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## **Report Of The Individual Action Plan (IAP) Peer Review Session Of The Philippines**

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Seoul, Korea  
3-4 March 2005**

# **REPORT OF THE INDIVIDUAL ACTION PLAN (IAP) PEER REVIEW OF THE PHILIPPINES**

**01 March 2005  
Seoul, Republic of Korea**

The IAP peer review session of the Philippines was held on 01 March 2005, in Seoul, Republic of Korea, at the margins of SOM 1 and related meetings. Delegates from Australia, Brunei Darussalam, Canada, Chile, Hong Kong, China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Peru, Singapore, Chinese Taipei, and United States of America were present. The APEC Secretariat, ABAC (APEC Business Advisory Council) and ASEAN (Association of the South-east Asian Nation) Secretariat were also present.

The Review Team for the Philippines comprised of:

<u>Moderator:</u>	Mr. Christopher Burton CTI representative of Canada
<u>Expert:</u>	Mr. Junsok Yang Professor Economic Department The Catholic University of Korea
<u>Discussant:</u>	Mr. Pablo Teitelboim CTI representative of Chile
<u>APEC Secretariat :</u>	Mr. Benyamin Carnadi Director (Program)

This report contains the following annexes:

- Annex 1– Moderator's Wrap-up remarks;
- Annex 2 – Study Report on the IAP of the Philippines;
- Annex 3 – Discussant's Remarks; and
- Annex 4 – Economies' written questions and remarks received during the session.

## IAP Peer Review of the Philippines

### MODERATOR'S CLOSING REMARKS

- Thank you all for your participation in the IAP Peer Review of the Philippines. In particular, I would like to thank our Expert, Dr. Junsok Yang, and our Discussant Mr. Mario Matus for their contribution to what has been a productive peer review session.
- I would also like to extend my compliments to the Philippines for its open and frank responses to member questions during this session.
- The Philippines has shown considerable resilience to both domestic and international economic challenges, and its commitment to trade liberalization has been evidenced by its APEC achievements -- helping spread the benefits of economic growth throughout the Asia-Pacific region.
- In particular, members have noted that the recent progress made by the Philippines in the IAP area of trade in goods is evidence of the Philippines' commitment to trade liberalization in the region. However, members have expressed concern about certain aspects of the Philippines' tariff structure -- in particular its bound rates and tariff rates. That said, members have recognized the progress made by the government and I congratulate the Philippines for having achieved the lowest tariff rates of the developing economies of APEC -- an example of the Philippines' strong commitment to the achievement of the Bogor Goals.
- The Philippines has already made significant improvements in the policy areas of customs procedures, standards and conformance, competition policy, and intellectual property rights. However, the expert stresses that *implementation* must now be a key focus. It is necessary for the Philippines to improve the execution component of its revised policies so as to ensure continued progress in these important areas.
- Our Expert, as well as other APEC members, has identified services, investment, and government procurement as the areas where the Philippines must make the most progress in order to reach Bogor.
- As noted by our Expert, the Philippines government has recognized the importance of FDI and the liberalization of services to the prosperity of both its domestic economy and the Asia-Pacific region. This is certainly an area of significant growth potential for the Philippines, and members encourage the government to make future improvements in the areas identified by the Expert so as to facilitate a more favourable foreign investment and services climate.
- In summary, much has been accomplished, but some challenges remain. I believe all present join me in urging the Philippines to continue its liberalization and facilitation efforts in pursuit of the Bogor Goals.

**INDIVIDUAL ACTION PLAN (IAP)  
PEER REVIEW  
OF THE PHILIPPINES**

**STUDY REPORT**

**BY  
REVIEW TEAM**

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# The Philippines IAP Review<sup>1</sup>

## I. Introduction

The Philippines has been an important APEC Member Economy since the founding of APEC. In 2003, The Philippines was the seventh largest APEC Member Economy in terms of population, with 83.8 million people, and the 15<sup>th</sup> largest APEC Member Economy in terms of GDP with 79.3 billion US dollars. Its per capita GNI in 2003 was 1,080 US dollars<sup>2</sup>.

In this review, we look at the Philippines' progress toward the Bogor Goal. We first take a short general overview of the Philippine economy and trade policy, including the role of APEC in the Philippines' policy formulation. Then, we look at the Philippines' progress toward the Bogor Goal, following the various chapters of the IAP.

The review shows that in the area of trade in goods, the Philippines has made substantial progress toward the Bogor Goal. However, in the area of trade in services and investment, there are still significant market barriers, and it is not entirely clear if the Bogor Goal can be achieved. But one should not be unduly pessimistic about the Philippines' chances of achieving the Bogor Goal in these areas since the Philippines recognizes the importance of foreign investment, increased competition through free trade, and transparency of government policy.

## II. General Overview

### *Macroeconomic Environment*

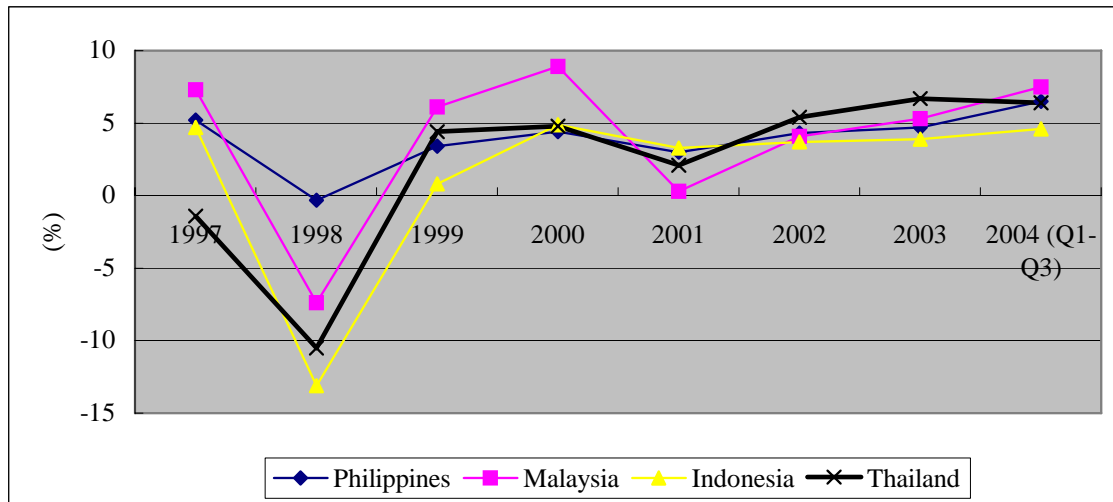
The Philippines had lower GDP growth rates than other large ASEAN economies in the late 1980s and 1990s. However, when the Asian financial crisis hit the region, the Philippines was less affected by the crisis than the other economies. Since the financial crisis, the growth rate for the Philippines has been somewhat favorable, though perhaps a bit modest compared to the other large ASEAN economies. The December 2004 *ADB Country Economic Review* points out that the Philippines has shown considerable resilience to unfavorable external events such as SARS, subdued world growth and poor weather; as well as domestic uncertainties such as elections, civil unrest and economic imbalances. The Philippines' growth rate for 2003 was 4.7%, and its growth rate for the first three quarters of 2004 is 6.5%.

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<sup>1</sup> : The expert wishes to thank the Philippine government, especially the Bureau of International Trade Relations for facilitating the in-economy visit, and making great efforts to make the visit productive.

<sup>2</sup> : GDP and population figures are the 2003 figures taken from 2004 APEC Economic Outlook; the GNI per capita figure is taken from the World Bank.

<Graph 1> GDP Growth Rates



Source: NEDA (National Economic Development Agency)

Agriculture still accounts for 20% of the GDP while manufacturing and services account for 33% and 47% respectively. Services is the fastest growing sector of the economy, with transportation, communication, and finance services being some of the faster growing service sub-sectors. Manufacturing has not grown as quickly, due in part to the global slowdown in the electronics and IT industries in 2001. The construction industry has also been adversely affected by the decline in public construction activities. While the trade account for the Philippines has recorded a deficit since 2001, the current account has continued to record positive figures, due to large remittances from overseas Filipino workers.

#### *Trade and Foreign Investment Environment*

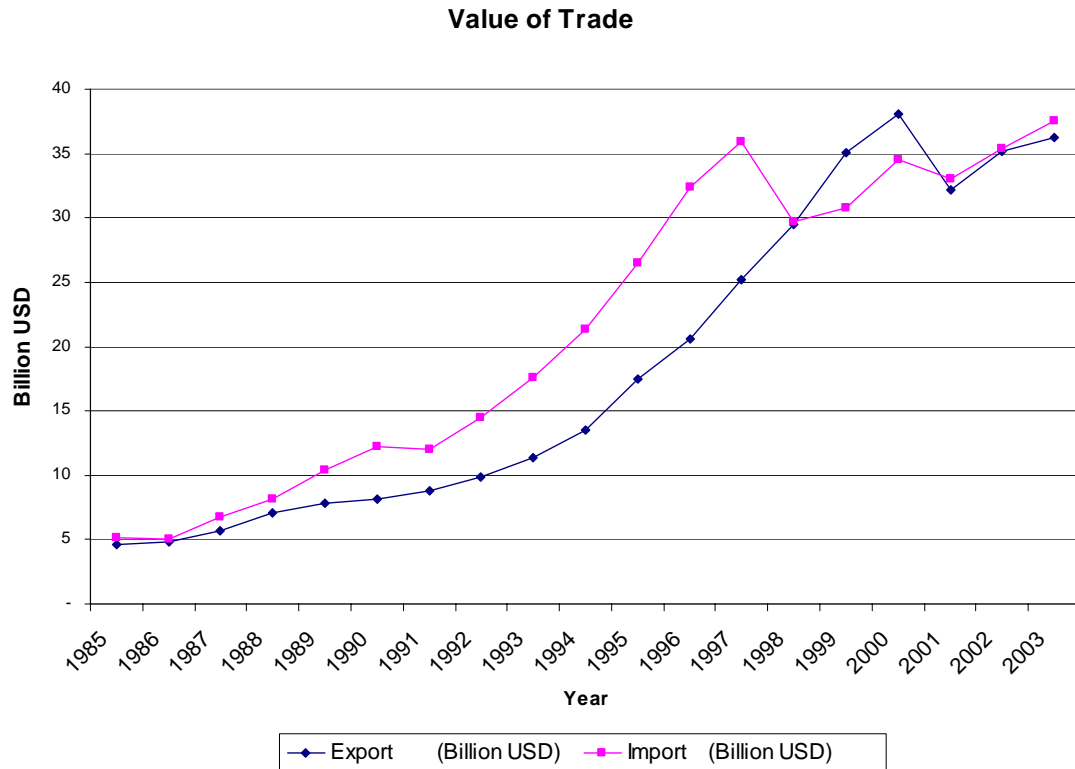
During the 1970s and 1980s, the Philippines was considered an economy which actively used import-substitution policies<sup>3</sup>. However, from the early 1980s, the Philippines initiated trade liberalization measures, and the picture changed considerably in the late 1980s and 1990s as trade grew quickly as seen in <Graph 2>. Trade dependence of the Philippines grew substantially in the 1990s as well. As seen in <Graph 4>, the amount of trade (exports and imports) as a percentage of GDP was less than 50% in the mid-1980s, but grew above 90% in the latter 1990s. As seen in <Graph 3>, the Philippines is currently running a trade deficit, but compared to most of the 1990s, the trade deficit as a percentage of the GDP is not excessive, as the trade deficit since 2001 never went beyond 2% of the GDP.

The Philippines' major trading partners are the United States, Japan, Singapore, Hong Kong China, and Taiwan. The Philippines' major export items are electronics, garments, electrical wiring harness,

<sup>3</sup> : For example, Bela Belassa examines the period between 1973-1983, and finds that inward orientation policies dominated in the Philippines. Bela Belassa (1989) "Outward Orientation" in Hollis Chenery and T.N. Srinivasan eds. (1989) *Handbook of Development Economics Volume II* North Holland, Amsterdam.

crude and refined coconut oil, fresh bananas, brakes and servo-brakes, and aircraft parts; while its major import items are electronic components, gas oil, gasoline, other wheat and meslin, copper concentrates, fuel oils and other capital equipment.

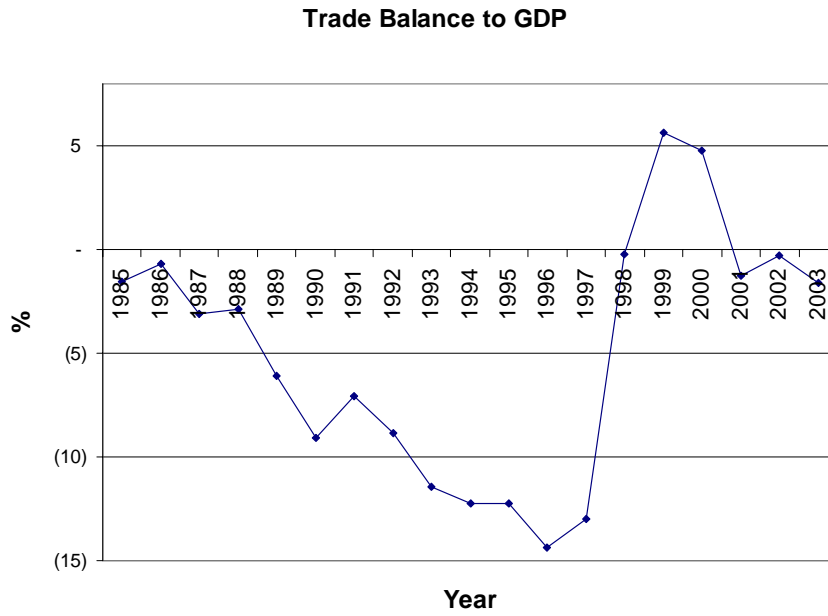
<Graph 2> The Philippines Trade in Billions of US Dollars



Source: NEDA

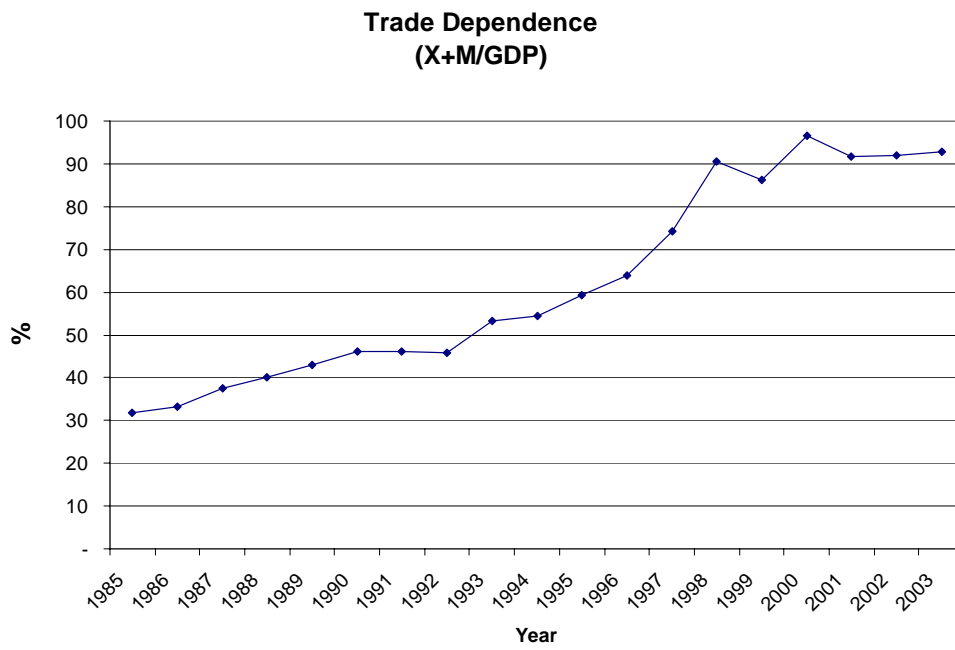


<Graph 3> Philippines Trade Balance as a Percentage to GDP



Source: NEDA

<Graph 4> Trade Dependence: (Exports + Imports)/GDP

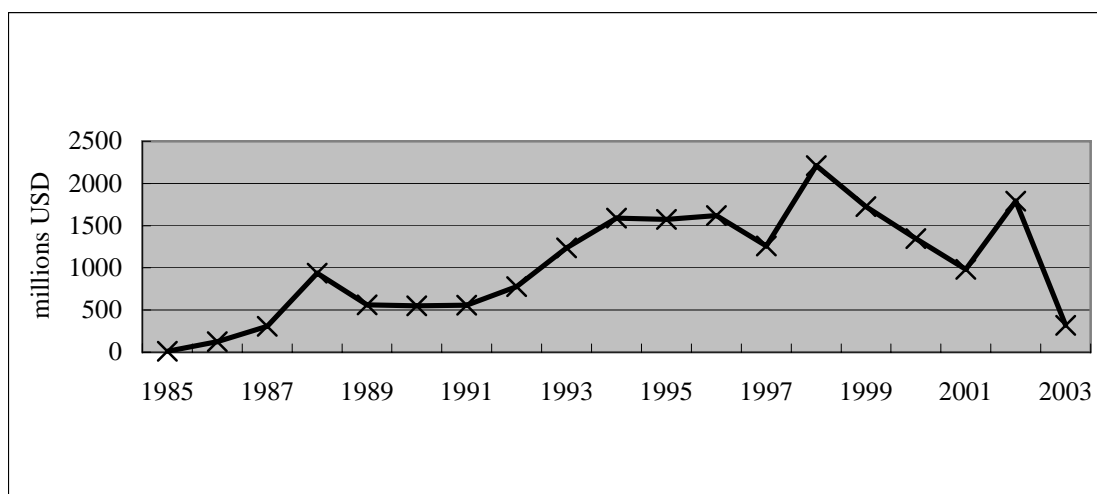


Source: NEDA

For foreign investment, between 1992 and 1996, there was a surge in capital inflow for both direct and portfolio investments. The foreign capital inflows underwent a significant slowdown in 1997 and 1998 due to the Asian financial crisis, but the inflows increased in general between 1999 to 2004.

