASEAN FTAs with China, Korea, and Australia and New Zealand, as well as through its Economic Partnership Agreement with Japan.

66. There have been no changes to the laws and regulations governing telecommunications since the Philippines' previous Review (Table IV.8). At that time three ICT-related bills were pending in Congress, the Convergence Bill, DICT bill, and National Telecommunications Commission (NTC) Reorganization Bill.[69] None of these has yet been enacted, but they remain on the Government's reform agenda as articulated in the Philippines Development Plan 2011-16.[70] In addition the Government intends to reassess out-dated aspects of the Public Telecommunications Policy Act and to develop a competition policy framework for the ICT sector.

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[67] Pre-Need Code of the Philippines (Republic Act No. 9829). Viewed at: http://www.lawphil.net/statutes/repacts/ra2009/ra_9829_2009.html. Implementing Rules and Regulations of Republic Act No. 9829. Viewed at: http://www.insurance.gov.ph/htm/pre-need.htm.

[68] The ICT Development Index comprises 11 indicators covering ICT access, use, and skills. Viewed at: http://www.itu.int/dms_pub/itu-d/opb/ind/D-IND-ICTOI-2010-U2-SUM-PDF-E.pdf.

[69] WTO (2005).

[70] As reported in the Philippines Development Plan 2011-16, the DICT Bill would establish a Department of Information and Communications Technology (DICT) to replace the Commission on Information and Communications Technology. The DICT's functions would be to coordinate and implement a national ICT development agenda. The NTC Reorganization Bill would, *inter alia*, make the NTC's charter more responsive to technological and market changes. The Convergence Bill would rationalize all pertinent laws; provide a technology-neutral legal basis to encourage investment into the ICT sector and the deployment of infrastructure and services to rural and unserved areas; permit the continued development of new technologies; and criminalize cable theft.

67. The NTC, an attached agency of the Office of the President, is responsible for administering the provisions of the Public Telecommunications Policy Act. This includes: ensuring telecommunications services are provided in underserved areas; granting Certificates of Public Convenience and Necessity (CPCN) (see below); establishing rates and tariffs in circumstances where there is not free competition; and resolving interconnection disputes. It is also responsible for allocating radio-frequency spectrum. The NTCs decisions may be appealed to the Court of Appeal and the Supreme Court.

Table IV.8
Telecommunications laws and regulations, 2011

Law/Regulation	Selected features
Constitution (Article XII, Section 11)	Sets out FDI restrictions for public utilities
Public Telecommunications Policy Act (RA 7925, 1995)	Sets out the regulatory responsibilities of the NTC (see below); lists the categories of telecommunications entities for which a congressional franchise is/is not required
EO 59 (1993) Guidelines for Compulsory Interconnection of Authorized Public Telecommunications Carriers	Sets out rules on interconnection. Interconnection is mandatory on a non-discriminatory basis between authorized public telecommunications carriers as well as with respect to connecting other value-added telecommunications services. Interconnection to be effected through bilateral negotiations between the parties, subject to technical, operational and traffic settlement rules issued by the NTC. Parties may request the NTC to determine interconnection terms in the event that they fail to reach an agreement. NTC has the authority to impose penalties for any violation of the provisions of the Order.
EO 109 (1993) Policy to improve the provision of local exchange carrier service	Sets out universal service requirements: international gateway operators are required to provide minimum of 300 local exchange lines per international switch termination and at least one rural exchange line must be provided for every ten urban ones.
EO 467 (1998) Providing for a national policy on the operation and use of international satellite communications in the country	Providers of basic telecommunications services allowed to access all international fixed satellite systems. Direct access to international mobile satellite services allowed for maritime, aeronautical and land mobile uses subject to NTC regulations. Operation and use of global mobile personal communication by satellite (GMPCS) to contribute to attainment of universal access allowed. Non-discriminatory interconnection between GMPCS and existing systems

Source: NTC online information. Viewed at: http://portal.ntc.gov.ph/wps/portal/!ut/p/_s.7_0_A/7_0_LU.

Licensing system

68. Companies wishing to provide public telecoms services (i.e. those involving the establishment of a fixed network) must obtain a "congressional franchise", which requires the approval of both Houses of Congress.[71] The maximum period for which a franchise may be granted is 50 years. Upon expiry, the franchisee must go back to Congress if it wants for an extension. In practice franchises have generally been granted for 25 years. No information was available on whether Congress has rejected any such applications. Telecoms services are regarded as a public utility and foreign equity in telecoms companies (both public (i.e. basic) and value added) is limited constitutionally to 40%.[72] Foreigners may not become executives or managers of telecoms firms and the number of foreign directors must be proportionate to the firm's aggregate share of foreign capital.

69. Franchised public telecoms companies must obtain a CPCN from the NTC in order to provide the relevant service. To obtain a CPCN, a petition must be filed with the NTC, supported by

[71] Under Republic Act No. 7925 (Article IV), a congressional franchise must be obtained for: local exchange operators; inter-exchange carriers; international carriers; mobile radio services; and radio paging services.

[72] The authorities indicated that, according to a Department of Justice opinion, if the service is not provided directly to consumers or the public, then the 40% limit does not apply.

financial, legal, and technical documents; the petition undergoes a public hearing. No information was available with respect to the criteria applied at the public hearing to determine whether the CPCN is granted. The CPCN specifies geographical area, type or classification of activities, regulations for providing the services and, in some cases, the rates chargeable.

70. Value-added telecoms services providers need not obtain a franchise but are required to register with the NTC.[73]

71. Cross-ownership restrictions apply, and no entity can have a franchise in both telecommunications and broadcasting (radio or television), either through airwaves or by cable. Foreign equity in a private radio communications network is limited to 20%. Broadcasting and TV are constitutionally reserved for Filipino nationals.[74]

Regulatory developments over review period

72. The authorities indicated that over the review period, interconnection negotiations have been brought to the NTC for intervention: some remain in arbitration; others have resulted in the commercial activation of interconnection facilities.

73. In 2008, the NTC made interconnection of backhaul operations to international optical cable system landing sites mandatory, thereby giving companies without their own cable landing stations a choice in the backhaul network used.[75] This was aimed at driving down prices for international calls, but no information was available as to whether this has been the case. In addition, in 2008, the NTC approved mandatory interconnection of wireless fixed-line providers without access charges within local calling areas: the authorities did not elaborate on the purpose of this measure and its intended impact.