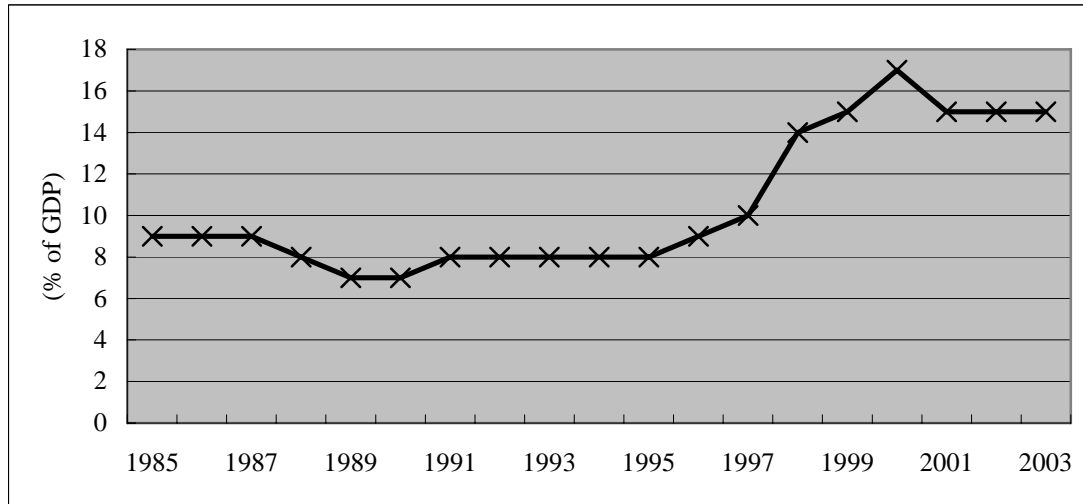
Looking specifically at foreign direct investment (FDI), <Graph 5> shows the amount of FDI inflows for the Philippines. Compared to other large ASEAN economies such as Thailand, Indonesia and Malaysia, the amount of FDI inflows for Philippines was small. <Graph 6> shows the amount of accumulated FDI inflows for the Philippines as a percentage of GDP. Again, the figure is substantially smaller than other large ASEAN economies, showing that, compared to other large ASEAN economies, the Philippines has not been able to attract as much foreign investment considering the size of its economy. <Graph 7> shows the flow of FDI for the Philippines as a percentage of gross fixed capital formation. Compared to other large ASEAN economies, FDI plays a smaller part in the gross fixed capital formation for the Philippines. These figures seem to indicate that FDI could play a larger part in the Philippine economy.

**<Graph 5> FDI Inflow for the Philippines in Millions of US Dollars**



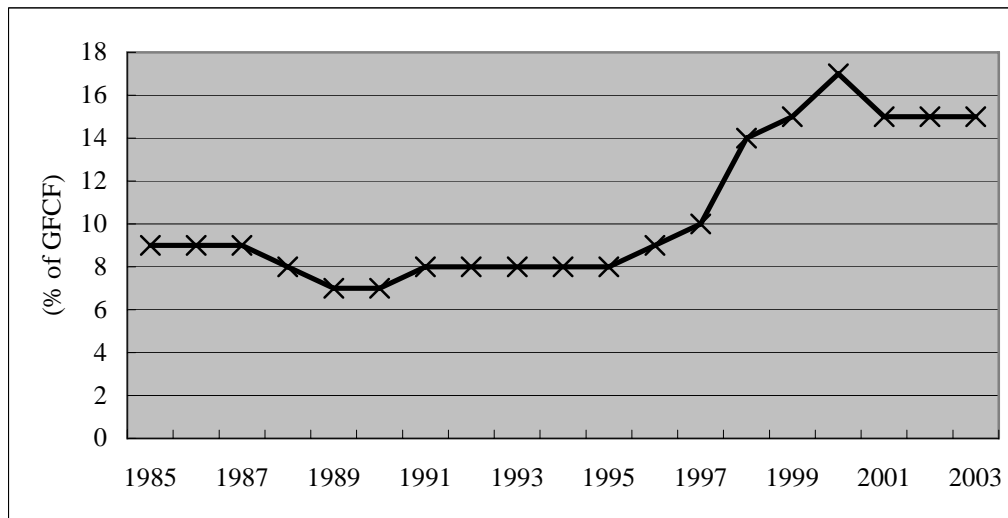
Source: UNCTAD FDI Database ([www.unctad.org](http://www.unctad.org))

<Graph 6> Stock of FDI for the Philippines as a Percentage of GDP



Source: UNCTAD FDI Database ([www.unctad.org](http://www.unctad.org))

<Graph 7> FDI Inflow for the Philippines as a Percentage of Gross Fixed Capital Formation



Source: UNCTAD FDI Database ([www.unctad.org](http://www.unctad.org))

### *The Philippines and APEC*

For the Philippines, APEC is an important forum for promoting trade in goods and services, investment and the transfer of technology and professional skills. All of the Philippines' major trading and investment partners are APEC member economies, and APEC economies accounted for 83.6% of

the Philippines' total trade in 2003<sup>4</sup>, and the top 20 foreign investors to the Philippines consist of businesses and companies from APEC economies, accounting for 57.05% of the country's total FDI in 2004.

APEC plays an important part in the Philippine economic policy formulation as well. APEC serves as an expression of the Philippines' commitment to domestic reforms, and provides a major impetus for trade and investment liberalization, as well as for increasing transparency.

#### *FTA Policy*

While the Philippines is an active participant of APEC and supports the multilateral trade system centered on the WTO, the Philippines has not been as enthusiastic about forming FTAs as some of the other APEC member economies. Because the Philippines has constraints in the amount of government resources that can be utilized for trade negotiations, it prefers to concentrate its resources on multilateral negotiations and APEC or ASEAN related negotiations. Thus, the Philippines takes a "careful" position on FTAs. However, Philippine government officials acknowledge that the Philippines may need to take a more active stance toward FTAs since as the Philippines' major trade partners sign FTAs with Philippines' competitors, Philippine goods may become relatively disadvantaged in their markets.

Currently, the Philippines is a part of two FTAs: ASEAN Free Trade Area (AFTA) and the ASEAN-China FTA. As a member of ASEAN, the Philippines is engaged in negotiations for ASEAN-Japan FTA, and also as a member of ASEAN, it is considering FTAs with Korea, India and CER. However, the only bilateral FTA under consideration by the Philippines currently is an FTA with Japan. All other FTAs are negotiated or considered in the context of ASEAN. The Philippines argues that any FTAs which it participates in must consider the special needs of developing economies.

#### *DDA Priorities*

The Philippines places great importance on the multilateral trade system, and the Doha Development Agenda negotiations. The issues which are most important for the Philippines include reduction of distortions in the agricultural market, increased market access for non-agricultural goods, and implementation issues, including special and differentiated provisions for developing countries to assure that products from developing countries have access to the markets of the developed countries.

### **III. Review by Subject**

In this section, we review the Philippines' progress toward the Bogor Goal by sections as established in the IAP. The Bogor Goal is defined as "*free and open trade and investment in the Asia-Pacific by 2010 for industrialised economies and 2020 for developing economies.*" To support the efforts to achieve this Bogor Goal, Osaka Action Agenda (OAA) was established in 1995, and the Manila Action

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<sup>4</sup> : This figure is taken from 2004 APEC Economic Outlook Table 1.5. The Philippines government gives this figure as 88%.

Plan (MAP) was established in 1996. While the OAA and MAP is used as objectives and guidelines to achieving the Bogor Goal in the context of the IAP, it is not entirely clear whether fulfilling the requirements of OAA and MAP implies that an APEC Member Economy has fulfilled the Bogor Goal. According to the 1995 and 1996 Economic Leaders' Declarations, both OAA and MAP were open to adjustments and changes. Thus, OAA and MAP seem to be means to achieve the Bogor Goal, rather than clarification of the Bogor Goal itself. Also, different economies seem to have somewhat different interpretations of the Bogor Goal, and for some sections of the IAP, it is not entirely clear how the Bogor Goal should be interpreted for those sections. Thus, for many sections, the Philippines' interpretation of the Bogor Goals is included, and where the Philippine interpretation seems reasonably consistent with the Bogor Goal, the evaluation of the Philippine's progress is made following that interpretation.

The Philippines argues that the standards for Bogor Goal should be different for developing and developed economies, and Bogor Goal should take into account the development status of each economy. The Philippines' interpretation of the Bogor Goal includes zero tariffs for substantially all goods with certain considerations and exceptions for its developing economy status; as well as the elimination of most barriers on trade in goods and services, and investment with certain considerations and exceptions for its developing economy status.

Overall, the Philippines has made substantial progress toward the Bogor Goal in the area of trade in goods. The tariff rates for the Philippines are very low given its developing status, and it has made good progress in the areas of non-tariff barriers, customs procedure, intellectual property rights, and standards and conformance. For trade in goods, if the current trends and efforts continue at similar levels, the Philippines is likely to achieve the Bogor Goal by 2020.

The picture is not as bright for the areas of trade in services and investment, as well as government procurement. Not only laws and legislation, but the Philippine Constitution limit foreign participation in these areas, and unless the Constitution is amended, it seems unlikely that the Philippines will achieve the Bogor Goal by 2020.

However, there is cause for optimism. The Philippines recognizes the need for foreign investment and investment liberalization in order to further its own economic development. Further, the Philippine government actively engages in dialogue with the business sector, both foreign and domestic. Thus, there is seems to be a good possibility that the Philippines will engage in constructive dialogue in the future concerning the Constitutional limits on foreign investment and services.

## **1. Tariffs**

The Philippines' definition of the Bogor Goal concerning tariffs is that all tariffs should be zero on a reciprocal basis, but for developing economies, some products should be exempted from the zero tariff rate in recognition of special problems which developing countries face.

In general, the Philippines has made a good progress toward that goal, as its tariff rates are the lowest among the developing economies of APEC. The Philippines' simple average applied tariff rate, at

7.06%, and its import-weighted average applied tariff rate at 3.42%, are lower than those of most other developing APEC economies, and approaches the rate of some developed economies. In 1996, these two rates were 13.99% for simple average, and 10.27% for import-weighted average<sup>5</sup>. Thus, the Philippines has cut its tariff rates unilaterally and substantially between 1997 and 2004.

The Philippines has also committed to further liberalization of tariffs. It has reduced tariff rates on EVSL products and Information Technology products. The Philippines has committed 60% of its tariff lines to zero tariffs in the ASEAN CEPT FTA, and it is willing to lower tariff rates on most goods with other APEC economies on a reciprocal basis. Given such strong progress, The Philippines is certainly able to achieve the Bogor Goals by 2020.

The Philippines is also committed to WTO principles, and any changes to tariff rates and the tariff system is made in a transparent fashion. Formal consultation mechanism as well as a system for technical discussion and assessment with stakeholders is well established. Schedules of consultations are published two weeks before the date, and invitations to the consultations are sent out via e-mail and fax to relevant stakeholders, including foreign chambers of commerce. Results of the consultations are reviewed by the cabinet, and the executive orders which change the rates or the tariff system take effect 15 days after publication in the Official Gazette or in at least two newspapers of general circulation. The Philippines is also in the process of incorporating the internet and information technology in this process. The entire process takes between 6 to 12 months, giving stakeholders ample time to prepare for changes.

However, there are some areas for improvements concerning the Philippine tariff structure. First, there are substantial difficulties concerning the level and coverage of its bound tariff rates. The bound tariff lines as a percentage of all tariff lines is only 57.83%, which seems to have actually fallen from 2003, when the coverage was 64.58%. The Philippine authorities clarified that the reason for the apparent reduction in coverage is due to the adoption by the ASEAN Member States of the ASEAN Harmonized Tariff Nomenclature (AHTN), which increased the number of Philippine tariff lines from 5,861 HS 2002 lines to 11,059 AHTN lines. Thus, if the HS 2002 nomenclature is used, the coverage remains at 65%. However, even this coverage is very much on the low side, as most APEC economies have a much higher percentage of bound lines as a percentage of all tariff lines. Of APEC economies which also belong to the WTO, only Malaysia and Hong Kong, China has lower rate of coverage. Thus, the Philippines needs to improve its coverage.

Further, there is substantial difference between the bound rates and the applied rates. The simple average applied rate is only 7.06%, but the simple average bound rate is more than three times as high, at 25.64%. Further, the import-weighted average applied rate is only 3.42%, but the import-weighted average bound rate is about six times as high, at 17.79%.

This problem is worsened by the fact that the Philippines sometimes raises its applied tariff rate

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<sup>5</sup> : These figures were provided by the Philippines' government, and they are different from the numbers given in the Philippines' IAP for 1996, which reported the simple average as 15.56%, and the import-weighted average as 9.55%.

within the bound rates. In 2004, tariff rates were increased on some 634 tariff lines, which comprise 11% of all tariff lines, in order to “provide temporary relief to certain industries that were heavily affected by the Asian financial crisis<sup>6</sup>,” and “provide immediate relief from import competition to local producers and manufacturers in the agriculture and manufacturing sectors to give them time to restructure and adjust.<sup>7</sup>” These increases are due to be phased out in 2005, but the Philippines does not preclude the possibility of increasing tariffs in the future. Thus, the high bound rates reduce the predictability of the Philippine tariff regime, especially the predictability of the applied tariff rates. However, the Philippine authorities state that the fact that these rates are bound makes the tariff regime predictable.

The Philippines argues that it needs the high bound rate for negotiation leverage in the WTO, and it requires some flexibility in tariff rates in consideration of its developing economy status. Further, the Philippines states that it has the legal right to raise the applied tariff rates as long as it is below the bound rates, and it is the prerogative of each country, as well as an internal concern of the country whether to raise or lower its applied tariff rates. However, it is questionable whether such changes in tariff rates are desirable in terms of achieving the Bogor Goal, or raising the efficiency of its economy.

The Philippines does maintain that such tariff increases are carried out in a transparent fashion, with ample opportunities for the domestic and foreign stakeholders to comment, and with sufficient notice to all affected stakeholders, as tariffs are “legitimate protectionist measure under the WTO.” However, the increases in tariff rates for protectionist purposes still is worrying in terms of achieving the Bogor Goal.

The second difficulty with the Philippine tariff system is the substantial differences of tariff rates between industries. While the rates are lower than those of most other developing APEC economies, the rates are substantially higher for finished clothing and transport equipment. Theoretically, the tariff rate structure with the least distortion is a uniform tariff rate, and in 1981, the Philippines had embarked on a unilateral tariff reform program to install a uniform 5% tariff rate<sup>8</sup> by 2004. However, this plan was put on hold in 2003, and today, while the Philippine authorities do not rule out the possibility of reinstating the uniform tariff rate program, the priority is on recalibrating the tariff structure consistent with national development goals rather than reinstating the program.

Perhaps the most serious potential problem for the Philippine tariff system in regards to achieving the Bogor Goal is the status of some “sensitive” agricultural goods. The Philippines maintains that, due to its developing economy status, it requires certain flexibilities in tariff rates, and it should not be expected to reduce all tariff rates to zero, even in 2020. According to the Philippine authorities, in light of the economic importance and political sensitivities of certain agricultural goods, the tariff rates for these goods are not expected to fall to zero percent. The Philippine authorities point out that they are carrying out their legitimate rights.

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<sup>6</sup> : WT/TPR/M/59 p.59, Philippines’ response to Australia

<sup>7</sup> : Answers to Questionnaire, B6

<sup>8</sup> : except for a limited number of sensitive agricultural goods.

Finally, like most other APEC member economies, while the Philippines is committed to further liberalization, it emphasizes the role of reciprocity by insisting that other economies do its part as well in lowering their tariff rates and liberalizing trade, and further reductions in tariffs as well as other trade barriers may be contingent on liberalization measures by other APEC member economies. One would not wish the reluctance of other economies to hold back the liberalization of the Philippines. However, this problem is a common one among most APEC economies.

In conclusion, for the area of tariffs, the Philippines is strongly on track to achieving the Bogor Goal. There are some areas for improvements in the Philippine tariff regime, mostly dealing with the coverage of the bound rates, the differences between the bound and applied rates, the Philippines' insistence on maintaining non-zero tariff rates on some agricultural goods, and the request for reciprocity. However, these weaknesses should be taken in the appropriate context, namely that the Philippines has one of the lowest applied tariff rates among developing APEC economies, and it has lowered the rates unilaterally and substantially since 1996. Thus, the Philippines seem very likely to achieve the Bogor Goal in the area of tariffs.

## **2. Non-Tariff Barriers**

There is no formal definition of non-tariff barriers (NTB) in the Bogor Goal or the IAP, though the IAP includes such items as quantitative restrictions, levies, licensing, and subsidies. However, the usual discussion of NTBs usually include other factors as well, such as anti-dumping duties, safeguards, countervailing duties, sanitary and phytosanitary (SPS) requirements, as well as factors covered elsewhere in the IAPs such as customs procedures. From the Philippine point of view, there will always be some measure which will state that an economy has a non-negligible NTB, so differences should be made between "non-tariff measures (NTM)," which are legitimate measures, based on science, and carried out in a transparent and nondiscriminatory fashion; and "non-tariff barriers" which are carried out with protectionist purposes in mind. In the Philippines' view, economies should be allowed to utilize non-tariff measures to protect safety, health and other social concerns, but the measures which can be used should be clearly defined. Under this definition, anti-dumping measures and safeguard measures should be considered as non-tariff measures and not barriers. However, in this section, we shall examine non-tariff measures as well as non-tariff barriers.

In the area of quantitative import restrictions, under the WTO / UR Agreements, Rice is subject to special treatment and thus it is exempt from tariffication and subject to quantitative import restriction until 2005. However, due to political sensitivity concerning rice, the Philippines is currently negotiating with its trade partners to extend the special treatment for rice until 2015.