74. The NTC indicated that it has prepared memorandum circulars on interconnection charges for mobile voice service and on short messaging service (SMS). These are intended to set the interconnection charges for voice calls between mobile operators with separate networks at PHP 4 to PHP 1 per minute, and for SMSs between two separate networks from PHP 0.36 to PHP 0.15 per SMS.

75. The Public Telecommunications Policy Act requires the NTC to allocate spectrum to the "best qualified" provider(s). Since the Philippines' previous Review, there has been one spectrum auction, for 3G services (in 2006). The authorities indicated that applicants were pre-qualified based on a set of criteria relating to their track record, rollout plan, and schedule rates for their services. This was to be followed by an auction in the event there were more qualified applicants than available spectrum blocks.[76] Since there were five blocks available for assignment and four applicants found to

[73] Value-added services may be provided by franchised public telecoms services provided: they may not discriminate against other value-added services providers with respect to rates or deny them equitable access to their facilities. In addition the value-added services they offer may not be cross-subsidized from their utility operations.

[74] Article XVI, Section 11 of the Constitution.

[75] As at August 2011, the Philippines was connected by five submarine cables: Tata TGN-Intra Asia cable (landed at Ballesteros); APCN-2 (Batangas); Asia-America Gateway (Currimao); EAC-C2C (Batangas); SeaMeWe-3 (Batangas). A further submarine cable, Southeast Asia Japan cable, to be landed at Nasugbu, is planned (Telegeography online information. Viewed at: http://www.telegeography.com).

[76] Award of the 3G spectrum was made following the provisions of NTC Memorandum Circular No. 07-08-2005, which provides the Rules and Regulations on the Allocation and Assignment of 3G Radio Frequency Band.

have met the qualification criteria, the four (Smart, Globe, Digitel, and Cure) were awarded the spectrum blocks. The fifth block has yet to be allocated, pending court proceedings.

76. In the Philippine Development Plan (2011-16), it is noted that there is a need for greater efficiency and transparency in spectrum regulation and allocation. The authorities indicated that the NTC is looking to automate its spectrum management and radio monitoring system, which would help in frequency planning and allocations; licensing and billing; surveillance and monitoring; and data collection.

77. The NTC sets tariffs for telecoms providers. However, if a service has sufficient competition to ensure fair and reasonable rates or tariffs, the NTC may exempt the service from its rate or tariff regulations. The authorities did not clarify the criteria used to determine "sufficient competition", or which providers' tariffs are currently regulated.

78. Since 2005, five cases concerning NTC decisions have been appealed to the Court of Appeal. Petitions were denied in four of the cases, and dismissed in one.

Market developments

79. The fixed-line market is dominated by Philippine Long Distance Telephone Company (PLDT), which had 53.15% share of subscribed lines in 2010.[77]

80. Nine cellular mobile providers were in operation in 2010. The main players were Smart (53.7% market share), and Globe (31.9% market share).

81. Over the period 2005-10, the Philippines saw a surge in mobile cellular use, with coverage over doubling from just over 40% to just over 85%. Fixed-line subscriptions grew very gradually over the review period, but remain low overall at just over 7% (Chart IV.1).

82. According to a 2008 study on the regulatory and policy environment in the Philippines, telecoms tariff rates have been going down, particularly in the cellular sector.[78] Overall the Philippines is ranked 113th out of 161 countries in the ITU's ICT Price Basket (2009). This study finds that measured as a percentage of GNI per capita, fixed-line and broadband prices are high in the Philippines; this may account for the relatively low number of internet subscriptions (both for fixed-line and fixed broadband). Mobile cellular prices, on the other hand are relatively low.[79]

83. VOIP is permitted in the Philippines. However, VOIP providers or sellers are required to register with the NTC, like any other value-added service provider. Carrier portability is unavailable.

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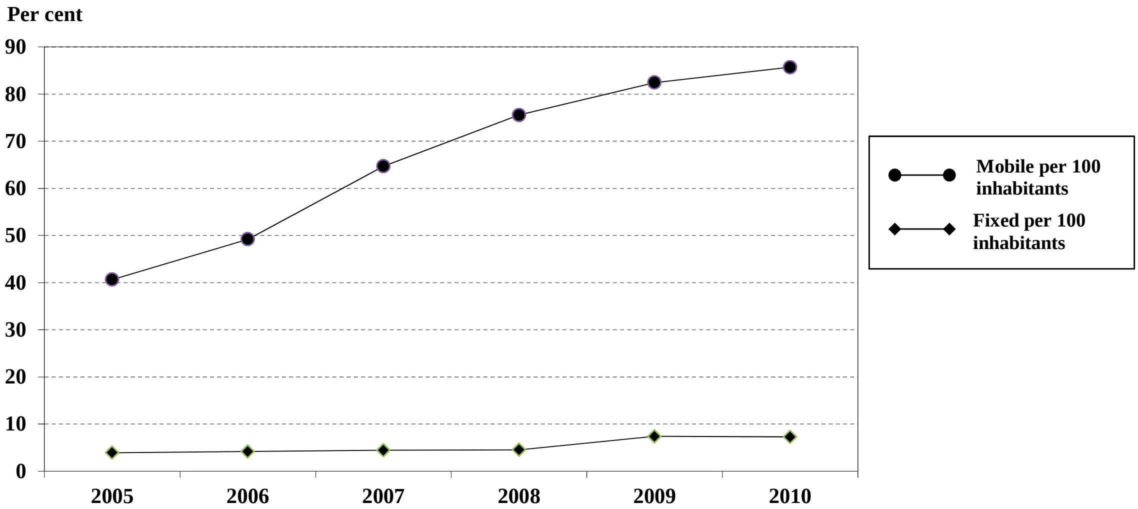
[77] The other main fixed line companies are: Bayantel (11.38% of subscribed lines); Bell Telecom (0.03%); Digitel (7.82%); ETPI/TTPI (0.57%); Innove (16.02%); and PT&T (0.42%).

[78] Alampay (2008).

[79] ITU (2010).

Chart IV.1
Fixed-line and mobile subscriptions, 2005-10



Source: ITU online information. Viewed at: http://www.itu.int/ITU-D/ict/statistics/.

(iv) Transport

84. Transportation services in the Philippines are being developed in the context of both national and regional plans, and priorities as articulated in the Government's National Transport Plan and the ASEAN Strategic Transport Plan (2011-15), otherwise known as the Brunei Action Plan (BAP).[80]

85. Under the GATS and under its FTAs, the Philippines has made specific commitments on maritime and air transport services, as well as rail and road transport and certain services auxiliary to all modes of transport (cargo-handling services; storage and warehousing services; container-yard and depot services; and freight forwarding services).

(a) Maritime transport services

86. The Maritime Industry Authority (MARINA), an attached agency of the Department of Transportation and Communications (DOTC), has overall responsibility for regulation and development of the four maritime sectors in the Philippines (domestic and overseas shipping, shipbuilding/ship repair, and maritime manpower). Its mandate includes: policy development; registration and licensing of ships; and provision of certificates required for carriers to operate domestically.[81]

87. MARINA has responsibility for registering vessels under the Philippine Register of Ships. Only Filipino nationals or domestic corporations or overseas companies that are at least 60% Filipino-owned may register vessels. The Chief Executive and Chief Operating officers must be citizens and permanent residents of the Philippines. Furthermore, the crew must be 100% Filipino. These requirements are the same as those applied at the time of the Philippines' previous Review.

[80] DOTC (2010); and ASEAN (2010).

[81] MARINA's functions are set out in Executive Order No. 125 (1987), as amended by Executive Order No. 125-A (1987). Viewed at: http://www.marina.gov.ph/policies/execorders.aspx.

88. Ships are registered to provide either domestic or international shipping. MARINA grants certificates to domestic shipping operators taking into consideration the economic and beneficial effects the proposed service should have to the port, province or region it proposes to serve.

89. There are 7,223 Philippines-registered ships (excluding fishing vessels) involved in the domestic transport of cargo and passengers **(**representing 1.9 million gross tonnes as at June 2011). There are 169 Philippine registered ships engaged in international voyages, (3.8 million gross tonnes). The authorities noted that Philippines-registered ships generally operate internationally, and do not tend to transport Philippine cargo.

90. While cabotage is reserved to Philippine ships registered to provide domestic shipping, a domestically flagged ship registered to provide overseas trade, may offer domestic services if granted a special permit by MARINA. This special permit may be granted if: (a) there is no existing vessel operating in the proposed route or area of operation; (b) there is no available local vessel to transport the cargo to meet the shipping requirement; (c) the proposed vessel is contracted by a public or private entity; or (d) in the case of a vessel carrying or bringing in foreign tourists, operation calls at domestic ports are part of its itinerary.[82]

91. Foreign-registered vessels are prohibited from providing cabotage services, although a special permit may be granted by MARINA when no domestic vessel is available or suitable to provide the service required, and the public interest warrants the same.[83] The authorities indicated that these ships are mostly involved in oil exploration projects contracted by the Government, which require specialized ships not normally available from the domestic fleet.

92. It was noted in the Philippines' previous Review, that domestic shipping was relatively expensive and highly concentrated. In the context of the current Review, the authorities noted that lower freight costs are being realized as a result of the Government's "Strong Republic Nautical Highway Roll-On-Roll-Off Transport System" launched in 2002.[84] The Nautical Highway connects the islands of Luzon, Visayas, and Mindanao, and allows for the continuous movement of cargo using land and water transport.

93. The Philippines is a signatory to the 1974 United Nations Convention on a Code of Conduct for Liner Conferences (UN Liner Code), but the authorities indicated that this is not applied.

94. Government cargos are reserved for Philippine-registered vessels. An exemption may be obtained from the Philippine Shipper's Bureau if suitable Philippine-flagged vessels are unavailable at reasonable freight rates within a reasonable period.[85]

95. All Philippine vessels must be repaired, altered, reconditioned, converted and dry docked at domestic shipyards or ship-repair facilities registered with MARINA. Exemptions apply, subject to a waiver from MARINA, such as when emergency repairs are required overseas, when repairs or works

[82] These conditions are set out in MARINA Circular No. 105.

[83] R.A. No. 9295, Chapter III, Section 6; and MARINA Circular No. 105/105-A.

[84] The RORO system is a network of roads and ports using a roll-on-roll-off ship designed to carry wheeled and tracked vehicles as all or most of its cargo. These vehicles are driven or towed on and off the ship either by the ship's owner ramps or shore-based ramps. These systems reduce costs associated with cargo loading (crane systems and skilled crane operators are not required) and enable RORO vessels to call at small ports.

[85] Cargo Reservation Law (PD 1466). Viewed at: http://www.lawphil.net/statutes/presdecs/pd1978/pd_1466_1978.html.

cannot be accommodated by Philippine shipyards or when the Philippines is not a port of call.[86] There are no foreign equity limits in shipbuilding and ship repair, and the authorities indicated that this policy was upheld by a Supreme Court decision in 2000.

96. The Philippines has a significant maritime manning industry. It has been reported that in 2005, Filipino seafarers contributed to between 25% and 28% of global manning, and US$2.5 billion to the Philippines' economy.[87]

Ports

97. The Philippines has around 950 ports including fishing ports and wharves, most of which serve inter-island trade. Fifteen government-owned ports and several private ports serve international trade; three ports handle foreign transhipment cargos.[88] The principal port is the Manila Port, comprising the North Harbour, which mainly handles domestic trade, and the South Harbour and Manila International Container Terminal (MICT), which handle foreign trade.

98. The Philippine Ports Authority (PPA) is responsible for administering most state-owned ports: it has 119 ports under its jurisdiction, comprising 23 base ports and 96 terminal ports.[89] In 2010, 166 million tonnes of cargo were transported through the PPA-administered ports; 42% was domestic. There were nearly 44 million passenger transport movements through these ports in the same year.