The Philippines has some quantitative export restriction measures, most notably for sugar, which is subject to international quota arrangements. The Philippines had maintained quantitative export restrictions on textiles and clothing as well, but these restrictions were removed when the Multi-Fiber Agreement was phased out.



As stated in the IAP, the Philippines maintains automatic import licensing measures for certain goods. The list includes items which require licensing in other economies as well, such as certain drugs, firearms, and certain dangerous chemicals. However, the list also includes items such as rice, color reproduction machines, used motor vehicles and parts, video machines, and used clothing which seem somewhat unusual.

Concerning the anti-dumping duties, countervailing duties, and safeguards, the Philippine authorities state that they have learned to “use” these tools following the Uruguay Round. Previous to the UR, developing economies did not use these tools, but since the UR/WTO Agreements effectively legalized these practices, developing economies use these tools to protect their industries. According to the Philippine authorities, in the case of the Philippines, these tools are used to provide temporary relief to industries adversely affected by the unfair trade practices of dumping and subsidization and increased importation under fair trade conditions as well. The Philippines notes that they try to strictly follow the relevant WTO Agreements when imposing these practices. As stated in the answers to the questions, the use of anti-dumping measures were fairly active around the time of the Asian financial crisis, presumably when the demand for protection by domestic industry was high, but the number seems to have fallen recently. There has not been any use of countervailing measures between 1995 and present. As regards to safeguard measures, there had been no use of safeguard measures before 2001, but there has been one (1) case each in 2002 and 2003 dealing with ceramic tiles and cement, and three (3) in 2004 on glass products.

Concerning SPS requirements, the Department of Agriculture is responsible for most SPS measures. The Philippines claims that its SPS measures are consistent with the WTO SPS Agreement, and there does not seem to be many serious complaints about the Philippines’ SPS measures by its trading partners.

In the area of non-tariff barriers, the Philippines seems to have a fairly liberalized system, with certain exceptions such as quantitative restrictions for rice. The non-tariff measures in place seem consistent with the provisions in relevant WTO Agreements. The increasing usage of anti-dumping and safeguard measures, even if it is consistent with WTO Agreements, is worrying, but the use of these measures by developing economies seem to be increasing in general, so the Philippines should not be considered unusual in this regard. However, the Philippines should use these non-tariff measures with great restraint. In conclusion, in the area of non-tariff measures and barriers, the Philippines is generally on track to achieving the Bogor Goal.

### **3. Services**

#### *Overview*

Services is a wide-ranging sector which includes several specific sub-sectors. The Services chapter of the IAP asks the APEC Member Economies to report developments on the Service sector as a whole, then developments in 24 specific service sub-sectors such as legal services, accounting services, and so on. Because the service sector is so wide-ranging, many developing economies, including the

Philippines, face resource constraints in trying to deal with all the service sub-sectors. As a result, the Philippines has not reported some sub-sectors of the Services chapter of the IAP for several years. In addition, the Philippines has not submitted the information for some sub-sectors in consideration of its national interest. The unreported sub-sectors include legal services, accounting services, architectural services, engineering services, other professional services, postal communications services, express delivery communications services, construction and other engineering services, educational services, environmental services, health and related services, recreational services, rail transport services, road transport services, and other transport services. The Philippines notes that many developing and developed members of APEC also do not report all the sub-sectors in their IAPs.

The resource constraints have affected the Philippines' WTO negotiations as well. The Philippines has not yet submitted a request/offer in the GATS negotiations, in part because it lacks the necessary resources to cover all areas of service negotiations<sup>9</sup>. For similar reasons, the fourth and fifth GATS protocols have not yet been ratified, though they have been sent to Congress for consideration and approval in December 2004, and ratification is expected in the near future<sup>10</sup>.

Below, various sub-sectors of the Philippine service sector will be considered. However, some sub-sectors will not be considered because no substantial information was provided or easily available for those sub-sectors. First, we shall consider the service sector as a whole.

The Philippines maintains several discriminatory measures against foreign service providers. The Philippine Constitution Article XII Sec. 14 states that "the practice of all professions in the Philippines shall be limited to Filipino citizens save in cases prescribed by law." However, the Philippines notes that other member economies also maintain discriminatory measures against foreign service providers.

Further, the Constitution prescribes 40% investment ceilings for foreigners in several service sub-sectors and public utilities. These investment ceilings will be discussed in more detail in the Investment section of this report. Also, the Constitution contains provisions for preferences to domestic service providers in government procurement. This provision will be discussed in more detail in the government procurement section of this report. There are some additional discriminatory measures prescribed in various legal Acts as well.

For full, comprehensive analysis of these discriminatory measures, in addition to economic factors, the political, social and historical factors should be considered as well. But, as far as the Bogor Goal of trade and investment liberalization in services is concerned<sup>11</sup>, these discriminatory measures would seem to make the achievement of the Bogor Goals very difficult for the Philippines.

### *Professional Services*

Professional services cover legal services, accounting services, architectural services, engineering

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<sup>9</sup> : According to the Philippines authorities, the Philippines is also availing itself of the flexibility afforded to developing countries to determine the sectors where they will make commitments and the extent of such commitments.

<sup>10</sup> : The ratification of the fourth and fifth protocols have also been affected by certain events including changes in administrations.

<sup>11</sup> : Some of these political and social factors are considered in the Investment section of this report.

services, and other professional services. As stated in the overview, the Philippine Constitution limits the practice of all professions to Filipino citizens save in cases prescribed by law. However, this prohibition may be waived for procurement of goods and services funded with foreign assistance.

#### *Telecommunications Services*

The Constitution imposes a 40% investment ceiling for foreign investors in the telecommunications services sub-sector, as this sector is considered a public utility. For broadcast services, firms must be 100% Filipino-owned. However, the government has made efforts to increase competition in the telecommunications services sub-sector. In the past, long distance telephone service was provided by a government regulated private monopoly, but in 1995, the industry was opened to various competitors.

#### *Transportation Services*

Due to the geographical nature of the Philippines, maritime and air transportation plays a much more important part in the Philippine economy than road and rail transportation. There is a 40% investment ceiling in place for maritime and air transportation service providers, as these sub-sectors are considered public utilities. However, there are no foreign investment ceilings in the shipbuilding sector pursuant to the Supreme Court Decision and recent law approved on May 3, 2004, by the President of the Philippines under Republic No. Act 9295, entitled: "An Act Promoting the development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Shipbreaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines, and for other Purposes."

There are limits on employment for foreign service providers in these sub-sectors. For example, in air transportation, only aliens qualified to hold technical positions may be employed within the first five years of operation of the enterprise, their stay must not exceed five years upon entry, and each employed foreign service provider should have at least two Filipino understudies.

The government has made efforts to improve competition in this sub-sector. The government tries to have at least two service providers for each route, unless the route is unprofitable. The government does provide incentives to transportation service providers on certain routes in order to provide universal service to all regions in the Philippines. Republic Act No. 9295, Chapter III, Section 8 on Deregulation of the Domestic Shipping Industry, grants to domestic ship operators to establish their own domestic shipping rates in order to encourage investments by existing shipowners and to attract new investment from new operators; Provided that effective competition is fostered and public interest is served."

#### *Financial Services*

The Philippines maintains significant entry barriers for foreign financial service providers. For example, Foreign banks can enter the Philippine domestic market through one of these three modes: Acquire up to 60% of the voting stock of an existing Philippine bank; invest up to 60% of the voting stock of a new banking subsidiary; or establish branches with full banking authority. But the last mode

is only allowed for six to ten banks. Thus, for most foreign banks, there is an investment ceiling of 60%.

Currently, there are fourteen foreign bank branches and six new subsidiaries of foreign banks operating in the Philippines<sup>12</sup>. While the numbers do not seem large, it is a substantial increase from 1994 when there were only four bank branches operating in the Philippines. Foreign banks account for 13.7% of all bank resources.

Even though there are still significant entry barriers, the current state of liberalization in the Philippines' financial market is a result of substantial deregulation. The Philippine government states that it is committed to liberalizing the market, but they need to calibrate the market and proceed carefully to avoid potential problems.

#### *Tourism Services*

Tourism services account for 8~9% of the Philippines' GDP, and is one of the priority economic sectors. Foreign investment is actively encouraged in this sub-sector, and 100% foreign ownership is allowed for most businesses in this sector<sup>13</sup>. The Constitution forbids foreigners to own land, but foreigners may lease the land up to 75 years. There are some employment restrictions in this sub-sector. For example, foreigners can serve as tourist guides only if no Filipinos are available.

#### *Energy Services*

The energy sector consists of electricity, oil, gas and coal industries. These energy industries are subject to the 40% foreign investor limit provisions of the Constitution. However, exploration and development of petroleum, gas and coal is not subject to the foreign investment ceiling, so wholly foreign-owned companies can participate in this area. The net proceeds from exploration and development are shared between government and the company, with government taking 60% of the proceeds.

The government has been engaged in major reforms in this sector. Oil industry had been operating as a state-owned monopoly, but competition has been introduced, and the state-owned firm has been privatized so that the government holds only 40% of the total stock. The government is also engaged in a major reform of the electricity market. Previously, bulk electricity supply and transmission were carried out by National Power Corporation (NPC), a government-owned and controlled corporation. Retail sale was carried out by electric distribution utilities. Competition will be introduced in generation and retail sales of electricity. 70% of NPC's generation capacity in the Luzon and Visayas Islands is programmed to be privatized by April 2006, and retail competition will be introduced in Luzon by July 2006. NPC will still retain the hydroelectric assets in Mindanao until 2011 while the

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<sup>12</sup> : While the answers to the questionnaire refer to seven foreign bank subsidiaries, the number of subsidiaries has been reduced from 7 to 6 with acquisition by Banco de Oro Universal Bank of Banco Santander Philippines, Inc. on 29 August 2003.

<sup>13</sup> : However, it should be noted that some businesses which deal with tourists, such as restaurants, may be classified as "retail service" and is subject to 40% investment ceiling.

remaining 30% of generation capacity in Luzon and Visayas are to be privatized still. Transmission is programmed for privatization (on concession basis only) but will remain a regulated monopoly. Partial participation by foreigners will be allowed.

#### *Distribution Services*

In distribution services, depending on the size of the enterprise, foreign investors may face investment ceilings. Foreigners cannot own enterprises with paid-up capital of less than USD 2.5 million, but foreigners may wholly own enterprises with paid-up capital of more than USD 7.5 million, or enterprises which specializes in high-end or luxury products with paid-up capital of 250,000 USD or more. For enterprises with paid-up capital between 2.5 million and 7.5 million USD, foreign participation had limited to 60% until March 2002, when this restriction expired<sup>14</sup>. The Philippine authorities explain that the restriction on foreign ownership of smaller enterprises exist in order to protect small stores, mostly “mom-and-pop” stores known as *sari-sari* stores. This explanation is an interesting contrast to some other APEC member economies which protected its small stores by limiting foreign investment in larger retail enterprises.

In addition, there are significant limits on foreign employment in distribution services due to the “Anti-Dummy Law”. The Anti-Dummy Law was originally meant to stop foreigners from using Filipinos as “dummies” to get around the abovementioned investment limits. However, due to the court’s interpretation of the Anti-Dummy Law, it is now very difficult for any foreigner to be employed in the Philippines retail sector.

There seems to be some evidence that these provisions have restricted FDI in the retail sector. Between 2000 and 2005, only eight companies wholly owned by foreigners have entered the Philippine market. While there are many foreign brand names in the Philippine retail service sub-sector, most are licensees or joint ventures.

#### **4. Investment**

In the area of investment, the Philippines’ goal is to create a free trade and investment area in Asia comparable to EU, but with restrictions in certain ‘sensitive areas’ which would be subject to further review and negotiations. The Philippines is pursuing this goal through ASEAN, and views the Bogor Goal in roughly the same terms.

The Philippines’ goal is complicated by the fact that the Constitution limits foreign investment in several important service sectors, and also imposes certain measures, such as the prohibition of foreign ownership of land, which hinders foreign investment. Article XII, sections 10 and 11 of the Philippines Constitution limits the foreign ownership of corporations and associations in certain sectors to 60%. The relevant provisions are as follows:

“The Congress shall, upon recommendation of the economic and planning agency, when the

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<sup>14</sup> : Note that the Philippines’ 2004 IAP for distribution services states that this restriction is still in place.

national interest dictates, reserve to citizens of the Philippines or to corporations and associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.” (Sec. 10)

“No franchise, certificate, or any other form of authorization for the operation of public utility shall be granted except to the citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. ... The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.” (Sec. 11)

Also, Sec.3 and Sec. 7 of Article XII of the Constitution effectively forbids ownership of land by foreign individuals or companies with more than 40% foreign ownership. Some foreign investors have pointed out that the prohibition on foreigners owning land can be the most crucial barrier to foreign investment for some Asian economies. These economic provisions in the Constitution, which limit foreign ownership of firms and land, seem to be based on the provision in the Preamble to the Constitution, Sec. 19, which states that “The State shall develop a self-reliant and independent economy effectively controlled by Filipinos.”

These Constitutional provisions may explain the low stock of FDI and the small role foreign investment plays in the Philippines’ gross fixed capital formation as seen in Section II of this Report. The reasons given for these provisions were diverse. It ranges from “protecting domestic industries from foreign control” to “national security,” and “the need to develop local industry.” An interesting point, which was made in one of the interviews in the Philippines, was that these provisions were included in the previous Philippine Constitution, but they gained strength after the 1987 “People’s Revolution” because the Administration of former President Marcos had often given franchises to foreign firms in a non-transparent manner, often involving bribes. Thus, from that point of view, the limits on foreign investment and foreign operation of public utilities serve as a check on the possible abuse of power of the executive branch of the government.

Amending the Constitution, as in any economy, is a difficult process, and needs strong support from the government, the political leaders and the population. It is not entirely clear whether amendments to the Constitution can be made in the near future to eliminate or reduce these foreign investment restrictions.

Concerning these Constitutional provisions, the following points should be made. First, while Sec.

10 does prescribe a 40% limit on foreign investment in certain industries, the decision on which industries to apply this limit seems to depend on the recommendation of the economic and planning agency, presumably NEDA (National Economic Development Agency). Thus, at least for the provisions on Sec. 10, NEDA has substantial influence on deciding which industries are covered by Sec. 10. Currently, the industries with foreign investment ceilings are listed in the Foreign Investment Negative List. The industries in the list are mostly in the services sector.

Second, the Constitution requires foreign investment ceilings and limits on foreign management for public utilities, but the exact range of industries classified as public utilities is defined by the executive and the judicial branches of the government, and subject to interpretation. Thus, there may be room to reduce the coverage of these Constitutional provisions without actually amending the Constitution.

Notwithstanding these Constitutional provisions, the Philippines has recently shown that it recognizes the need for more foreign investment. There are currently no limitation on foreign investment for the manufacturing sector<sup>15</sup>, and industries which deal with agricultural processing. Further, the Philippine courts have recently ruled that foreigners can own 100% of equity in the firms of the mining sector. Judicial activism as well as efforts by economic government departments may be able to limit the number of industries where the foreign investment ceilings are enforced.

The Philippines has recently established a “one stop center” for foreign investment, but its effectiveness may be less than hoped, since the center is a coordinating body and an information center pointing out the departments that foreign investors need to visit, and providing a checklist of forms that foreign investors need to fill out, rather than a body empowered to authorize various aspects of foreign investment.

The Philippines seems to have a relatively transparent mechanism for investment related regulations. Implementing rules for legislation must be issued by specific agencies, and there are public hearings before and during deliberation, and after finalization. The entire process takes two months to a year to complete, so stakeholders should have an ample time to learn of, and adjust to new regulations. Invitations to the public hearings are explicitly sent out to various stakeholders, both domestic and foreign.

Summing up, there are major barriers to foreign investment in the Philippine economy. Two of the most important barriers, namely the foreign investment ceilings in certain industries and public utilities, and the limits on land ownership are enshrined in the Constitution itself. These barriers will hinder the Philippines’ fulfillment of the Bogor Goal.

However, the picture of investment in the Philippines is not entirely bleak. While there are foreign investment ceilings in certain sectors, there are also numerous industries without such investment ceilings. Further, the Philippine executive and judicial branches seem to recognize the importance and the need for foreign investment, and at least for now, they are committed to limiting the number of industries covered by these provisions in the Constitution to the minimum. But since the investment ceilings cover several major industries, the Philippines may want to re-examine their position on these

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<sup>15</sup> : except for defense related goods and dangerous drugs.

Constitutional provisions, balancing the domestic political considerations with the long term economic considerations.

## **5. Standards and Conformance**

The Philippines is currently actively establishing Philippine National Standards (PNS), and the Philippines hopes to achieve 100% harmonization of PNS and international standards such as ISO, IEC, ITU and Codex Alimentarius standards by 2000. The current attempt to harmonize the Philippine National Standards began in 1996. At that time, the Philippines had about 2000 standards, of which 15% were aligned with international standards. The Philippines began reviewing those standards, and found out that some PNS are obsolete and others were not responsive to market needs. During the review, only 1400 PNS were found to be up-to-date and responsive to market needs. From then, the Philippines has established new PNS in several industries. The process of establishing of new standards include measures to guarantee that the PNS conforms to a relevant international standards whenever possible. If a new standard is to be adopted, and there is an international standard available, then the international standards will be used as reference for adoption, and any discussions on this standard will be limited..

The Philippines has targeted 10 industrial areas as priority areas for establishing new standards (Wearables, home furnishings, construction materials, food and food products, electrical and electronics, information technology, motor vehicle parts, giftware and holiday decors, organic and natural products, and marine products), and from the year 2004, the Philippines has targeted establishing 1000 new standards every year. Currently, there are about 4000 standards, and the percentage of alignment with international standards is currently about 75%. Philippines hopes to establish 10,000 standards and achieve 95% alignment by 2010 and 100% alignment with appropriate international standards by 2020. The Bureau of Product Standards (BPS) targets various different areas for conformance reviews, and in 2005 and 2006, the low alignment rate for machinery sector will be reviewed.

It should be noted that the goals listed above applies to technical standards under the Bureau of Product Standards (BPS), and does not necessarily apply to standards set by other agencies such as food and health standards, which are governed by the Department of Health and the Department of Agriculture. However, there are efforts in those departments to raise the alignment rates as well.

The Philippines also participates in various APEC, ASEAN and bilateral base MRAs. However, the Philippines feels that there has been little progress made concerning the MRAs which APEC established in the early 1990s, thus APEC should do more in the area of MRAs. As a beginning, APEC should review the work agenda for MRAs.

## **6. Customs Procedures**

The Philippines considers the Bogor Goal in Customs Procedure to mean that its customs procedure



system should meet world standards, but there should be some considerations given to the difficulties faced by developing countries. Using this goal to evaluate the Philippines' customs procedure system, the Philippines, while still facing substantial problems and difficulties, should be able to solve these problems by the target date of 2020.

Arguably, the most important global standard for customs procedure is the Revised Kyoto Convention of the WCO. The Philippines plans to accede to the Convention, but with certain reservations. Many of the Philippines' reservations are concerned with the standards for the release of consignment and duty payments. The Philippines authorities state that these reservations are due to the importance of tariff revenues in the government's fiscal state. For the Philippines, the tariff revenue is approximately 17% of the government revenue, and thus an important source of government revenue. Thus, this source must be protected and guaranteed. However, the Philippine authorities feel that, like many other developing countries, because of the lack of available resources, the government cannot fully utilize the post-entry audit system to collect tariffs which are often used in the developed economies.

However, there have been efforts to introduce post entry auditing. According to the Philippine customs authorities, to allow for a smooth transition on the adoption of the transaction value from home consumption value as the basis for customs valuation, and as part of its commitments in the WTO Valuation agreement, a post entry audit mechanism was created under RA 9135 with the Post Entry Audit (PEA) Group of the Bureau of Customs (BOC). The Group is tasked to conduct post release evaluation of relevant company practices and records to help make a judgment about the integrity of information supplied to customs at the time of entry lodgment. The audit verifies the accuracy of the declared customs value and tariff classification of imports. The PEA system was designed to facilitate trade by refocusing valuation control from the border to the tail end of the import clearance process, which resulted in the paradigm shift of detailed examination/verification of documents and declarations at the border.

The Philippine authorities argue that, due to the importance of the tariff revenue to the government revenue, as well as the lack of available resources, the state's ability to authenticate and validate the invoice must be maintained, due to high probability of spurious invoices and under-invoicing. The Philippines customs authorities seem to be wary of attempts at smuggling through under-invoicing or the use of spurious documents, and somewhat distrustful of traders, making them reluctant to introduce some measures which may facilitate the customs process. However, the Philippines has introduced many trade facilitation measures, and the customs authorities do consult regularly with the private sector, so the degree of trust between the authorities and the traders may increase in the future.

The Philippines customs has made important progress in two areas: Adoption of risk assessment procedures and the use of information technology. While the progress in both of these areas are still tentative and require much work, the very introduction of these procedures is notable, and will substantially help the Philippines' progress toward the Bogor Goal in the area of customs procedures.

The Philippines has adopted risk assessment procedures for customs. With assistance from the WCO

technical committee as well as technical assistance from Japan and the United States, the Philippines customs authority has formed a risk management group. The group categorizes imports into four categories ('super green', 'green', 'yellow' and 'red') based on factors such as the type of good, origin of the good, and the past records of the traders involved. Goods classified as super-green, green or yellow is processed within a few hours, provided all the documents are complete and correct. However, goods classified as 'red' are subject to 100% inspection, and the time needed to clear the same can be measured at most in days. Customs Examiners/Appraisers are usually available 8 hours a day, 5 days-a-week, but these hours may be extended as circumstances may warrant to facilitate the release of shipments which are classified as 'red'. The Philippines customs authorities do state that, according to a Japanese study on time management, even goods classified as 'red' are processed fairly quickly.

While the introduction of risk assessment is a positive development, it is worrying is that fully 80% of all imports are classified as 'red,' meaning that risk assessment criteria may need substantial refinements. The Philippines customs authorities state that the high percentage of goods classified as 'red' is due to two reasons: Serious smuggling problems, and the lack of human resources. At present, there are less than ten (10) people assigned to the Risk Management Group which formulates the criteria or parameters for an entry to be selected (green, yellow or red) under the selectivity system. The categories are electronically triggered at the entry encoding center. The Philippines authorities state that they must continually balance the need for extreme confidentiality and maintaining the present staff complement to preserve the integrity of the selectivity system. However, the high percentage of imports which are classified as 'red' seem to indicate that the number of personnel is inadequate to meet the needs of the Philippines.

The Philippines has also just begun to use information technology in its customs procedures. It is in the process of redesigning the BOC portal, which will act as a "single window" which provides information on laws and regulations dealing with customs procedures, and which will also act as a "single window" for much of the paperwork involved in customs procedures. The portal will act as a G2B and G2C gateway, and it will be consistent with UN ASYCUDA standards. However, it is noted that the Philippines has had substantial resource constraints. It was only in 2004 that 500 million peso was budgeted to update the required equipment, and the updating will not be completed until 2006.

In conclusion, the Philippines have made substantial improvements in its customs procedures during the last few years, but it still has many areas for improvement. However, there are good indications that the problems can be overcome. The adoption of risk assessment methods and information technology, as well as the introduction of the "single window" concept is especially notable. Further, while the Philippines has not been enthusiastic about negotiations of trade facilitation in the WTO DDA, which deals with many of these customs procedure issues, the Philippines is now committed to making a good effort in the negotiations. The Philippines has also expressed interest in an interactive process in APEC to establish standards for customs procedures which may be more appropriate to developing economies.

The Philippine risk assessment methodology needs to be improved quite substantially, but given that it has already been introduced and used, the successful operation of risk assessment seems to be a matter

of making steady marginal improvements rather than a structural change. As the Philippines gains more experience with the risk assessment methodology and the PEA system, trust may be built up between the traders and the authorities, allowing the adoption of more trade facilitation measures.

For the Philippines, meeting the Bogor Goal in the area of customs procedures involves not a vast and extensive reform, but steady marginal improvements in the system that is already adopted. Thus, one can be optimistic about the Philippines meeting the Bogor Goal in the area of customs procedures.

## **7. Intellectual Property Rights**

The Philippines believes that guaranteeing Intellectual Property Rights (IPR) is important for encouraging more trade between the Philippines and its trading partners, and IPR is important for the encouragement of free flow of trade, investment and technology. Technology owners and investors must be convinced that there is strong enforcement of IPR before they can be induced to transfer their technology or invest in the Philippines.

The Philippines is a member of the World Intellectual Property Organization (WIPO), and is a signatory to most of the important international IPR agreements such as the Paris, Berne and Rome Conventions. The Philippines has also adheres to the Budapest Treaty on International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and the ASEAN Framework Agreement on Intellectual Property Cooperation. As far as the legislation and the legal institutions are concerned, the Philippines is in full compliance with the TRIPs Agreement. Thus, the Philippines has an adequate legal and institutional basis for protecting and implementing intellectual property rights (IPRs).

However, many of the Philippines' trading partners have long complained that IPR protection in the Philippines needs to be stronger, as there are extensive pirating activities. Thus, the Philippines is currently in the process of introducing legislation and implementation processes with stronger penalties and investigative powers in order to strengthen IPR protection.

RA 9239, otherwise known as the Optical Media Act took effect on 2 March 2004, and it strengthens IPR protection in the Philippines considerably. Under the new act, the Optical Media Board is to be established to control the pirating of optical media such as CDs and DVDs. The prosecutors no longer need to prove copyright infringement in order to stop the counterfeiters of optical media, but rather only need to show that the equipment that the counterfeiters use is not properly registered and thus illegal. Punishment for first offense can range from 3 to 6 years imprisonment and a fine between 500,000-1,500,00 pesos. These penalties can be imposed to any person, natural or judicial who shall engage in the importation, exportation, acquisition, sale or distribution of, or possess or operate manufacturing equipment, parts and accessories without the necessary licenses from the Optical Media Board. However, there have been some delays in implementing this Act, as the Congress has not yet approved the implementing rules for this Act. Currently, the implementation rules are in the final stages of Congressional approval.

As seen above, the Optical Media Act prescribes a relatively harsh penalty for violating the Act. Further, the Intellectual Property Code also prescribes relatively harsh penalties for infringement of copyright. The maximum penalty ranges from 6~9 years in prison, and fine can be a maximum of 1.5 million pesos. However, the rate of convictions seems to be very low. There were only four convictions in 2004, though there 370 criminal and civil cases pending in courts. Because the Optical Media Act has been approved for only one year, and the implementation rules not in place, it is too early to gauge its effectiveness. However, looking at the results of the Intellectual Property Code, the problem in the Philippines concerning implementation of IPR seems to lie not in legal provisions and the amount of penalties, but achieving conviction.

The Philippines has a strong plan in place to enforce its IPR laws. The Philippines has established an Intellectual Property Office (IPO) to gather information, coordinate its IPR related policies, and educate the importance of IPR to the various government agencies of the executive branch, the judicial branch of the government including judges, businesses and the general public. The IPO sets IPR enforcement policies through the Intellectual Property Rights Enforcement Action Panel (IP-REAP), which includes representatives from central and local governments, as well as business and IPR related organizations. IPO also coordinates enforcement of IPR through its Intellectual Property Enforcement Services (IPES). The IPES coordinates the enforcement efforts of the Optical Media Board, National Police, local governments, the National Bureau on Investigations, the Bureau of Customs and other agencies.

It is notable that the IPO acts as a coordinator for IPR enforcement rather than a direct enforcement agency. The responsibility for the actual enforcement lies in various diverse agencies such as the Police and Customs. Such structure has advantages and disadvantages. If there is a strong national will to protect IPR, then the current structure allows diverse resources from many agencies to be utilized to protect IPR. However, if there is no strong political will, then the various enforcement agencies may not have a clear agenda or incentives to maintain and enforce IPR protection, and thus enforcement may be weakened. Currently, the Philippines does seem to have a strong policy commitment toward the protection of IPR so that the enforcement structure seems to be working fairly well. It remains to be seen whether the commitment will continue in the long term, but there is no reason to be pessimistic at the moment.

A notable development in the Philippines' IPR protection regime is the Philippines' recognition of the need to address IPR protection in the demand side, as well as the supply side. Thus, the IPR authorities of the Philippines seek to reduce the demand for counterfeit and pirated IPR products through active education of businesses and population, as well as imposing penalties on the buyers of pirated merchandise. It is not clear at the moment what the penalties are, and how many citations have been issued so far, but the willingness to address the demand side of IPR violations as well as the supply side bodes well for the Philippines' approach toward IPR protection.

In conclusion, the Philippines has the institutional and legal framework in place to protect domestic and foreign IPR. While the Philippines' enforcement of IPR has been weak in the past, there seems to be clear indication that the Philippines is willing to strengthen its enforcement of IPR. Effective IPR

protection requires continuous strong enforcement, and the Philippines has made strong commitments to enforce IPR. If these commitments continue, then Philippines seems to be on track to achieving the Bogor Goal in this area.

## **8. Competition Policy**

The Philippines considers the competition policy important to the Bogor Goal, because it believes that the benefits of liberalization in trade and investment should not be diminished by an uncompetitive economic environment. Thus, the Philippines is currently in the process of strengthening its competition policy.

For the Philippines, competition policy is mandated in the Constitution itself, as the Article XII Section 19 prohibits monopolies and combinations that restricts trade or abet unfair competition. However, the basic statutes, which enforce this mandate, are split among many different laws such as the Law on Monopolies and Combinations under RA 3247, the Revised penal Code as amended by RA 1956, the Civil Code, and the Consumer Act. Thus there is no single implementation body for competition policy, and the responsibility is split among many different agencies. Also, the implementation of these laws has been minimal due to the lack of jurisprudence, vagueness in the wording of the law, lack of comprehensiveness, and the weak administrative mechanism for effect enforcement. Further, the government has a difficult time implementing and enforcing competition policy because the current enabling legislation (the Revised Penal Code) enforcing the constitutional provisions is criminal in nature, thus requiring a proof of guilt “beyond reasonable doubt” which is difficult to achieve. As a result, in the 1999 WTO Trade Policy Review, the report commented that the Philippines economy is highly concentrated<sup>16</sup>.

While the Philippines authorities have enforced competition policy on certain industries, such as telecommunications and air transportation, and reduced concentration in those industries, overall, there has not been an economy-wide comprehensive enforcement of competition policy. Thus, the Philippine authorities themselves recognize a need for stronger competition policy.

In recognition of these problems, the Philippine government has submitted a new comprehensive competition policy legislation to Congress. This legislation, if passed by Congress, will gather provisions currently dispersed among several domestic laws, and will establish a central implementation body for competition policy. It is expected that a central implementation body will be able to enforce competition on an economy-wide basis instead of the current piecemeal industry-by-industry basis.

Further, under the new legislation, the government is expected to maintain competitive neutrality; so that it no longer gives preference for certain firms in certain industries. Such competitive neutrality implies a further step away from the infant industry – based protectionist policies of the past. Thus, the new legislation, if passed by Congress, will be an opportunity for the Philippines to implement a true competition policy, to enhance the competitive environment for all industries.

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<sup>16</sup> : WTO (1999) WT/TPR/S/59 p.76

It is also notable that the current Philippines legislation allows private individuals or firms, including foreigners who are legal entities, to bring competition policy cases against those firms which engage in anti-competitive practices, though practically, this mechanism has been seldom used because the prosecution of anti-competitive practices with respect to their criminal aspect requires proof “beyond reasonable doubt” which is very difficult to prove, and the penalties are usually very low. There are laws on the books, which state that a party harmed by anti-competitive actions can sue for civil damages twice the amount of the damage, but this law has not been tested yet. The new legislation currently under consideration in Congress lowers the burden of proof to a “preponderance of evidence.”

As stated in the Services chapter, the government has taken an active approach in raising the competition in many service sectors such as the transportation sector, where the government requires at least two carriers to serve any routes whenever possible. Thus, at least in terms of fostering competition between domestic suppliers, the government seems to be taking a very active position. Sadly, the situation differs considerably when it comes to foreign suppliers.

As stated in the Services, Investment, and Government Procurement chapters of this report, the Constitution requires 40% ceilings for foreign investment in many important service industries, and domestic suppliers are favored in government procurement. Such limits seem contrary to, if not the wording, than to the spirit of competition policy laws. However, the Philippines authorities state that, while the Constitution cannot be amended easily, its provisions are constantly reviewed by the Supreme Court. A recent decision by the Supreme Court which ruled that 100% foreign investment in the mining sector is constitutional, shows that the executive and the judicial branches of the government are committed to maintaining a good environment for investment, both domestic and foreign, subject to the provisions of the Constitution.

In conclusion, the new legislation will be very helpful in making the domestic economic environment more competitive, at least as it applies domestic suppliers. However, the Constitutional limits on foreign participation in certain service sectors and government procurement may act to reduce competition, and may act to reduce the benefits from service and investment liberalization.

## **9. Government Procurement**

Currently, the Philippines’ concept of the Bogor Goals does not seem to include a full liberalization of government procurement. Under the current Constitution and legislation, the Philippines has a very strong preference policy for domestic goods and services. Unless the procurement is for a foreign-assisted project, if a Filipino supplier can supply a good or service under consideration, the government must procure the good or service from that domestic source. Possible cost savings, which may be gained from foreign suppliers, cannot be considered. This provision is part of the Philippine Constitution Article XII Sections 10 and 12, which states that:

“... In the grant of rights, privileges and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.” (Sec. 10)

“The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.” (Sec. 12)

There are currently no plans in place to reconsider this provision. If the procurement is funded by international agency, competitive bidding from both domestic and international sources are allowed, but there is a 15% cost preference for domestic sources, which is said to be consistent with World Bank and ADB provisions.

The Philippines has made substantial improvements in the area of transparency of government procurement. RA 9184 has introduced information technology in the area of government procurement, and RA 8184 has standardized the procurement procedures and bidding documents for all government agencies and local governments. All procuring agencies now effectively follow one law and use one set of documents. Furthermore, the Philippines has recently strengthened the transparency of its government procurement regime by introducing the Government Electronic Procurement System (G-EPS). Thus, it was somewhat surprising that the Philippines did not support WTO DDA negotiations on transparency in government procurement. However, while the Philippines opposed the negotiations, the Philippines authorities consider that the Philippines is compliant with many of the measures introduced in the discussions on the transparency of government procurement in the WTO, and the Philippines opposed the negotiations on “strategic” grounds. Also, the Philippines believes that government procurement is inappropriate for binding rules either in APEC or WTO, and that, given the importance of government procurement as a development tool, any rules on government procurement should be non-binding. The Philippines argues that regimes should be given flexibility on government procurement depending on their levels of development.

Reviewing the Philippines’ IAP and the answers to the questionnaire, as well as interviews with Philippines authorities, the Philippines seem to be in compliance with most of the provisions in APEC non-binding principles of government procurement. However, there are two areas where the Philippines is not in compliance: non-discrimination, and value for money, since Philippines cannot procure from foreign sources if a domestic source is available, even when there may be considerable savings in cost.