99. Under its Charter, as revised, the PPA has the corporate powers to supervise, control, regulate, construct, maintain, operate, and provide facilities and services in the ports belonging to it. The PPA has granted private corporations long-term contracts to manage and operate some of its major ports: the MICT is managed by International Container Terminals Services Inc.; South Harbour, Manila and the Port of Batangas are managed by Asian Terminals Inc.; and Manila North Harbour is managed by Manila North Harbour Port Inc. The authorities reported that cargo handling services in various PPA ports have been privatized and PPA-owned passenger terminal buildings in various ports are also being operated by private entities. Foreign equity in port management, which includes cargo handling, passenger terminal and other related services, is capped at 40%.

100. State-owned ports that are not under the PPA's jurisdiction are: the Port of Cebu; Port Irene; Poro Point, San Fernando Port; Subic Bay; and the Port of Polloc.[90] Fishing ports are under the authority of the Philippines Fisheries Development Authority (PFDA)

101. Private corporations may apply to the PPA for a licence to own, finance, develop, construct, and operate ports. Foreign equity in port ownership is limited to 40%. The construction of the port

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[86] Presidential Decree No. 1211 " Requiring all Philippine owned and/or registered vessels to undertake repairs and drydocking with MARINA-registered ship repair yards".

[87] PDP Australia Pty Ltd and Meyrick and Associates (2005).

[88] Government-owned ports that serve international trade are: South Harbour (Manila); Manila MICT; Limay; Batangas; Legazpi; Puerto Princesa; Dumaguete; Iloilo; Cagayan de Oro; Iligan; Nasipit; Surigao; Davao; General Santos; Currimao; Salomague; and Zamboanga. The ports that handle foreign transhipment cargos are: Currimao, Salomague, and MICT.

[89] As clarified by the authorities, a base port is the center or hub of operations and is normally the busiest terminal in a Port Management Office (PMO). A terminal port, on the other hand, is a port under the administration of the base port.

[90] The Port of Cebu is administered by the Cebu Port Authority; Port Irene by Cagayan Economic Zone Authority; Poro Point, San Fernando by Bases Conversion Development Authority; Subic Bay by Subic Bay Metropolitan Authority; and Port of Polloc by Autonomous Region of Muslim Mindanao.

must conform with the overall national port development plan. While the port facility and back-up area of the port may be privately owned, the foreshore area belongs to the Government. In 2010, the 426 private ports handled 58% of the Philippines' total cargo, mainly oil, petroleum products, and wheat.

102. With respect to port auxiliary services, there is a constitutional requirement that customs brokers must be Filipinos. Information was not available on the regime applied for freight forwarding and maritime agency services.

Incentives

103. Certain passenger and cargo vessels and accessories may be VAT exempt to assist the domestic shipping industry. However, VAT may only be exempt on imports when there is insufficient domestic production.[91] This incentive scheme expires in 2014.

Commitments under the GATS and FTAs

104. The Philippines has made GATS commitments in maritime transport. With respect to international passenger and freight transport (excluding cabotage transport and government-owned cargos), the only limitations relate to market access mode 4, whereby it is specified that for specialized vessels, aliens may be employed as supernumeries only for a six-month period. The only limitations with respect to leasing/rental of vessels without crew are that contracts must be approved by MARINA. The Philippines inscribed a market-access limitation requiring repairs, conversion or drydocking of Philippine-owned or registered vessels to be done at MARINA-registered domestic ship-repair yards. The Philippines has scheduled MFN exemptions relating to preferential cargo-sharing arrangements granted to parties of the UNCTAD Liner Code[92], as well as cabotage transport, which is reserved for Philippine owned or registered vessels. Limited access to cabotage transport is allowed on a reciprocal basis, with countries with which the Philippines has concluded agreements on amity, commerce, and navigation.

105. The Philippines specific commitments on maritime transport under the AFAS and ASEAN FTAs with Australia-New Zealand and Korea are identical to its GATS commitments. Under the bilateral agreement between Japan and the Philippines, non-discriminatory access to certain port services is scheduled as an additional commitment. In addition, the Philippines has made specific commitments on maritime agency services, pushing and towing services, port and waterway operation services, and other supporting services for water transport.

(b) Air transport

Airlines and air services agreements (ASAs)

[91] The VAT exemption applies to purchases of passenger and cargo vessels of 150 gross tonnes and above under a certain age, as well as other items such as engines and spare parts, life-saving equipment, safety and rescue equipment, communication and navigational equipment, and metal plates used for transport operations. For imports to be eligible for the VAT exemption, they must have the prior approval of MARINA and be imported by a MARINA-registered domestic supping operator.

[92] Under the arrangement, a party to the UNCTAD Liner Code effectively implementing the Code is assured of at least 40% share of its bilateral export and import liner cargo trade with the Philippines.

106. In 2010, the Philippines recorded 41 million passenger movements by plane and 563 million tonnes of cargo transported by air (both within the country and abroad). Passenger transport increased steadily over the review period, while cargo volumes fluctuated.[93]

107. The Civil Aeronautics Board (CAB), an attached agency of the Department of Transportation and Communications (DOTC), is responsible for licensing domestic and international airlines and regulating competition within the sector.[94] The Civil Aviation Authority of the Philippines (CAAP), created in 2008, has responsibility for the regulation of technical, operational, safety, and security aspects of aviation. It is a Government agency attached to the DOTC with quasi-judicial and legislative powers, and has corporate attributes. It replaces the Air Transportation Office.[95]

108. Under the Constitution, and as reflected in the Civil Aviation Authority Act (2008), foreign equity in domestically licenced airlines is capped at 40%.[96] Five major airlines are operating in the Philippines as of October 2011. In addition, Air Asia, has been granted a provisional licence but has not yet commenced operations (Table IV.9). Philippine Airlines (PAL) serves the majority of international scheduled routes; 34 small air carriers (air taxi operators) are certified to operate in the country. All airlines are privately owned corporations. Philippine carriers operate flights to 23 territories.[97]

109. The domestic market was opened for competition among domestic airlines in the 1990s (PAL previously had a monopoly). While there are no specific legal provisions limiting cabotage to domestically licenced airlines, this is achieved through the exclusion of these rights in air services agreements. In 2010, the cabotage market accounted for 16.6 million passenger movements (up from 7.1 million in 2004).

Table IV.9
Domestic airlines: market share and foreign equity participation, October 2011

Carrier	Market share (%)		Foreign equity participation (%)
	Domestic	International	
PAL	32	64	3
Cebu Pacific Air	48	34	0
Air Philippines	11	0	0
Zest Air	8	2	0
SEAir	1	0	40

Source: Information provided by the authorities.

110. International air services (cargo and passenger) are governed by bilateral ASAs. ASAs are negotiated by the Philippine Air Negotiating Panel and/or the Philippine Air Consultation Panel

[93] For Philippine aircraft, passenger, and cargo statistics over 2001-10, see CAAP online information. Viewed at: http://www.caap.gov.ph/web/downloads.htm.

[94] As noted in the Philippines previous review, the CAB is responsible for eliminating rate discrimination, unfair competition, and deceptive practices, and for approving airline mergers. These matters are handled by public hearings, particularly if there are opposing parties or complaints.

[95] An Act creating the Civil Aviation Authority of the Philippines, authorizing the appropriation of funds therefore and for other purposes (R.A. 9497, 4 March 2008). Viewed at: http://www.lawphil.net/statutes/repacts/ra2008/ra_9497_2008.html.

[96] Civil Aviation Authority Act (2008) R.A. No. 9497, Section 44.

[97] Australia; Bahrain; Brunei Darussalam; Canada; China; Hong Kong, China; India; Indonesia; Japan; Kingdom of Saudi Arabia; Korea; Kuwait; Malaysia; Macau, China; Netherlands; Papua New Guinea; Qatar; Singapore; Chinese Taipei; Thailand; United Arab Emirates; United States; and Viet Nam.

(together known as the Philippines Air Panels).[98] In negotiating ASAs, the Philippines Air Panels are guided by the principles of promoting tourism, investment, trade, employment, competition, and the competitiveness of Philippine domestic carriers.

111. Current government policy is to pursue ASAs more aggressively. Under Executive Order 29 (2011), the Philippines Air Panels are authorized to offer third, fourth, and fifth freedom rights to all airports other than the Ninoy Aquino International Airport (NAIA) (which is approaching full capacity), and may do so without imposing restrictions on frequency, capacity, or type of aircraft. For ASAs already in force, the CAB has the authority to grant foreign air carriers increased frequencies and capacities beyond the terms of the relevant ASA. These increases must be approved by the President and may have conditions attached, including that they may apply only for a specific period.

112. The Philippines has signed 65 ASAs, all of which are in force (either fully or provisionally); 14 agreements were signed over the review period (Table IV.10). There was no noticeable shift towards a more liberal approach to ASAs over the review period. Most ASAs are restrictive, covering only third and fourth freedoms (fifth freedom traffic rights are permitted under 24 agreements). All ASAs require substantial ownership and effective control of the airline and dual approval of tariffs. In addition, capacity is generally predetermined, with a few exceptions. On the other hand, multiple designation is the general rule.

Table IV.10
Key characteristics of the Philippines' ASAs, 2005-11

Partner	Signed	Traffic rights (freedoms)	Ownership[a]	Tariffs[b]	Capacity[c]	Designation
Papua New Guinea	08/2011*	3,4	SOEC	DA	PreD	Multiple
Malaysia	07/2011*	3,4	SOEC	DA	PreD (route 1,2) free (route 3)	Multiple
Singapore	05/2010*	3,4,5	SOEC	DA	PreD	Multiple
Turkey	02/2010*	3,4,5	SOEC	DA	PreD	Multiple
Russia	12/2009*	3,4	SOEC	DA	PreD	Multiple
Libya	10/2009*	3,4	SOEC	DA	PreD	Multiple
United Kingdom	07/2009*	3,4	SOEC	DA	PreD	Multiple
Spain	05/2009*	3,4	SOEC	DA	PreD	Multiple
Australia	03/2009*	3,4,5	SOEC	DA	PreD (route 1) free (route 2)	Multiple
Finland	09/2008	3,4,5	SOEC	DA	PreD	Multiple
Iran	08/2008	3,4	SOEC	DA	PreD	Multiple
Cambodia	06/2008*	3,4	SOEC	DA	PreD	Multiple
Canada	06/2008*	3,4,5	SOEC	DA	PreD	Multiple
New Zealand	11/2007	3,4	SOEC	DA	PreD	Multiple

Note: Agreements marked with an asterisk (*) have entered into force on a provisional basis.
SOEC - substantial ownership and effective control;
DA - dual approval;
PreD - predetermination;
Free - free determination (free).

Source: Information provided by the authorities.

113. Several agreements were signed over the review period, to implement the ASEAN Open Skies Policy. In addition, an ASA has been signed between ASEAN and China (Table IV.11). The

[98] As set out in Executive Order (EO) No. 28, 2011, the Philippine Air Negotiating Panel is responsible for negotiations to conclude ASAs and the Philippine Air Consultation Board is responsible for any succeeding negotiations. Viewed at: http://www.gov.ph/2011/03/14/executive-order-no-28-2/.

authorities indicated that, to the extent there are conflicting provisions in bilateral and ASEAN air services agreements, the more liberal provision would prevail.

114. Major challenges facing the CAAP have been the recent FAA-IASA downgrading (in 2008), the EU-EASA blacklisting (2010), and ICAO-USOAP specific safety concerns (2010). These have had a negative implication for the eligibility of Philippine licenced aircraft to operate in these territories. The authorities noted that to resolve these issues, the CAAP is in the process of amending its civil aviation rules; employing the necessary qualified personnel; strengthening its information database and aviation oversight functions; and complying with all other civil aviation safety requirements.

115. The Philippines imposes a 3% common Carriers Tax (CCT) and a 2.5% gross billings tax on carriers. Tax reforms are being considered in Congress to reduce disincentives for long-haul carriers and thereby encourage tourism.

Table IV.11
ASEAN air services agreements signed since 2005

Agreement	Signed/entry into force (Philippines)	Description
ASEAN Multilateral Agreement on Air Services (MAAS)	May 2009 / May 2010	Requires substantial ownership and effective control of carriers. Multiple designation applies. Predetermination for capacity. Covers 3rd, 4th and 5th freedom rights.
ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services (MAFLPAS)	November 2010 / has not yet entered into force	Builds on the MAAS to allow designated airlines of ASEAN Member States to provide air services from international airports in one territory to international airports in another territory, with full 3rd, 4th and 5th freedom rights.
ASEAN Multilateral Agreement on the Full Liberalization of Air Freight Services (MAFLAFS)	May 2009 / May 2010	The agreement offers a choice of ownership (either substantial ownership and effective control; community of interest; or principal place of business); tariffs may be freely determined. Covers 3rd, 4th and 5th freedom rights.
ASEAN-China Air Transport Agreement (AC-ATA)	November 2010 / has not yet entered into force	Allows designated airlines of ASEAN to provide air services from any city with an international airport in its territory to any city with an international airport in the territory of China and vice versa with third and fourth freedom traffic rights. Discussions are being held to expand the Agreement to include fifth freedom traffic rights.