It is not entirely clear from the OAA, MAP and the discussions about the Bogor Goal whether the Bogor Goal implies full liberalization of government procurement. However, if Bogor Goal does imply the liberalization of government procurement, the Philippines will not be able to meet the Bogor Goal unless it makes fundamental changes in its approach toward government procurement. While Philippines has improved the transparency of its procurement regime substantially, it has made little headway in the area of trade liberalization in government procurement. Unless the attitude toward the desirability of market openness in government procurement is changed, and the Constitutional provision requiring domestic sourcing is changed, the Philippines seems unlikely to meet the Bogor Goal. It is worth noting, however, that almost no APEC member economy, whether developed or developing, operates a completely non-discriminatory, open government procurement system. Thus, APEC member economies should clarify the definition of Bogor Goal as it concerns government procurement

as soon as feasible.

## **10. Deregulation / Regulatory Reform**

The Philippines recognizes the need for deregulation and regulatory reform to make its economy more market friendly. The Medium Term Development Plan for 2004-2010 gives substantial importance to deregulation and legal reforms. The deregulation of the domestic economy has been accompanied by various privatization and liberalization initiatives. However, deregulation seems to have proceeded on a specific sectoral and industry basis, and not on a comprehensive economy-wide basis. It may be more accurate to state that while the Philippines has initiated many industry-level deregulation measures, it has not yet initiated a regulatory reform program, which deals with a comprehensive economy-wide reduction of regulatory burden for firms and individuals. Thus, there is no formal mechanism in place for reviews of existing and proposed regulations in all areas, and there is no formal organization to promote an economy-wide regulatory reform. Rather, there are separate and different regulators for different industries, and each department sets its own agenda. Some of the more active industries in this area are the oil industry, and some parts of the retail industry.

However, the Philippines seems to have a relatively high degree of regulatory transparency. When new regulations are to be imposed, the department holds open meetings and actively invites stakeholders who may be affected by the new regulations, including foreign chambers of commerce. Any decisions from these meetings are published in major newspapers. There are formalized and institutionalized cooperative mechanism in place between government agencies to examine specialized laws which may affect several departments. Notably, there are five interagency bodies dealing with areas of tariff, budget, social issues, social infrastructure, and investment coordination. Further, before the law is submitted to the President for signing, an examination of the bill on its effects is required. While this examination is not a full Regulatory Impact Analysis (RIA), it fulfills many of its functions, such as summarizing different opinions, and examining any possible impact on various stakeholders. Before any law is implemented, it must be published in major newspapers and the government gazette. The private newspapers, on their own initiative, often publish supplements which list new laws and regulations. Also, the Philippines operates a central regulation database for all government departments, but its coverage may be incomplete. Individual departments maintain their own websites where latest regulations can be found. All government agencies must have summaries of different regulations, which they require, in their offices and on the internet. The availability of information is regularly audited to guarantee transparency and accountability.

The Philippines fully realizes the need for more regulatory reform in order to reduce burdens on the private sector. It is worth noting that the Philippines authorities feel additional deregulation and regulatory reform is necessary, not only to make the domestic economy more competitive and open to domestic and foreign firms, but also to increase the competitiveness of the Philippine SMEs, who may have more difficulties in fulfilling regulatory requirements than a large domestic or foreign firm.



However, because there are no consistent economy-wide regulatory reform mechanism or processes in place, regulatory reform efforts in the Philippines are likely to be uneven, and it may be difficult for the Philippines to reduce regulatory burdens on domestic and foreign businesses.

## 11. WTO Obligations and Rules of Origin

According to the Philippines authorities, as well as the WTO Trade Policy Review in 1999, the Philippines is fully compliant with all WTO obligations. The Philippines has implemented all of its commitments under Annex 1A, 1B and 1C of GATT, GATS and TRIPS Agreements, and while the Philippines did receive an extension of applicability of TRIMS Agreement concerning local content requirement in the motor vehicle sector, the extension ran out in 2003. As stated in the Non Tariff Barrier section of this report, the Philippines has obtained an exemption for rice, so that tariffication need not take place for rice until at least the end of 2004. However, this exemption is consistent with Philippines' UR / WTO obligations.

The Philippines does not apply rules of origin for imports from MFN sources, and preferential rules of origin are applied only under regional agreements. Because the Philippines has signed only two FTAs, and since both deal with ASEAN, it has few problems with rules of origin. The Philippines regularly conducts consultations with the private sector to maintain transparency in the implementation of rules of origin, and in 2004, the Bureau of Customs issued a Customs Memorandum Order to consolidate and simplify the issuance of Certificates of Origin and the verification of imported goods covered by such Certificates whether or not they satisfy the conditions under the rules of origin of ASEAN-CEPT FTA and ASEAN-China FTA.

## 12. Dispute Mediation

The goal of dispute mediation is to address disputes between member economies or private businesses cooperatively at an early stage with a view to resolving their differences in a manner which will help avoid confrontation and escalation.

For disputes between governments, the Philippines considers the WTO dispute settlement procedures as being the primary and ultimate mechanism to settle disputes. The Philippines has been a fairly active user of the WTO dispute settlement mechanism. The Philippines has been involved in the WTO dispute settlement mechanism four times as a defendant. Details are presented in <Table 1>

<Table 1> WTO DSB Cases Where the Philippines was the Defendant

Case Number	Claimant	Description of Case (Year of initiation)	Result
DS 74	United States	Measures affecting pork and poultry (1997)	Mutual agreement

DS 102	United States	Measures affecting pork and poultry (1997)	Mutual agreement
DS 195	United States	Measures affecting trade and investment in the motor vehicle sector (2000)	Awaiting formation of panel
DS 215	Korea	Anti-dumping measures regarding polypropylene resins (2000)	Pending consultation

Source: WTO document WT/DS/OV/22 (2004) and the Philippine government

The Philippines has been either a claimant or a third party in eight WTO dispute settlement cases. These cases are summarized in <Table 2>.

**<Table 2> WTO DSB Cases where the Philippines was the Claimant or a Third Party**

Case Number	Defendant	Description of Case (Year of initiation)	Result
DS 22	Brazil	Measures affecting desiccated coconut (1995)	Panel and Appellant Body declared provisions cited by claimant were inapplicable to case
DS 61	United States	Import Prohibition of shrimp and certain shrimp products (1996)	Combined with DS 58
DS 270	Australia	Certain measures involving the importation of fresh fruits and vegetables (2002)	Panel established
DS 271	Australia	Certain measures involving the importation of fresh pineapple (2002)	Pending consultation
DS 34	Turkey	Restrictions on imports of textiles and clothing products (1996) – Third Party Rights	Panel and Appellant Body found that certain measures of Turkey were inconsistent with Agreements
DS 58	United States	Import Prohibition of shrimp and certain shrimp products (1996) – Third Party Rights	Panel and Appellant Body found that certain measures of the US were inconsistent with Agreements
DS 243	United States	Rules of Origin for Textiles and Apparel Products (2002) – Third Party Rights	Panel found that the US rules of origin for textiles and apparel products were not inconsistent with the Rules of Origin Agreement

DS 287	Australia	Quarantine regime for imports (2003) – Third Party Rights	Panel established
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Source: WTO document WT/DS/OV/22 (2004) and the Philippine government

For disputes between governments, in addition to the WTO DSB, the Philippines can utilize the ASEAN Protocol on Dispute Settlement Mechanism for disputes between ASEAN member countries, and provisions of its bilateral trade and investment treaties (BIT) for disputes between certain countries such as Germany and Japan with whom the Philippines has signed BITs.

For disputes between governments and private entities, the Philippines is a signatory to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID). Two cases have been brought under the ICSID. BITs also contain provisions on settlement of such disputes.

In the area of disputes between private entities, the Philippines has passed the Alternative Dispute Resolution (ADR) Act in 2004, and its implementation rules were recently completed and submitted to Congress. The ADR Act provides autonomy and the use of mediation for dispute resolution. The international commercial arbitration measures in the ADR Act were modeled after UNCITRAL rules. The ADR Act provides that for foreign arbitrage awards filed by regional award courts, the New York Convention shall be govern the recognition and awards of arbitrage. The Philippines feels that the needs of foreign entities were duly considered in the ADR Act, since during the formulation of the Act, the Congress engaged the services of large law firms whose clients include major foreign firms. The Philippines feels that the ADR Act is a major development in private dispute mediation, as it institutionalizes alternate dispute resolution and court mandated mediation.

### **13. Mobility of Business People**

In the area of the mobility of business people, the Philippines' vision of the Bogor Goal is that there should be free movement of business people in and out of borders, but there should be consideration given to the legitimacy of business done within borders as well as sovereign interest and goals.

The Philippines has instituted measures to improve the mobility of business people in order to expand tourism, trade, and investment. Notably, it has begun utilizing information technology as well as other applied technology to reduce processing time. The Philippines will introduce machine-readable passports, which contain biometric and various safety features, and it is constantly reviewing its immigration mechanism to improve efficiency.

The Philippines has also instituted the Personal Identification Secure Comparison and Evaluation System (PISCES) with the technical and personnel assistance of the United States, and the system is functioning smoothly so far. In addition, Advance Passenger Information / Advance Passenger Processing System of Australia is also in place.

For shorter stays of less than 14 or 21 days, the Philippines usually does not require a visa for

business people from most APEC Member Economies. For stays under 59 days, business people from APEC member economies can use the APEC Business Travel Card. However, for longer stays, the process can be more complex.

The Philippines issues non-immigrant visas for temporary stays. There are visas for temporary visitors such as students and traders; visas for pre-arranged employment for workers; and special non-immigrant visas issued to investors and workers engaged by firms registered with the Bureau of Immigrations (BI). The validity of most of these multiple entry visas are only for one year, though special immigrant visas with three year validity are issued to executives in multinational firms registered with the BI. Other registered firms can receive visas of one year validity, renewable for a maximum of five years. Foreign firms which invest at least USD 75,000 are eligible for visas renewable as long as the investment is valid.

The validity of most visas given to investors and service providers seem to be of one year duration. The Philippine authorities state that this one year provision is necessary for monitoring purposes. Service providers with proof of employment are eligible for three year visas. The Philippines states that the current system of visas and their length of validity provide adequate flexibility for foreign service providers and investors who want to carry out their business in the Philippines. The Philippines is currently considering an extension of the validity period for visa issued to tourists.

The Philippine authorities state that the paperwork requirements for visas and alien employment service permits required for foreign service providers are transparent. For employment related visas, an employment contract and a letter of request from an employer is sufficient to receive a visa. Non-immigrant visas are processed within two weeks, and special visas are processed within five days. In practice, processing times tend to be shorter. Regular processing takes perhaps 2~3 days, and many visas are processed within one day provided all documentation is in order.

In all, for shorter visits, the Philippines system for mobility of business people seems to be efficient. For longer visits, while the short validity of non-immigrant visas may be a problem, it does not seem to be a serious one. Thus, the Philippines seems to have a fairly liberal system for mobility of business people. Because a sizable proportion of Philippine citizens are engaged as overseas workers working in other countries, the Philippines has emphasized the importance of reciprocity in mobility of business people, and urges other APEC member economies to make their mobility of business people more flexible and liberal.

#### **IV. Conclusion**

The Philippines is one of the leading developing economy members of APEC. Since the 1990s, the Philippines has made great efforts in liberalizing its economy, and introducing competition into the economy.

In the area of trade in goods, the Philippines made substantial progress toward the Bogor Goal. Its tariff rates are extremely low for a developing economy member, and good first steps have been made in

the areas of customs procedures, standards and conformance, and competition policy. The Philippines has established the necessary legal and institutional framework to protect intellectual property rights, but in the past, the actual implementation seemed to be weak. Recently, the Philippines has placed great importance in improving IPR protection. Since the framework is relatively new, an assessment of its effective implementation may be too early.

There are some areas where the achievement of Bogor Goal will be difficult. The Philippines has several investment barriers and service trade barriers, as well as barriers for government procurement. These barriers will make the achievement of Bogor Goal difficult in these areas. However, the Philippines does recognize the importance of open competition and foreign investment in the development of its economy, so one should not be unduly pessimistic on the chances of the Philippines achieving the Bogor Goal in these areas.

## Annex 1: Responses to Written Questions by Member Economies and Expert

### Individual Action Plan (IAP) Peer Review for Philippines, 2004-2005 Review Process Questions

#### A. Overview and Macroeconomic Policy

(Expert)

1. Please give short description about the status of Philippines' macroeconomy since the financial crisis. (GDP growth rate, inflation rate, unemployment rate, major economic policies etc.). What are some of the macroeconomic and microeconomic policies Philippines have taken to combat the effects of the Asian financial crisis? Does the Philippines government believe that it has completely overcome the effects of the Asian financial crisis?

Table 1. Key Macro Indicators, 1997-2004

PARTICULARS	1997	1998	1999	2000	2001	2002	2003	2004
GNP (growth rate in %)	5.3	0.7	3.7	4.8	4.2	4.3	5.6	6.2 <sup>a</sup>
GDP (growth rate in %)	5.2	-0.3	3.4	4.4	3.0	4.3	4.7	6.5
Agriculture	3.4	-5.5	6.5	3.4	3.7	3.8	3.8	6.7
Industry	6.1	-1.8	0.9	4.9	0.9	3.6	3.8	5.2
Of which: Mfg	4.2	-1.2	1.6	5.6	2.9	3.5	4.2	4.5
Construction	16.2	-8.9	-1.6	1.4	-5.0	-5.7	-2.6	8.2
Service	5.4	3.5	4.0	4.4	4.3	5.1	5.8	7.3
Of which: Trans, Comm, Storage	8.2	6.5	5.3	10.4	8.8	8.9	8.6	10.8
Inflation rate	5.9	9.7	6.6	4.5	6.1	3.0	3.0	5.5
91-day T-bill rate	13.1	15.3	10.2	9.9	9.9	5.4	6.0	7.3
NG Fiscal Deficit (as % of GDP)	0.06	-1.88	-3.75	-4.0	-4.0	-5.32	-4.65	-4.1
Public Sector Debt (% of GDP)	110	110.7	118.3	125	121.6	130.3	137.5	n.a.
Consolidated Public Sector Financial Position (as % of GDP)	-0.94	-3.33	-3.37	-4.53	-4.61	-5.52	-5.46	13.96 <sup>b</sup>
Current Account (as % of GNP)	-5.1	2.3	9.0	7.9	1.7	5.4	3.9	6.1 <sup>b</sup>
Gross In'tl. Reserves (US\$ Bn) (no. of months in imports)	8.7	10.8	15.1	15.0	15.6 4.6	16.2 4.7	16.9 4.7	16.0 4.1
NPL/Total loans (percent)	4.68	10.37	12.34	15.09	17.35	11.95	14.05	14.21
Employment Generation ('000)	529 <sup>c</sup>	196	117	-289	1702	907	574	976
Unemployment Rate (in %)	8.7 <sup>c</sup>	10.3	9.8	11.2	11.2	11.4	11.4	11.8
Unemployment Rate (ILO-based)	5.4	6.4	6.4	6.9	7.5	7.7	7.3	7.5

<sup>a</sup>/ First three quarter growth rate

<sup>b</sup>/ as of end-September

<sup>c</sup>/ based on the 1980-based population projection, succeeding series based on 1995-based population projection

GDP growth quickly rebounded in 1999 after a slight contraction in 1998. Growth has been accelerating since then, except in 2001 when there was a global slowdown in semiconductor/ electronics

exports.

The economy was able to avoid a sharp downturn due to a combination of factors. The first was the expansionary fiscal policy stance in 1999 and the accommodative monetary policy since 2000. Another factor was the support given to the agriculture sector, which propped up rural incomes. Lastly, the liberalization of the telecommunication industry began to bear fruit as demand for cellular phone services rose significantly, with cellular phones easier and cheaper to acquire than landline services.

Services and agriculture have been the main growth drivers. The strong growth in services has been driven by the telecommunications industry which has been growing on the back of strong demand for cellular phone services. The growth of agriculture has also been generally strong, except in 1998 when the sector succumbed to one of the strongest El Nino disturbance to hit the country. Agriculture has been benefiting from government programs such as the use of hybrid and high yielding variety seeds in palay and corn, rehabilitation of irrigation facilities, and also strong consumer demand for private sector led businesses such as fishery, poultry, and livestock production. Industry has grown at a more modest pace due to the modest growth in manufacturing and the decline in construction activity. The recovery in manufacturing was adversely affected by the global slowdown in the electronics/IT industry in 2001, while the construction industry has also been hit by the decline in public construction activity due to the declining revenues as a share to GDP. Manufacturing has not recovered solidly due to inability to make significant gains in the global market.

The Philippines' economic performance in comparison with other economies is shown in the following table.

**Table 2. Comparative GDP Growth Rates of Selected Asian Countries**

COUNTRY	1997	1998	1999	2000	2001	2002	2003	2004 (Q1-Q3)
Philippines	5.2	-0.3	3.4	4.4	3.0	4.3	4.7	6.5
Malaysia	7.3	-7.4	6.1	8.9	0.3	4.1	5.3	7.5
Indonesia	4.7	-13.1	0.8	4.9	3.3	3.7	3.9	4.6
Thailand	-1.4	-10.5	4.4	4.8	2.1	5.4	6.7	6.4
Taiwan	6.7	4.6	5.4	5.9	-2.2	3.6	3.2	6.6
Hong Kong	5.1	-5.0	3.4	10.2	0.5	1.9	3.2	8.7
South Korea	4.7	-6.9	9.5	8.5	3.8	7.0	3.1	5.1
China	8.8	7.8	7.0	7.6	7.3	8.0	9.1	9.5
Singapore	8.6	-0.9	6.9	9.7	-2.0	2.2	1.1	9.1

Source: Country statistical agency websites

Employment recovered more slowly in 1999-2000 even with the economy already delivering positive growth. The economy started generating significant employment beginning in 2001 of about 1 million jobs a year, although this has not been sufficient to lower the unemployment rate on account of the large influx of labor entrants.

The macroeconomic environment stabilized quickly after the peso depreciated in 1997. Inflation kicked up to 9.7 percent in 1998 but thereafter fell to a low 3 percent in 2002-2003 on account of low capacity utilization, despite the rising growth. However, inflation rose anew in 2004 due to the increase in oil prices and commodity prices such as fertilizer, corn, and wheat that affected food prices.