Source: ASEAN online information. Viewed at: http://www.aseansec.org/7365.htm.

Airports, airport management, and ground handling services

116. The Philippines has 86 airports: of these 10 serve international flights and 41 serve domestic scheduled services. NAIA is the main airport for international flights.[99] CAAP regulations provide that airports can be government or privately owned**.**

117. As noted in the Government's National Transport Plan, the Philippines air transport infrastructure needs rationalizing and upgrading: airport infrastructure development has not kept pace with increased passenger traffic, and the NAIA is approaching full capacity. Moreover,

[99] Civil Aviation Authority of the Philippines online information. Viewed at: http://www.caap.gov.ph/web/airports.htm#. The ten international airports are: Laoag, Subic Bay, Clark, Manila, Puerto Princesa, Kalibo, Cebu, Zamboanga, Tambler, and Davao. Airports are classified as (a) international airports (airports with border-control facilities used for international flights); (b) principal airports (used for domestic scheduled flights either by jets (class 1) or propeller planes (class 2); and (c) community airports (used for general aviation aircraft).

The Philippines has more national airports than justified by its size (geographically and economically).[100]

118. The Mactan-Cebu Airport and the Ninoy Aquino International airport are managed by the Mactan-Cebu International Airport Authority (MCIAA) and the Manila International Airport Authority (MIAA), respectively, which are government-owned and controlled corporations, attached to the DOTC.[101] The authorities noted that the management and operation of Caticlan Airport was recently awarded to the private sector. There is also a plan to privatize the operation and maintenance of Laguindingan Airport, which is due to be completed in 2012. All other airports are operated and maintained by the CAAP. Landing fees for international flights are around double those levied on domestic flights. Fees are computed based on aircraft gross weight. For international operations the fees are US$2.48 per 500 kg, and for domestic operations the fee is PHP 48.18 per 500 kg. The fees for international flights are applied regardless of ownership.

119. Air traffic services are provided exclusively by the CAAP. With respect to ground handling services, the authorities indicated that self, mutual, and third-party handling are permitted.

Sales, reservation, marketing, repair, and maintenance services

120. The Philippines has undertaken GATS and FTA commitments on the maintenance and repair of aircraft; and, on selling and marketing services.[102] The authorities indicated that since air transport is considered to be a public utility, foreign equity restrictions apply maximum of 40% to all mode 3 market-access commitments. This is specified in the Philippines' horizontal commitments. Subject to horizontal provisions, the Philippines has scheduled an open regime for the maintenance and repair of aircraft, whereas specific commitments on selling and marketing services vary slightly according to the respective agreement (Table IV.12). Information was not available on the applied regime for sales, reservation, marketing, repair, and maintenance services.

Table IV.12
Philippines' specific commitments on sales, reservation, marketing, and repair and maintenance services (modes 1-3)
(Commitments: full ■; partial ◘; unbound □)

Sub-sector	GATS/FTA coverage	Market access		National treatment	
Maintenance and repair of aircraft	GATS; ASEAN - Korea; AANZFTA	M1	□*	M1	□*
		M2	■	M2	■
		M3	■	M3	■
	Philippines - Japan	M1	□*	M1	□*
		M2	■	M2	■
		M3	◘	M3	■
Selling and marketing services					
Off-line carriers	AANZFTA	M1	◘	M1	■
		M2	■	M2	■
		M3	◘	M3	■
	Philippines - Japan	M1	◘	M1	■

Table IV.12 (cont'd)

[100] DOTC (2010).
[101] MCIAA online information. Viewed at: http://www.mactan-cebuairport.com.ph/corporate_mciaa.php.
[102] In addition, the Philippines has undertaken commitments on rental of aircraft without crew under the GATS, ASEAN-Korea FTA, and the AANZFTA. Contracts for the lease of aircraft are subject to the approval of the Civil Aeronautics Board.

Sub-sector	GATS/FTA coverage	Market access		National treatment	
		M2	■	M2	■
		M3	■	M3	■
General Sales and Cargo Sales Agency	GATS; and, ASEAN - Korea.	M1	◘	M1	■
		M2	■	M2	■
		M3	■	M3	■
	AANZFTA	M1	■	M1	■
		M2	■	M2	■
		M3	■	M3	■
	Philippines - Japan	M1	◘	M1	■
		M2	■	M2	■
		M3	◘	M3	◘

* Unbound due to lack of technical feasibility.

Notes: These specific commitments should be read together with the respective horizontal limitations scheduled by the Philippines under the GATS and its FTAs. These mainly affect mode 3.
Off-line carrier: any foreign air carrier not certified by the CAB, but who maintains an office or who has agents/employees in the Philippines, who sells air transportation on the carrier's behalf.
General Sales Agent: a person not employed by an air carrier, who is authorized by it to sell air transportation (either by him/herself or through an agent).
Cargo sales agent: a person not employed by an air carrier, who sells air transport of cargo.

Source: GATS and FTA commitments (see Table IV.4 source). Information was not available on the Philippines air transport services commitments under ASEAN.

(v) Tourism

121. The tourism sector contributed 5.8% to GDP and 10.3% to employment (2010). Tourist arrivals to the Philippines rose to 3.5 million in 2010, up from 2.3 million in 2004, but lower than the growth projections in 2004 (to 5 million by 2010). Most visitors were from Korea (21%) the United States (17%) and Japan (10%).

122. The Philippines has made GATS commitments on tourism accommodation facilities; speciality restaurants; professional congress organizers; and travel agencies. In its specific commitments, foreign equity is limited to 40% for pension houses, tourist inns, apartels, professional congress organizers, and travel agencies. No foreign equity is allowed if specialty restaurants are not part of hotel facilities. There are also various restrictions on employment of foreigners and/or residency and citizenship requirements.

123. The tourism sector is considered to be central to the Philippines social and economic development. In the Goals and Growth Strategies of the Department of Tourism 2010-2016, the Government's objective is to double tourist arrivals by 2016, and create a substantial number of jobs. The authorities indicated that the main bottleneck to tourism development is infrastructural weaknesses, particularly highways, hotels, and tourist facilities. Other problem areas include air transport shortcomings (including airline safety issues and tax disincentives (see air transport section above)) as well as security in key tourist destinations. The Department of Tourism has identified some key pillars in its long-term growth strategy: enhancing airline access; building tourism infrastructure; upgrading the quality of tourism products and services. The authorities noted that a National Tourism Development Plan 2011-16 has been drafted, but has not yet been approved by the President.

124. Notwithstanding the importance the Government attaches to growth, significant market access and barriers to foreign investment remain in the tourism sector (Table IV.13).

Table IV.13
Market access and investment conditions, tourism services, 2011

Service	Investment restrictions	Legislative basis (if any)
Accommodation facilities	100% foreign equity is allowed in accommodation facilities, however, lands may be leased to foreign investors only for a period of 50 years, renewable once for not more than 25 years. For tourism projects, private land may only be leased to foreigners for investments of a minimum of US$5 million	Constitution
Restaurants	Minimum paid-up capital for 100% foreign-owned restaurants is US$2.5 million; otherwise foreign ownership is limited to 40%. Land ownership restrictions apply	Retail Trade Liberalization Act (R.A.7042, 1991, as amended)
Tourist guides	Foreigners may be employed as tourist guides only if no Filipinos are available	Labour Code (section 40)

Source: WTO Secretariat.

125. The enactment of the Tourism Act in 2009 (Republic Act 9593) developed the concept of the Tourism Enterprise Zone (TEZ), for which special incentives are offered. TEZ's are geographical areas with certain specified characteristics.[103] Applications for designation as a TEZ must be made to the Tourism Infrastructure and Enterprise Authority (TIEZA), and be accompanied by a development plan.[104] The minimum required investment in order to benefit from incentives is US$5 million.[105] The TIEZA is responsible for issuing all relevant licences and permits to TEZ operators and registered tourism enterprises operating within a TEZ, as well as for granting incentives.

126. Available fiscal incentives under the Tourism Act include income-tax holidays, customs-duty exemptions, tax credits for locally sourced goods and services, and a social responsibility incentive (Table IV.14). Under the Act, foreign-owned and domestic enterprises are entitled to incentives on the same basis. Several TEZ applications are being evaluated.

127. Enterprises operating within TEZs are required to pay a 5% tax on their gross income earned on registered activities.[106]

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[103] The characteristics are specified in Chapter IV(A) of the Tourism Act of 2009: (a) the area is capable of being defined into one contiguous territory; (b) it has historical and cultural significance, environmental beauty, or existing or potential integrated leisure facilities within its bounds or within reasonable distance from it; (c) it has, or may have, strategic access through transportation infrastructure and reasonable connection with utilities infrastructure systems; (d) it is sufficient in size, such that it may be further utilized for bringing in new investments in tourism establishments and services; and (e) it is in a strategic location such as to catalyse the socio-economic development of neighbouring communities.

[104] The TIEZA is governed by a Board of Directors, chaired by the Secretary of the Department of Tourism and largely comprises Filipino nationals, including representatives from tourism-related service providers.

[105] Guidelines for the Designation and Supervision of Tourism Enterprise Zones and the Administration of Incentives under R.A. 9593. Viewed at: http://www.tieza.com.ph/pages-laws-and-issuances.php.

[106] This is in lieu of all other national and local taxes and licence fees (excluding any real estate taxes and any other TIEZA fees).

Table IV.14
Fiscal incentives offered under the 2009 Tourism Act

Incentive	Application
Income-tax holiday	6-year income-tax exemption for new enterprises in greenfield and brownfield TEZ's (extendable for up to 6 additional years if the registered enterprises undertake a substantial expansion or upgrade of their facilities amounting to 50% of the original investment). Net operating loss of a TEZ operator or registered tourism enterprise may be carried over as a deduction from gross income for the 6 consecutive years immediately following the year of such loss
	6-year (non-renewable) income-tax exemption for existing enterprises in brownfield tourism zones if enterprises undertake an extensive expansion or upgrade of their facilities
Customs-duty exemptions	100% exemption from all taxes and customs duties for imports of goods consumed in the course of services rendered by or through enterprises within TEZs
Tax credit for locally sourced goods	Tax credit equivalent to all national internal revenue taxes paid on locally sourced goods and services directly or indirectly used by the registered enterprise for services rendered within the TEZ. Taxes include: income tax; estate and donors tax; VAT; excise tax; documentary stamp tax; and other such taxes as collected by the Bureau of Internal Revenue
Social responsibility incentive	Tax deduction from income or other national taxes equivalent to a reasonable percentage (maximum 50%) of the cost of environmental protection or cultural preservation activities, sustainable livelihood programmes for local communities and similar

Source: Tourism Act of 2009.

128. Non-fiscal incentives include: employment of foreign nationals in certain positions for reasonable periods and resident visas for foreign nationals investing US$200,000 or over. Investors have the right to repatriate the proceeds of the liquidation of an investment and may remit earnings as well as money to meet loan commitments. There are guarantees that investments will not be requisitioned unless in time of war or national emergency (with due compensation paid).

129. Tourism enterprises outside of TEZs are entitled to incentives offered under: the Omnibus Investments Code; the Foreign Investments Act; the Special Economic Zone Act; and the Bases Conversion and Development Act (Chapter III(3)(i)).

(vi) Professional services

130. The Philippines Professional Regulation Commission (PRC) has responsibility for regulating and licensing 46 professions, which it does through its sector-specific Professional Regulatory Boards (PRBs) and the respective profession-specific laws.[107] The only profession not regulated by the PRC is law, which is the responsibility of the Supreme Court. To practice as a lawyer in the Philippines, the Supreme Court Philippine Bar Examination must be passed. In order to be a candidate for the bar examination, the academic requirements are: a professional degree in law from a recognized law school in the Philippines or from a foreign law school that has been accredited by the Philippine Government (introduced in 2010), and a bachelor's degree (with academic credits in required subjects) from a recognized college or university in the Philippines or abroad. Lawyers must be Filipino citizens and residents.