With falling inflation, interest rates also declined to a low 5.4 percent in 2002. However, interest rates started to rise in the wake of the sharp deterioration in fiscal balances and rising debt which began after 1997.

The current account position has remained in a surplus on account of falling imports after the Asian crisis, but mostly due to the large remittances from overseas Filipino workers.

The main impact of the Asian crisis on the Philippine economy has been on the fiscal sector, with NG fiscal surplus in 1997 reversing to a deficit and hitting a low 5.3 percent of GDP in 2002. Public debt

also rose to 137.5 percent of GDP in 2003 from 110 percent in 1997.

**Table 3. Fiscal Indicators**

	1997	1998	1999	2000	2001	2002	2003	2004 Q1-Q3
Revenues as % of GDP	19.44	17.35	16.07	15.34	15.35	14.32	14.57	14.95
Tax Revenues as % of GDP	16.98	15.63	14.50	13.71	13.33	12.54	12.50	12.79
Expenditures as % of GDP	19.38	19.23	19.82	19.35	19.35	19.65	19.22	19.06
Deficit as % of GDP	0.06	(1.88)	(3.75)	(4.00)	(4.00)	(5.32)	(4.65)	(4.11)

The government initially adopted an expansionary fiscal policy with expenditures allowed to expand even in the face of the sharp contraction in revenues. However, as the deficit problem became more acute, the government adopted a tight fiscal policy stance, at the cost of a sharp reduction in capital outlay spending, albeit unsuccessfully, as the deficit continued to rise on account of rising interest payments. To address the fiscal crisis, the National Government implemented administrative measures to improve revenue collection efficiency. Major programs included the creation of a Large Taxpayers Unit, the Excise Tax Unit, and the VAT Reconciliation and Enforcement Listing, which matched sales data across firms to plug the leakages in VAT payments. In January 2004, Congress also passed a bill which adjusted the excise taxes on alcohol, cigarettes, and tobacco for past inflation and provided an increase in excise taxes until 2010.

The national government is targeting to achieve a balanced budget and a public sector deficit of 1 percent by 2010. The revenue measures include raising of excise tax on alcohol and tobacco products, tax amnesty, rationalization of fiscal incentives, two-step increase in VAT rate, franchise tax on telecommunications, simplified net income tax reform act of 2004, lateral attrition, excise tax on petroleum products. A separate legislative program will be pursued to regulate and reduce expenditures, e.g., fiscal responsibility bill, rationalization/reorganization program, rationalization of retirement and pension benefits, and improvement of government corporate performance.

Another problem that remains is the large amount of non-performing loans. Due to fiscal constraints, the government was not in a position to absorb the non-performing loans. However, the Special Purpose Asset Vehicle law was passed in 2002 which provided tax incentives for setting up asset management corporations. As of 2004, P26.2 billion of NPLs has been unloaded from banks through the SPV, accounting for roughly 10 percent of NPLs.

**2. Please give a short description about Philippines' current account position and trade structure since the financial crisis. (Amount of exports, amount of imports, major trading partners, major trade items) Please also give a short description on Philippines' major trade policies since the financial crisis.**

Foreign Trade, 1998 to 2003  
(F.O.B. value in million U.S. dollars)

Year	Total Trade	Exports	Imports
2003	73,197.96	36,231.21	37,496.50
2002	70,634.68	35,208.17	35,426.51
2001	65,207.00	32,150.00	33,057.00
2000	72,569.13	38,078.25	34,490.87
1999	65,779.35	35,036.89	30,741.46
1998	59,156.64	29,496.75	29,659.89



Source: National Statistics Office and Bangko Sentral ng Pilipinas

*The United States, Japan, Singapore, Hong Kong, China and Taiwan are the Philippines' top five trading partners.*

*For details on direction of trade, please refer to [http://www.nscb.gov.ph/secstat/d\\_trade.asp](http://www.nscb.gov.ph/secstat/d_trade.asp).*

*Top Philippine exports are: electronics, garments, electrical wiring harness, crude and refined coconut oil, fresh bananas, brakes and servo-brakes, and aircraft parts. Major imports include electronic components, gas oil, gasoline, other wheat and meslin, copper concentrates, fuel oils, rice and other capital equipment.*

*Reforms continue to be undertaken to open the economy. Non-tariff barriers have been removed gradually and tariff protection sharply reduced, with MFN duties currently averaging 6.88%. More liberal investment policies and the deregulation and privatization programme have widened the choice of sectors for domestic and foreign private investors. These measures have helped soften the impact on the Philippine economy of the Asian financial crisis.*

**3. Please give a short description about Philippines' capital account position since the financial crisis. (Amount of capital inflow, amount of capital outflow, amount of inward and outward FDI, major investment partners, major investment sectors) Please also give a short description on Philippines' major capital liberalization and FDI policies since the financial crisis. (The data on the government websites seem to end at 1Q 2004. Are these the latest data available?)**

*The Philippine experience with capital flows can best be described in three stages as follows (Attachment 1):*

- *1992-1996 Surge in Capital Inflows*
- *Net foreign capital flows during the period 1992-96 posted an average 36 percent growth compared to the 30 percent average increase in 1990-91. The surge in capital inflows was attributed to the country's improving macroeconomic fundamentals and the implementation of key structural measures such as the reforms to deregulate the foreign exchange systems particularly current account transactions in 1993. Rules on foreign borrowings and investments were also modified to be consistent with the liberalized rules on current accounts. Meanwhile, policy reforms to enhance competition and improve the prudential regulatory framework in the Philippine financial sector were also pursued.*
- *Foreign investments, both direct and portfolio investments, dominated the entry of foreign capital during the period. The average share of foreign investments in the net foreign capital inflows rose to almost 53 percent from 1992-96, compared to 39 percent in 1990-91. Medium- and long-term (MLT) loans accounted for about 37 percent of inflows in 1992-96, down from its average share of 51 percent in 1990-91. The balance consisted of short-term capital flows in the form of trade-related financing.*
- **1997-1998 Asian Financial Crisis**
  - *The country underwent a significant slowdown in foreign capital inflows during the crisis period of 1997-98. Net foreign capital inflows declined by 12 percent in 1997 and further by 3 percent in 1998. The currency crisis of 1997, which resulted in the sharp depreciation of the Philippine peso, highlighted the adverse impact of a massive and quick reversal of short-term capital flows.*
  - *Except for MLT loans, both direct and portfolio capital flows contracted in 1997. However, in 1998, both direct and portfolio capital recovered from their slump in the previous year. Nonetheless, net foreign direct investment inflows remained positive in 1997-98. Portfolio investments posted a net outflow of about \$406 million in 1997, but recovered in 1998 posting a net inflow of about \$264 million.*

- **1999-2004 Recovery from the Crisis**

- *Most Asian economies affected by the crisis showed encouraging signs of recovery in 1999 as economic indicators in the region improved. Total capital inflows increased by 36 percent to \$8,125 million in 1999, simultaneous with the country's growth in output and domestic demand as well as decline in inflation. Capital inflows, however, declined in 2000 and 2001 by 44 percent and 38 percent, respectively. The overall decline in foreign investments in 2000 was due to cautious investor climate following the generally weak global conditions and challenges in the domestic front, including a political transition and concerns about the peace and order situation. Capital inflows posted a 26 percent increase in 2002 but declined by 36 percent in 2003 due to weak global economic outlook and domestic concerns. For January-September 2004, capital flows increased by 270 percent compared to the same period in 2003 following a peaceful conclusion of the political exercise in May.*
- *For the period 1999-2004, MLT loans doubled to \$5,467 million in 1999 but steadily declined in 2000-2003. Nonetheless, share in MLT loans to net capital flows increased to an average of 67 percent. For January-September 2004, MLT loans registered a 24 percent increase from the comparable period last year.*
- *Meanwhile, portfolio investments increased in 2001-2003, with the uptrend continuing up to the first nine months of 2004. Foreign direct investments (FDI), on the other hand, posted a declining trend in 1999-2001. FDI increased by 134 percent in 2002 as non-residents' equity investments improved but decreased anew in 2003 by 85 percent due to the combined effect of global economic slowdown and domestic concerns (e.g. fiscal deficit and pending political exercise in May 2004). For January-September 2004, FDI posted a 61 percent increase from the comparable period last year.*
- *Major investors during the period 1990-2004 were mainly from Japan, Hong Kong, the Netherlands, Singapore, South Korea, United Kingdom, and the United States. Japan, Singapore and the US accounted for 74 percent of total direct investments in 2003 (Attachment 2).*
- *A large part of investments during the period in review were channeled to the manufacturing sector, financial intermediation (i.e., banks and financial institutions), and services (i.e., communications, transport, storage, electricity, gas and water) (Attachment 3).*

*Major Capital Liberalization and FDI policies post financial crisis*

- *The Bangko Sentral ng Pilipinas (BSP) authorized the Philippine Stock Exchange (PSE) to establish the Dollar-Denominated (DDT) Facility where PSE-listed shares denominated in U.S. Dollars may be traded in the PSE trading floors without need for conversion to Philippine pesos of the foreign exchange (FX) to fund such investments, and the BSP in January 2004 further authorized special BSP registration of such investments; and*
- *The BSP, through a Monetary Board Resolution in May 2004, waived, on a case-to-case basis, the BSP requirement for conversion to Philippine pesos through the Philippine banking system of the FX funding the foreign investments, to enable such investments to be BSP-registered and entitled to source FX from the Philippine banking system for capital repatriation/remittance of cash dividends/profits, subject to prior BSP approval and submission of proof of use of said FX funding to pay investor's FX obligations.*

**4. What role does APEC play in Philippines trade and investment environment? What is the share of APEC economies in Philippines total exports, imports, trade, investment and FDI?**

*APEC is an important forum for promoting trade in goods and services, investment, and the transfer of technology and professional skills. It is important to the Philippines as it aims to formulate an appropriate agenda towards active trade and investment rooted in liberalization, facilitation and economic and technical cooperation. This agenda feeds into the country's economic policy environment.*

*Continued access to the markets of the Asia-Pacific economies is valuable to the Philippines, as well as understanding the market peculiarities of each APEC economy. APEC technical assistance, capacity-building initiatives in human resource development, energy, transportation, fisheries, marine resource conservation, and infrastructure development contribute to dealing with the rapid changes in the Asia Pacific market.*

*In 2003, APEC accounted for 88 percent of the Philippines total trade. The country's top five trading partners comprise of APEC member economies namely, the United States, Japan, Singapore Hong Kong and Taiwan collectively accounting for 57 percent of the Philippines total trade or US\$42B.*

*In terms of the commodity structure, top Philippine exports to APEC economies are: electronics, garments, electrical wiring harness, crude and refined coconut oil, fresh bananas, brakes and servo-brakes, and aircraft parts. Major imports from APEC comprise of electronics, gas oil, gasoline, other wheat and meslin, copper concentrates, fuel oils, and rice.*

*APEC investments also figure prominently in terms of foreign direct investment (FDI) registered with the Board of Investments (BOI), Philippine Economic Zone Authority (PEZA), Subic Bay Management Authority (SBMA) and Clark Development Corporation (CDC). The top 20 foreign investors to the Philippines consist of businesses and companies from APEC economies accounting for 57.05 percent of the country's total FDI in 2004 compared to 32 percent in the same period of 2003.*

*Singapore, the United States and Japan fall among the top five top foreign investors in 2004 with combined investments of USD 314.88 million. Other APEC economies with investments in RP include Australia, Hong Kong, Korea, Malaysia, China, Canada and Chinese Taipei with combined investments of USD 25.73 million.*

**5. What role does APEC play in Philippines economic policy formulation? Does APEC play an important part in Philippines economic policy (including but not limited to market liberalization policy)? If so, please give some concrete examples.**

*APEC serves as an expression of Philippine commitment to domestic reforms as enunciated in the programs of the various government administrations since the early 1980s. For example, because the Philippine internal reform initiatives has committed its government and agencies to transparency in the formulation of trade and investment policies as well as in the enforcement of its laws and regulations, the country has committed itself to the same thrust in the APEC multilateral fora to further reinforce and lend international dimension to domestic transparency campaigns. It has also implemented structural reforms aimed at power and financial sector reform, export competitiveness, socio-political stability and foreign investment liberalization.*

*The Philippines finds it expedient to adopt APEC principles because they are in consonance with domestic economic reform principles. They also usually complement programs already in place and confirm the propriety of policy tracks taken.*

*Details of the reform measures are described in the Philippine Economy Reports in APEC and the IAPs.*

**6. Philippines seems to be taking a more active view toward signing FTAs. Is this impression correct? In Philippines' point of view, does FTA contribute to regional and global market liberalization, or does it damage liberalization by increasing discriminatory treatment?**

*The Philippines continues to participate actively in the WTO and remains committed to the multilateral system. The Philippines recognizes that it is best served by a stable and increasingly liberalized multilateral trading system, which takes into consideration the needs of developing nations. Thus, the Philippines remains an active member of the WTO, where the authorities have emphasized that negotiations need to provide adequate flexibility to developing countries.*

*However, the authorities also intend to pursue regional and bilateral trade agreements, where appropriate. Nevertheless, since its last Review, the Philippines has only concluded one FTA*

*negotiation covering trade in goods with ASEAN and China under the Framework Agreement on Comprehensive Economic Cooperation between the Association of South East Asian Nations and the People's Republic of China and concluded in principle the majority of the elements of the bilateral Japan-Philippines Economic Partnership Agreement.*

*As a matter of policy, the Philippines ensures that such agreements are consistent with made the commitments made at the WTO. This ensures that such FTAs contribute to global market liberalization.*

**7. What is Philippines' current policy toward FTAs? With what countries have Philippines formally signed FTAs, and with what countries is Philippines formally negotiating FTAs? Are there any countries which Philippines is currently considering FTA negotiations? Are there any "priority" countries with which Philippines wants to form an FTA? Are there any countries with which Philippines will not consider signing a FTA?**

*Although active in bilateral trade talks, the Philippines remains pragmatic in approaching FTAs. The government believes that it should focus on what is doable at the moment, allowing Member countries to liberalize at their own pace. The Philippines also goes for full compliance, consistent with national domestic capability in order to participate meaningfully and substantially in economic integration initiatives.*

*Current FTAs where the Philippines is a party are the ASEAN Free Trade Area (AFTA) wherein, as an ASEAN member, it is also a party to the ASEAN-China FTA mentioned earlier. It also participates in the ongoing negotiations for an ASEAN-Japan FTA. Still as a member of ASEAN, the Philippines is considering engaging Korea, India and CER in FTA negotiations.*

*Bilaterally, the Japan-Philippine Economic Partnership Agreement (JPEPA) has been concluded in principle with only legal scrubbing left to do. In addition, studies are ongoing for a Philippine-US FTA and a possible Philippine-Chinese Taipei FTA.*

*The Philippines position in these FTAs are governed by the following principles:*

- *Flexibility, wherein the use of Special and Differential (S&D) Treatment is utilized in almost all FTAs. S&D Treatment takes into account the different levels of development among FTA party members;*
- *Recognition of the needs and concerns of local industries;*
- *Regular consultations with local stakeholders;*
- *Transparency of policies undertaken;*
- *Consistency of FTA rules with existing rules of the WTO; and*
- *Comprehensiveness where FTA arrangements should not be limited to only trade in goods but should also cover, where appropriate, trade in services, investments and at the minimum, economic cooperation activities designed to address the development requirements of the Philippines.*

**8. What is Philippines' "definition" of the Bogor Goal? Does it include zero tariffs on all items (no exceptions) or "substantially" all items? If the latter, what items would be exempted from zero tariff provisions? What other measures are envisioned by the government to fulfil the Bogor Goal?**

*The Philippines commits to eliminate tariffs on substantially all products. Since the implementation of the Tariff Reform Program and up to the present, tariffs on products covered under EVSL are being progressively reduced.*

*As a WTO member, it has also eliminated tariffs on substantially all information technology products by the agreed timetable of 2000 under the WTO Information Technology Agreement (ITA). The Philippines, however, maintains tariff quotas for "sensitive" agricultural products, the quantitative restrictions of which were lifted and converted into tariff equivalents under the WTO Agreement on Agriculture. These products include live animals (except live bovine animals), pork, goat meat, poultry meat, potatoes, coffee, maize and sugar.*

## 9. NEDA Comments on Philippine Trade Policy

Contrary to the statement of the subject report, trade liberalization already started in the early 1980s. It was in the 1980s when major trade reforms were undertaken. The Evolution of the Philippine trade policy reform could be group into five periods<sup>17</sup>:

Post-war to 1970s	Pre-reform era of highly trade restrictive and protectionist regime, supporting the inward-looking import substitution strategy.
1981-1985	The first major trade reform was implemented through the Tariff Reform Program which brought down all tariff range to within 50 percent from highs of 100 percent tariff rates.
1986-1988	Major import liberalization under the Aquino Administration
1991-1995	Second phase of the Tariff Reform Program was enacted under the Aquino Administration under Executive Order 470 (EO 470), which narrowed down the tariff range to mostly within 30 percent.
1996-2000	Executive Order 264 was implemented by the Ramos Administration, which further narrowed down the tariff range to within 3 to 10 percent (excluding some agricultural products).

The major trade reforms that the government undertook in 1981 contained three major components: (1) the 1981-1985 Tariff Reform Program (TRP), (2) an import liberalization plan, and (3) the indirect tax realignment. The 1981-1985 TRP brought down the entire tariff rates to within zero-to-50 percent range. The indirect tax realignment scheme, which aimed to remove the protective effects of differentiated sales tax between imports and local products, was implemented in the latter part of 1985. The import liberalization was shelved in view of the BOP crisis in August 1983.

More trade reforms were implemented under the Aquino Administration that reduces import restrictions (from import licensing requirements or outright import ban) from 1986 to 1989. This brought down the percentage of regulated items to less than 5 percent of total import items subject to restriction. The second phase of the TRP was also implemented under the Aquino Administration with the passing of EO 470 in 1991. This further narrowed down the tariff range within the 3 to 30 percent range by the year 1995.

The Ramos Administration's policy agenda have been meant to pursue further trade liberalization measures by reducing the levels and spread of tariff rates toward uniform protection across all sectors.<sup>18</sup> Aside from the various Executive Orders and CB Circulars<sup>19</sup>, the first major step was the passing of EO 264 which further reduce the tariff range to within 3 and 10 percent by the year 2000.

### B. Tariffs

#### (Hong Kong, China)

**1. We appreciate the Philippines' implementation of the Tariff Reform Program that causes its average applied tariff to drop from 13.99% in 1996 to 5% in 2003. We note however that the average tariff was raised to 6.88% in 2004 to provide relief to local producers and manufacturers. We encourage the Philippines to keep up with efforts in reducing its applied tariffs, and to lower its bound tariffs (average of 25.33%) and remove its tariff quotas under the Doha Round negotiations.**

*The Philippines notes Hong Kong, China's comments.*

#### (New Zealand)

<sup>17</sup> : Source: Austria, M. ,Medalla, E.M. 1996. "A Study on the Trade and Investment Policies of Developing Countries: The Case of the Philippines" *PIDS Discussion Paper Series 96-03*. Makati, Philippine Institute for Development Studies

<sup>18</sup> : The Philippine National Development Plan: Directions for the 21<sup>st</sup> Century

<sup>19</sup> : These include EO 1, EO 2, EO 5, EO 8, EO 61, and CB Circulars 1347, 1356, 1365

**2. We note that, overall, the Philippines has very moderate applied tariff levels, often well below bound rates. In agriculture the average applied tariff is 6.97% and for wood 5.97%. Is the Philippines planning to narrow the gap between its bound and applied tariff rates?**

*The decision on tariffs to be applied depends on the sensitivity of the products concerned as dictated by the domestic industry situation. Maximum flexibility on treatment of sensitive products is observed.*

**3. When is the deferred tariff reduction for dairy products likely to be realised?**

*Tariff reduction for dairy products have never been deferred. In fact, applied tariffs on dairy products are already very low, ranging from 1-3%.*

**4. Might the Philippines instead raise the applied rates for dairy products towards their bound ceiling?**

*Considering the current state of domestic dairy production, there is very little likelihood for this option at this time.*

**5. When is Philippine’s commitment to lower tariffs on certain “sensitive” agricultural products (including beef, grain and some vegetables) likely to be implemented?**

*The Philippines has been implementing its commitment to lower tariffs on sensitive agricultural products, including beef, grains and some vegetables, following the scheduled phasedown of reductions of tariff bindings for sensitive products under Schedule LXXV. Based on paragraph 1 of the headnotes in the Philippine Schedule, the reductions in tariffs provided for in Section 1A of Part I of the Schedule is implemented in accordance with the Customs and Tariff Code of the Philippines, which imposes customs duties in round percentage points.*

*Schedule of implementation:*

<i>Tariff cuts equal to 5 percentage points or less</i>	<i>1 July 1999</i>
<i>Tariff cuts equal to 10 percentage points</i>	<i>Two equal instalments on 1 July 1997 and 1 July 2002</i>
<i>Tariff cuts equal to 15 percentage points</i>	<i>Three equal instalments on 1 July 1997, 1999, and 2003</i>

*Thus for the aforementioned sensitive products, the resulting rates are:*

<i>Beef</i>	<i>Base rate, 1995:</i>	<i>60%</i>
	<i>Bound rate, 2004:</i>	<i>35%-40%</i>
<i>Grains (Corn)</i>	<i>Base rate, 1995:</i>	<i>100%</i>
	<i>Bound rate, 2004:</i>	<i>50%</i>
<i>Vegetables (Potatoes, Onions, Garlic, Cabbage)</i>	<i>Base rate, 1995:</i>	<i>100%</i>
	<i>Bound rate, 2004:</i>	<i>40%</i>

**(Expert)**

**6. Philippines has delayed the implementation of the uniform tariff of 5%. The IAP states “developments in the domestic and global economic environments warrant modification in the applied rates of duty on certain products ... to provide temporary relief to local producers and manufacturers...” What does Philippines mean by “developments in the domestic and global**

economic environments”; What products does Philippines believe require temporary relief and for how long; and does Philippines have concrete plans to implement the uniform tariff, and by what year?

Recalling the Committee on Tariff Related Matters (TRM)<sup>20</sup> discussion on the matter, the rationale behind the comprehensive tariff review undertaken in 2003, which culminated in the issuance of Executive Orders (E.O.s) 241 and 264, was to provide immediate relief from import competition to local producers and manufacturers in the agriculture and manufacturing sectors and give them time to restructure and adjust.

It was recognized that the unilateral Tariff Reform Program, which the Philippines undertook starting 1981, was valid until 1997-1998 when the Philippine economy was moving forward. However, the continuation of said program was no longer sustainable due to recent global and geopolitical developments, referring to the influx of imported goods from China, the clamor by domestic industries for greater tariff protection due to the high cost of doing business in the Philippines, and tariff revenue considerations. Consequently, the automatic tariff reductions under E.O. 334 were arrested by freezing tariffs at 2002 levels (under E.O. 164) and a review of the entire tariff structure was initiated. It is further noted that during the tariff review, the MFN tariff structures of ASEAN Member States were also taken into consideration.

Looking at the impact of the aforementioned E.O.s 241 and 264, it is noted that the tariff increases, which are intended to be temporary (up to 2005 only), affect merely 11% of total tariff lines (see Table 1). This is because the recalibration of tariff rates was done on the criterion of merit, i.e., higher tariff protection was afforded those industries that have undertaken concrete measures to improve efficiency and productivity.

**Table 1. Tariff Adjustments Under E.O.s 241 and 264**

<i>Change in Tariff Rate</i>	<i>Number of HS 2002 Tariff Lines</i>	<i>% Share to Total</i>
<i>Increase</i>	634	10.79
<i>Decrease</i>	268	4.56
<i>Maintain</i>	4,963	84.49
<i>Unified</i>	9	0.15
<i>TOTAL</i>	5,874	100.00

**Note:** The tariff rates prescribed in E.O.s 241 and 264 were compared with the 2003 tariff schedule as of E.O. 196.

Attached is the list of 634 tariff lines whose tariff rates were adjusted upwards (see Table B.6). Among the 455 industrial products in the list are: chemical products; paper and paperboard; sewing thread, yarn and fabrics; and flat products of steel. Agricultural products include live swine and poultry; fish; vegetables; cigarettes; and beer and other spirituous beverages.

**7. Philippines has an admirably low simple average tariff rate, but the simple average bound rate is very high; the simple average bound rate is more than three times higher than the simple average tariff rate. Does Philippines have any particular reason why it maintains such a high bound rate, and does Philippines have any plans to lower the bound rate? Further, large differences between the bound rate and the applied rate can lead to applied tariff increases in an un-transparent fashion. Does Philippines have mechanisms in place to guarantee that applied tariff rates do not increase in an un-transparent fashion?**

<sup>20</sup> : The TRM is a cabinet level committee chaired by the Department of Trade and Industry (DTI) Secretary and co-chaired by the National Economic Development Authority (NEDA) Director-General. The TRM is tasked to advise the President and the NEDA Board on tariff and related matters as well as on the effects on the country of various international developments. The TRM coordinates the positions of concerned agencies and recommends positions for international negotiations.

As mentioned in the Philippine IAP, the Philippines conducts public hearings/consultations on petitions for tariff modification as well as Philippine participation in international trading arrangements, e.g., the WTO and the AFTA-CEPT Scheme. Tariff changes are published in two (2) newspapers of general circulation before they take effect. Any new issuances are reflected in the Tariff and Customs Code of the Philippines. The Philippines also provides updates on tariff changes to the APEC Tariff Database and the WTO Integrated Database.

**8. According to the IAP tariff summary, Philippines has a low percentage of bound tariff lines as a percentage of all lines. Does Philippines have a plan to raise the percentage of bound lines?**

*This will depend on the outcome of the DDA negotiations.*

**9. Compared to other sectoral rates, the sectoral tariff rates for textiles and clothing and transport equipment seem unusually high. Why does Philippines believe these sectors require such high tariff rates? Are these sectors covered by the uniform tariff plans? If not, why?**

*The tariff rates for textiles and clothing are only relatively high for finished clothing (20% in 2004). Tariffs for raw and intermediate materials like fibers, yarn and fabrics are 0-3%, 7% and 7-10%, respectively.*

*It is important to note, however, that compared to other countries, the Philippine tariff rates for the sector is much lower.*

*The textiles and clothing sector is covered by the uniform tariff plan.*

### **C. Non-Tariff Barriers**

**(Hong Kong, China)**

**1. We note that the Philippines' NTMs are applied mainly for reasons of public health, safety, security, welfare and national interest or to fulfill international obligations. However, for trade facilitation sake, we encourage the Philippines to regularly review the NTMs with a view to reducing their application as far as possible.**

*The Philippines intends to progressively eliminate Non Tariff Measures to the extent possible to minimize distortions to trade. Meanwhile, all NTMs are WTO- consistent.*

**(Expert)**

**2. How many anti-dumping and countervailing tariff or measures has Philippines put in place since 1995, and on what items? Has the number of measures risen after the Asian financial crisis?**

#### Anti-Dumping Measures

*For Calendar Year 1995*

- Nil

*For Calendar Year 1996*

- Newsprint- Finland
- Terry towelling products- PROC and Hong Kong

*For Calendar Year 1997*

- Nil

*For Calendar Year 1998*

- Galvanized malleable coated fittings –PROC (extension of definitive anti-dumping duty)
- Magnesite based refractory bricks – Germany
- Sodium Tripolyphosphate – PROC

*For Calendar Year 1999*



- Polypropylene – South Korea
  - Cold Rolled Coils (CRC) – Malaysia
- For Calendar Year 2000
- Cold-Rolled Coils (CRC) and Sheets – Russia, Chinese Taipei and Ukraine (imposition of definitive anti-dumping duty suspended due to non-operation of National Steel Corporation)
  - Steel Billets – Russia (imposition of definitive anti-dumping duty suspended due to non-operation of National Steel Corporation)
  - Polypropylene Resins – South Korea (definitive anti-dumping duty imposed; lifted upon recommendation of the Permanent Mission in Geneva following consultations in the WTO Dispute Settlement Body)
  - Clear float glass – Indonesia, Malaysia
- For Calendar Year 2001
- Cold Rolled Coils (CRC) – Malaysia (definitive anti-dumping duty imposed; imposition suspended due to non-operation of National Steel Corporation)
  - PVC floor covering – Thailand
- For Calendar Year 2002
- Nil
- For Calendar Year 2003
- Nil
- For Calendar Year 2004
- Sodium Tripolyphosphates (STPP) – China (extension of the imposition of the definitive anti-dumping duties for a period of three (3) years)

Countervailing Measures

1995 – present: Nil

**3. How many safeguard measures has Philippines put in place since 1995, and on what items? Has the number of safeguard measures risen after the Asian financial crisis?**

1995 – 2001: Nil  
 2002: Ceramic tiles  
 2003: Cement

**4. The IAP states that Philippines maintains quantitative import restrictions on rice. Can Philippines give any indications on its future policies for rice? Does Philippines maintain quantitative import restrictions on rice in its FTAs?**

*The Philippine Government is negotiating for the continuation of the rice QR as a form of protection for its 3 million rice farmers. So far, nine countries such as Australia, Pakistan, Thailand, USA, Argentina, Canada, India, China and Egypt have notified us about their desire to engage in the said negotiation.*

*With reference to current trade negotiations, such as bilateral FTAs being entered into by the Philippines, rice is always considered as highly sensitive and special treatment is being pursued.*

*On rice importation policies, the National Food Authority (NFA) undertakes the importation of rice for food security. The Agency has the first right to import the country's food security requirements from the import volume determined by an Inter-Agency Committee (IAC), which is chaired by the Secretary of the Department of Agriculture. Importation of rice is resorted to only when there is an actual or projected shortage of rice as a result of a shortfall in production or other reasons that warrant the need for importation. The decision to import lies in the hands of the IAC, which regularly conducts an evaluation of the country's supply and demand situation and outlook every quarter or as often as needed. In its evaluation, the IAC determines the surplus or deficit the country will have. In case of a deficit situation, the IAC recommends to the DA Secretary and NFA council chairman the volume of rice needed to be imported to avert the projected shortfall. The volume of rice to be imported does not include the Minimum Access Volume (MAV), which the country has to import to comply with the WTO.*

*With the lifting of the Agency's monopoly in rice importation, farmers are now allowed to participate in the stabilization of rice supply and prices. Under the NFA's Farmers as Importers (FAI) Program, rice*

farmers are granted import quotas representing the balance of the total import volume. Volume not brought in by the farmers under the FAI Program shall be imported by the NFA if still needed.

**5. The IAP states that Philippines maintains discretionary export licensing and voluntary export restraints on garments and textiles as a result of quotas in other countries. Presumably this quota refers to the Multi-Fiber Arrangement (MFA). When MFA is phased out, will Philippines also phase out export licensing and voluntary export restraints in this sector?**

*Export licensing required for the sector is eliminated with the lifting of all quota restrictions under the MFA phase out. The sector follows the normal rules and procedures for exporting applicable to all other sectors starting January 2005.*

*The export licensing previously required by the Philippine government for textiles and clothing exports is in line with the administration of export quotas and monitoring of its utilization, as agreed bilaterally with countries such as the United States, European Union and Canada, under the MFA.*

**6. The IAP gives very little descriptions on Philippines SPS (Sanitary and Phylo-Sanitary) procedures and policies. Would Philippines like to give a short description about the goals of its SPS procedures and policies, what progress has been made in this area recently, and what changes are planned to make imports easier while protecting Philippine citizens?**

*The WTO Agreement on Sanitary and Phytosanitary Measures (or the SPS Agreement) is important to agricultural trade and therefore to 12 million farmers and fishermen comprising the agriculture sector and representing 40% of the country's labor force. SPS measures are implemented to ensure that risk of entry and spread of pests and diseases borne by imported agricultural and fishery products are prevented in order to protect human, plant, and animal health and lives.*

*The Philippine Department of Agriculture manages the implementation of the SPS Agreement. It maintains an SPS Notification Authority and Enquiry Point and an SPS Information System ([www.spis.da.gov.ph](http://www.spis.da.gov.ph)).*

*The SPS Notification Authority and Enquiry Point is the Policy Research Service (PRS) of the Department of Agriculture. It contains the following information:*

- *Philippine SPS measures as provided by the DA regulatory agencies*
- *SPS measures of other countries and international standards organizations*
- *Working documents relevant to SPS development, enforcement and monitoring in the Philippines*

*SPS measures are implemented through regulatory agencies of the Department of Agriculture and the Department of Health. The Department of Agriculture has ten (10) regulatory agencies with responsibility over animal and plant health protection and the safety of fresh foods from production to consumption. These agencies and their respective SPS jurisdictions are:*

- *Bureau of Animal Industry(BPI)*

*Responsible for preventing the entry and spread of exotic and communicable animal diseases and with safeguarding animal health and industries. It is also responsible for control measures for feeds and feedstuff.*

- *National Meat Inspection Service (NMIS)*

*Responsible for SPS measures related to meat hygiene and the safety of meat products including chicken. Its regulatory program includes the inspection of imported meat and meat products and the accreditation of slaughterhouses and meat processing establishments.*

- *Bureau of Fisheries and Aquatic Resources (BFAR)*

*Responsible for the safety of fish, shellfish, crustaceans and other seafood and aquaculture products for human consumption. It is the assigned competent authority for the export of fishery products to the European Union. In this capacity, the agency inspects and accredits fish processing establishments, monitors marine biotoxins in seafoods, and levels of antibiotics and veterinary drug residues in aquaculture products. The agency is also responsible for fish health and implements quarantine regulations for live fish.*

- *Bureau of Plant Industry (BPI)*

*Responsible for measures related to plant health. It conducts pest risk analysis, issues phytosanitary certificates and implements measures regulating the international and domestic movement of plants and plant products. It maintains the country's official pesticide residue analysis laboratories. It is also responsible for approving biotechnology-derived plants for food and feeds.*

- *Fertilizer and Pesticide Authority (FPA)*

*Responsible for establishing and enforcing maximum residue limits for pesticides in local and imported raw agricultural commodities. Maximum Residue Limits (MRL's) for pesticides is based on standards of the Codex Alimentarius Commission.*

- *Bureau of Agricultural and Fisheries Product Standards (BAFPS)*

*Responsible for the development and implementation of standards for quality and safety of fresh, primary and secondary processed agricultural and fishery products, aquaculture and livestock. It harmonizes local and international standards and is the Codex contact point.*

- *Philippine Coconut Authority (PCA)*

*Responsible for developing and implementing SPS measures related to coconut, coconut oil, other vegetable oils, copra, and other coconut products and all other SPS measures that impact on the coconut industry.*

*There are three (3) other regulatory agencies in the Department of Agriculture that play minor roles in the implementation of SPS measures namely, the Sugar Regulatory Administration (SRA), for sugar; the Fiber Industry and Development Administration (FIDA), for cotton seeds.*

*(Note: The regulatory agency in the Department of Health is the Bureau of Food and Drug (BFAD). It is responsible for ensuring the safety and purity of foods and implements regulations on the approval and use of food activities, labelling of pre-packaged foods, dietary supplements, and others.)*

#### *Improving SPS Management*

- *Public-Private Interaction*

*Public private interaction is an integral part of the development and implementation of SPS measures. The private sector is consulted in the development and finalization of regulations to ensure a transparent and inclusive decision-making process. There are many food associations and several consumer organizations in the Philippines of varying levels of awareness and knowledge of food safety issues.*