[107] The 46 regulated professions are: accountancy; aeronautical engineering; agricultural engineering; agriculture; architecture; chemical engineering; chemistry; civil engineering; criminology; customs brokers; dentistry; electrical engineering; electronics engineering; environmental planning; fisheries; forestry; geodetic engineering; geology; guidance counselling; interior design; landscape architecture; librarians; marine deck officers; marine engineer officers; master plumbers; mechanical engineering; medical technology; medicine; metallurgical engineering; midwifery; mining engineering; naval architecture and marine engineering; nursing; nutrition and dietetics; optometry; pharmacy; physical therapy and occupational therapy; professional teachers; psychology; radiologic and x-ray technology; real estate service; respiratory therapy; sanitary engineering; social workers; sugar technology; and veterinary medicine (PRC online information. Viewed at: http://www.prc.gov.ph).

131. Under the Constitution (Article XII (Section 14), and as outlined in the Eighth Regular Foreign Investment Negative List, the practice of all professions in the Philippines is limited to Filipino citizens, except in cases prescribed by law. However, Article 40 of the Labour Code provides that non-resident aliens may be admitted to the Philippines to supply a service after it has been determined that a competent and willing Filipino is not available at the time of application. Moreover, the Philippines Professional Regulation Commission Modernization Act (2000) allows the PRC, upon the recommendation of the professional regulatory body concerned, to approve the licensing and registration of foreign professionals, with or without examination, when substantially the same requirements for licensing and registration for the profession exist in the respective country, and on the basis of reciprocal treatment. Licences or special temporary permits may be granted to: foreign professionals under reciprocity and other international agreements; consultants engaged in foreign-assisted government projects; and employees of foreign private firms or institutions pursuant to law[108], or health professionals engaged in time-limited humanitarian missions.[109]

132. The authorities noted that, generally, private organizations make the request for their profession to be recognized and regulated by the PRC. In order for a new profession to be PRC-regulated, legislation must be passed in Congress. The PRC has a role in ensuring that new legislation does not conflict with existing laws.

133. Over the review period, the Philippines included specific commitments on professional services in its regional and bilateral trade agreements, i.e. the ASEAN Framework Agreement on Services (AFAS); the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA); the ASEAN-Korea Agreement on Trade in Services (AK-ATS); and the bilateral FTA between the Philippines and Japan.[110] The limitations inscribed against sector-specific commitments vary widely (Table IV.15). In order for these commitments to be implemented, mutual recognition agreements (MRAs) need to be developed. Concrete progress has been achieved only under the AFAS, whereby framework arrangements to facilitate MRAs between countries have been concluded on engineering (2005); nursing (2006); architectural services (2007); surveying (2007); medical practitioners (2009); dental practitioners (2009); and accountancy services (2009).[111] These framework arrangements are a first step towards concluding the MRAs themselves. The authorities indicated that MRA negotiations in health-related areas under the AFAS are the most advanced. However, they were not able to give an estimate of when these or other MRAs would be concluded.

Table IV.15
Specific commitments on professional services undertaken in FTAs

	AFAS	AANZFTA	AK-ATS	Philippines-Japan
All subsectors of professional services	X	X	X	X
Legal (861)	-	-	-	-
Accounting, auditing and bookkeeping (862)				
- *Accounting*	-	X	-	-
- *Auditing Services including financial auditing and accounting review (86211, 86212)*	X	-	-	X
- Bookkeeping services, except tax returns (86220)	X	-	-	-
Taxation (863)	X	-	-	-
Architectural (8671)	X	-	-	X

Table IV.15 (cont'd)

[108] The authorities clarified that "pursuant to law" in the context of R.A. No. 8981 refers to the domestic/national regulatory laws governing the 46 regulated professions under the jurisdiction of the PRC.

[109] PRC Modernization Act (R.A. No. 8981, 2000). Viewed at: http://www.chanrobles.com/republicactno8981.htm.

[110] No GATS specific commitments have been taken on professional services.

[111] ASEAN online information. Viewed at: http://www.aseansec.org/23986.htm.

	AFAS	AANZFTA	AK-ATS	Philippines-Japan
Engineering (8672)				
- *Aeronautical engineering*	-	-	-	X
- *Agricultural engineering*	-	-	-	X
- *Chemical engineering*	-	-	-	X
- *Civil engineering*	X	X	-	X
- *Mechanical engineering*	X	X	-	X
- *Sanitary engineering*	X	X	-	X
- *Electrical engineering*	-	-	-	X
- *Naval architecture and marine engineering*	-	-	-	X
- *Metallurgical engineering*	X	X	-	X
- *Electronics engineering*	X	-	-	X
- *Mining engineering*	X	-	-	X
- *Geodetic engineering*	X	-	-	X
Urban planning and landscape architectural (8674)				
- *Urban (environmental) planning (86741, 91123)*	X	-	-	X
- *Landscape architectural (86742)*	X	X	-	X
Medical and dental (9312)				
- Medicine (9312**)	-	-	-	X
- Dentistry (9312**)	-	-	-	X
- Optometry	-	-	-	X
- Medical Technology	-	-	-	X
- Radiologic Technology	-	-	-	X
Veterinary (932)	-	-	-	X
Services provided by midwives, nurses, physiotherapists and para-medical personnel (93191)				
- Nursing (93191**)	-	-	-	X
- Midwifery (93181**)	-	-	-	X
- Physical and occupational therapy (93191**)	-	-	-	X
Other services				
- *Criminology*	-	-	-	X
- *Chemistry*	-	-	-	X
- *Forestry*	-	-	-	X
- *Librarianship*	-	-	-	X
- *Merchant marine professional*	-	-	-	X
- *Master plumber*	-	-	-	X
- *Social work*	-	-	-	X
- *Agriculture*	-	-	-	X
- *Fisheries*	-	-	-	X
- *Interior design*	-	X	-	X
- *Geology*	-	-	-	X
- *Professional teachers*	-	-	-	X
- *Customs brokerage*				X

Source: WTO document MTN.GNS/W/120, 10 July 1991.

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