*The Philippine Chamber of Food Manufacturers (PCFM) has created technical working groups with the Bureau of Food and Drug to harmonize local standards. The Department of Agriculture recently approved the creation of a National Codex Committee to allow different government agencies and private sector representatives to participate in the development of country positions at the Codex Alimentarius.*

- *Upgrading Skills and Capabilities*

*Capability building in the fields of SPS is a continuing activity of the DA and is usually done through partnership and technical assistance provided by international agencies and the Philippines' trading partners.*

**7. CEPT requires the elimination of quantitative restrictions and other non-tariff barriers. What measures have Philippines taken to fulfil this goal, and what further measures are envisioned?**

*The process of Non Tariff Measures elimination has been agreed upon among ASEAN members generally, including (a) verification of information on NTMs, and (b) design of a work programme towards the elimination of NTBs.*

*From 1999 to present, the Philippines participated in implementing the following decisions:*

- a) procedures for notification, cross-notification or complaints*
- b) database information*
- c) review of working definitions and criteria*

*It will participate actively to implement the following decisions in the future:*

- a) verification and justification by members of notified NTMs;*
- b) classifying them into (i) technical barriers to trade (TBTs), (ii) sanitary and phytosanitary measures (SPS); (iii) security and environment measures, (iv) import licensing procedures (ILP) and/or other administrative measures;*
- c) mechanism for addressing complaints; and*
- d) design of a work program for eliminating "unjustifiable and unnecessary" NTMs.*

**(United States)**

**8. Please describe any non-tariff barriers linked to SPS issues and whether SPS measures are harmonized to CODEX guidelines.**

*Quarantine measures, inspection services, pest risk analysis, establishment and enforcement of maximum residue limits for pesticides, and development and implementation of standards for quality and safety of fresh, primary and secondary processed agricultural and fishery products are the principal non-tariff measures linked to SPS issues. SPS measures developed and implemented by the Philippine regulatory institutions are consistent with international standards, statutes and protocols set for inter-country trade as defined by the OIE for animal health, the IPPC for plant health and the Codex Alimentarius Commission for food safety. The Philippines is signatory to these international standards making bodies.*

**D. Services**

**(Hong Kong, China)**

**1. We note that the Philippines has not yet filed returns of IAPs on a number of services sectors, including business services, certain communication services and transport services, etc. We would like to urge the Philippines to file the outstanding returns as soon as possible.**

*The Philippines notes Hong Kong, China's comments.*

**2. Furthermore, it is noted that the Philippines has not yet tabled its initial services offer in the context of the current round of services negotiations in the WTO. We would like to encourage the Philippines to do so the soonest possible.**

*The Philippines notes Hong Kong, China's comments.*

**3. We note from the IAP that Philippines' existing regime on some services sectors is more liberal than the one portrayed by its GATS schedule of specific commitments, e.g. higher foreign equity caps are allowed for financial services and tourism related services. We would like to encourage the Philippines to reflect its freer regime in its initial offers in the present round of the services negotiations, so as to bring its commitments in line with its actual regime and to increase the predictability of the regime.**

*The Philippines notes Hong Kong, China's comments.*

#### **4. Financial Services : Insurance**

**We understand that foreign-owned intermediary cannot enter the market by establishment of a branch. We hoped that this restriction could be removed. Also a foreign-owned company can avail itself of only 1 out of the 3 modes of entry. This appears to be restrictive.**

*The Philippines notes Hong Kong, China's comments.*

#### **5. Financial Services : Banking**

**We would like to seek clarification on ownership of foreign banks as different figures are mentioned in the IAP. Under the part for "operational requirements", it is mentioned that foreign banks are authorized to operate in the Philippines through different modes, one of which is "by acquiring, purchasing or owning up to 60% of the voting stock of an existing bank". However, under "foreign entry", it is mentioned that foreign banks could acquire up to 100% of the voting stock of the domestic banks.**

*The statutory basis for the capital participation limit of foreign banks is R.A. No. 7721 or the Foreign Banks Liberalization Act promulgated on 18 May 1994. Under this law, foreign ownership is allowed up to 60 percent of the voting stock of an existing bank.*

*The regulatory regime on the entry of foreign banks in the country was further liberalized with the passage of the General Banking Law (GBL) of 2000 (R.A. No. 8791) on 23 May 2000. Under the GBL, the Monetary Board may allow full foreign capital participation only within a specified period of time and subject to the guidelines of R.A. 7721. Section 73 of the GBL specifically provides that within seven (7) years from the effectivity of this Act and subject to guidelines issued pursuant to the Foreign banks Liberalization Act, the Monetary Board may authorize a foreign bank to acquire up to one hundred percent (100% of the voting stock of only one (1) bank organized under the laws of the Republic of the Philippines.*

**(Mexico)**

#### **6. Energy services**

**In this sector it would be important and useful to have a brief description of the Electric Power Industry Act and the Downstream Oil Industry Law in order to have a general idea of the main issues of those regulations and a website to check them out.**

*On 8 June 2001, the Electric Power Industry Reform Act (EPIRA) was signed into law. Among the major reforms embodied in EPIRA are the establishment of the WESM and the privatization of NPC. The restructuring of the electricity industry calls for the separation of the different components of the power sector into the generation, transmission, distribution and supply sectors. On the other hand, the privatization of the NPC involves the sale of the state-owned power firm's generation assets to investors and the awarding of the operation and maintenance of the TRANSCO transmission assets to a concessionaire.*

*The Department of Energy (DOE) continues with its mandates of overseeing the planning, monitoring and assessment of the electricity reforms. The Department has been working towards the implementation of the various reforms embodied in the EPIRA with collaborative effort from concerned agencies and the private sector.*

*On the other hand, the downstream sector remains to be an attractive area for investments. R.A. 8479 or the Downstream Oil Industry Deregulation Act offers market liberalization, tariff treatment, promotion of fair trade practices, program to encourage entry of new participants, incentives for new investments, promotion of retail competition, anti-trust safeguards and government role.*

*Descriptions and additional information on the Electric Power Industry Reform Act and the Downstream Oil Industry Law can be found at [www.doe.gov.ph](http://www.doe.gov.ph).*

#### **7. Communications services: telecommunications**

**Is there any further plan to increase the foreign investment share in areas such as ownership, operation and maintenance of telecommunications services?**

*The equity limitation on foreign investment in telecommunications services is a constitutional limitation. Unless the Constitution is amended, we are bound by this limitation. There are plans to improve on this, however, this can not overrule the Constitution, especially as this relate to broadcast and telecom. A 100% Filipino equity is required for broadcast.*

*There had been recommendations in the past to allow increase in foreign ownership for telecommunications services, mainly because this sector is capital intensive. However, the foreign equity limitation in telecommunication services is a Constitutional provision. Only a Constitutional amendment can allow improvement of such restriction.*

#### **8. Tourism and travel related services**

**It is necessary to clarify if there are regulations on tourism and travel services in order to know all the operational requirements to provide these kind of services, adding a website to consult the respective regulations.**

*The function for regulating the tourism has been developed from the Department of Tourism to the local government units (LGUs) pursuant to the Local Government Code of 1991. Thus, regulations and operational requirements for tourism services are subject to the rules and regulations of the Securities and Exchange Commission, Board of Investments, and the Department of Trade and Industry. The Department of Tourism, however, undertake accreditation of tourism establishments which conform with minimum standards set by the Department.*

*Employment of foreign nationals in the tourism sector is regulated by the Department of Labor and Employment. The following are the websites of concerned agencies which may be visited for further information and clarification:*

- Department of Tourism (DOT): [www.wowphilippines.com.ph](http://www.wowphilippines.com.ph)
- Board of Investments (BOI): [www.dti.gov.ph](http://www.dti.gov.ph)
- Security Exchange Commission (SEC): [www.sec.gov.ph](http://www.sec.gov.ph)
- Department of Labor and Employment (DOLE): [www.dole.gov.ph](http://www.dole.gov.ph)
- Land Transportation and Franchising Regulatory Board (LTFRB): [www.ltfrb.gov.ph](http://www.ltfrb.gov.ph)

**(New Zealand)**

**9. We note that a constitutional 40% cap on foreign interests covers almost all sectors. In others the rules are even more prescriptive with ownership of land and broadcasting services, as well as legal practice all reserved exclusively to Filipinos. What plans does the Philippines have to liberalise its services sector including raising the cap on foreign ownership or removing the cap?**

*The Medium-Term Philippine Development Plan for 2004-2010 recognizes the need for the reassessment of the Constitution, which may consider that the country now lives in a global economy, closely interconnected by trade and investments. Thus, there are plans to effect fundamental reforms and changes in the restrictive Constitutional provisions on national economy and patrimony to bring in investment that*

will create jobs and opportunities and eventually reduce poverty.

**10. In regard to air transport arrangements, does the Philippines have plans to liberalise access for foreign airlines interested in entering air services agreements, including granting fifth freedom rights?**

*The Philippine liberalization policy on air access to foreign carriers is through air services agreements (ASAs). ASAs are basically bilaterally negotiated based on reciprocity and value for the Philippines. Fifth freedom traffic rights (FFTR) are also negotiated and agreed in ASAs but are secondary and supplemental to third and fourth freedom traffic rights and which shall clearly promote the development of routes and destinations. Supply and demand in the route are also to be considered in the grant of FFTR.*

**(Expert)**

**11. Philippines limits land ownership to Philippines citizens or corporations with at least 60% ownership by Philippine citizens. Is this regulation based on the Constitution? What is the economic, political or social justification (other than the Constitution) for this limit?**

*This regulation is provided in the 1987 Constitution (Sec. 2 Article XII). The framers of the 1987 Constitution did not want majority or substantial part of the country's territory to be owned by foreigners and therefore be in a position to undermine the country's national security.*

**12. According to the IAP, broadcast services (including CATV) are required to be 100% Filipino-owned. Is this regulation based on the Constitution? What is the economic, political or social justification (other than the Constitution) for this limit?**

*Broadcast is part of media and pursuant to the provisions of Article XVI, Section 11, the ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly owned and managed by such citizens.*

*There is still no legislative enactment of a CATV law. However, per E.O. 205, the National Telecommunications Commission (NTC) is granted power to grant the Certificate of Authority for the operation of CATV services in the Philippines. Pursuant to the enabling provision of E.O. 205, CATV appears to be made part of commercial mass media. Thus, the requirement of a 100 per cent Filipino ownership is called for.*

**13. There seems to be many areas of services and investment which are fully or partially restricted to foreigners based on the Constitution. What is the relevant provisions in the Constitution? An English translation of the relevant provisions would be appreciated. What is the economic, political or social justification for the provisions in the Constitution?**

*The Constitutional restriction applies to any "public utility" or public services whereby under the provisions of Article XII of the Philippine Constitution on National Economy and Patrimony, particularly Section 11 which states:*

*"No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or be longer than fifty years... The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital and all the executive and managing officers of such corporation or association must be citizens of the Philippines."*

*The minutes of the debate that brought the approval and ratification of the 1987 Constitution will explain the economic, political or social justification behind this provision.*

*In one explanation of this Constitutional provision of Article XII on National Economy and Patrimony, reference is made to Article II Declaration of Principles and State Policies, Section 19 which states: “The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.”*

**14. In the “Operational Requirements” section of the Distribution Services sub-chapter of the IAP, Philippines states the requirements of RA 8762, which states restrictions on foreign investment. What is the economic, political or social justification for this requirement?**

*The justification for these provisions is in Article II, Section 19 of the Constitution, which provides that “The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.”*

*The legislation believes that the requirements imposed will attract bona fide players and best practices operators that will really redound to the benefit of the consumers.*

*Additional information on foreign investments (i.e. statistics) can be viewed at [www.boi.gov.ph](http://www.boi.gov.ph)*

**15. In the “Licensing and Qualification Requirements of Service Providers” section of the Distribution Services sub-chapter of the IAP, Philippines states the requirements of RA 8762 which lists the qualifications required by Philippines for foreign investors. These requirements seem restrictive. What is the economic, political or social justification for this requirement? Does the Government have any statistics on foreign investment in the distribution services sector? What is the market penetration rate for foreign companies in the distribution services sector?**

*Please see response to question D.14*

**16. In the “Licensing and Qualification Requirements of Service Providers” section of the Financial Services sub-chapter of the IAP, Philippines states the requirements of RA 7721 which lists the guideline for selection (banking) used by Philippines for selection of foreign banks. These requirements seem restrictive. What is the economic, political or social justification for this requirement? Does the Government have any statistics on foreign banks in the financial services sector? What is the status of foreign bank participation in the Philippines financial services sector?**

*(a) Justification for the requirements for the selection of foreign banks*

- *Section 3 (Guidelines for Approval) of R.A. No. 7721, An Act Liberalizing the Entry and Scope of Operations of Foreign banks in the Philippines stipulates the factors to consider in the selection of foreign banks that may be allowed to invest in majority of the voting stock of an existing domestic bank or to establish a subsidiary or branch in the Philippines, as follows: (1) geographic representation and complementation, (2) strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank, (3) demonstrated capacity, global reputation for financial innovations and stability in a competitive environment to the applicant, (4) reciprocity rights enjoyed by Philippine banks in the applicant’s country and (5) willingness to fully share technology. These criteria are meant to help in the attainment of the objectives of the country’s bank liberalization policy under R.A No. 7721, namely: (1) ensure that the country of origin of foreign banks which will operate in the Philippines is not dominated by foreign financial service suppliers originating from a few countries; (2) maximize the contributions of foreign banks in economic growth and development, particularly with respect to trade and investments; (3) maintaining an environment that would ensure the integrity and stability of the banking and financial system while promoting financial market innovations; (4) ensure that Philippine foreign*



service providers also enjoy market access in foreign markets; and (5) enhance the country's competitiveness in the international market through the transfer of technology.

- It must be noted that the requirements for the selection of foreign banks under R.A. No. 7721 could not be regarded as restrictive as evidenced by the number of foreign banks that were established in the Philippines since its enactment. From 4 foreign bank branches existing in 1994, there are now 14 foreign bank branches performing full commercial banking operations and 7 new subsidiaries of foreign banks operating in the Philippines.

(b) Statistics on foreign banks

- Kindly refer to the attached Annex D.16 (Offices of foreign bank branches and subsidiaries and Table 1 (Foreign Banks: Performance Indicators)

(c) Status of foreign bank participation in the Philippines' financial services sector

- As a result of the liberalization of the entry of foreign banks, the share of foreign bank branches and subsidiaries to the total assets of the Philippine banking system grew from 6.2 percent at end-1995 to 13.7 percent at end-2003. This share remained well below the 30 percent ceiling set under Section 3 of R.A. No.7721.
- The liberalization of branch banking and the entry of foreign banks contributed not only to the significant rise in resources but to the widening of the operating network of the banking system. The number of offices of foreign banks branches and subsidiaries increased from a mere 18 at end-1995 to 187 at end-2003.
- Foreign banks, composed of 4 bank branches existing prior to R.A. No. 7721, 10 new foreign bank branches and 7 foreign bank subsidiaries turned in their best performance in 2003 in terms of profitability, asset quality and capital adequacy. Some of the ways through which foreign banks attained this were: (1) shifting lending focus from the traditional corporate loans to more diversified customer revenue stream; (2) offering a wider range of deposit products and financial services; (3) keying in on local currency financial market products; and (4) introducing various cost reduction/business processes and re-engineering initiatives.
- Net income after tax (NIAT) for the year ended 31 December 2003 increased to ₱8.0 billion from ₱6.3 billion the previous year. This represented a 27.9 percent year-on-year growth on account of improved performance of new foreign bank branches and reduced losses of foreign bank subsidiaries. The strong performance was traced to better asset quality, which enabled foreign banks to reduce their yearly loss provisioning by ₱1.4 billion or 28.3 percent to ₱3.5 billion from 4.9 billion last year. Net interest income also improved by 1.4 percent to ₱18.1 billion. Total assets reached its highest level since 1998 at ₱501.1 billion.

**17. In the "Foreign Entry" section of the Distribution Services sub-chapter of the IAP, Philippines states that membership in the board of directors for financing companies are limited to Filipino citizens. What is the economic, political or social justification for this requirement? Is this restriction only for financing companies, or for other financial institutions as well?**

As amended by P.D. No. 715, the Anti-Dummy Law now allows the election of aliens as members of the board of directors or governing body of corporations or associations engaged in partially nationalized activities, in proportion to their allowable participation or share in the capital of such entities. This decree is in line with Article 14, Section 5 of the Constitution which provides that "the participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof." It is intended to give foreign stockholders limited representation in the governing board in proportion to their equity, and therefore, alien directors may not hold any other position in said entity.

**18. In the “Operational Requirements” section of the Transport Services – Air sub-chapter of the IAP, Philippines states that Executive Order 219 mandates the designation of at least two international carriers to encourage competition ... [if] not serviced by existing carriers. If a route is served by a Filipino carrier, does the same provision apply? In other words, does Executive Order 219 also have provisions to reduce monopolies by domestic carriers?**

*E.O. 219 provides that for international air transportation, it is required that at least two (2) international carriers be designated official carrier(s) for the Philippines. The official carrier referred therein are those carriers that should be at least 60% Filipino owned. Hence, the provision does apply to Filipino carriers.*

*The entry of foreign air carriers, which will affect the reduction of monopolies by domestic carriers will depend on the Air Services Agreements (ASA) made by the Philippines with other countries. It is a standard requirement in the ASA negotiation for the Philippines to have at least two-carrier designation or multiple designations. Furthermore, EO 219 provides that when the designated carrier(s) do not service the total frequency entitlement of the Philippines under existing ASA or other arrangements, then additional carrier(s) may be designated to operate such unused frequencies. These measures will reduce the possibility of monopoly of domestic carriers.*

**19. In the “Foreign Entry” section of the Transport Services – Air sub-chapter of the IAP, Philippines states that only aliens qualified to hold technical positions may be employed within the first five years of operation of enterprise, and each alien must have at least two Filipino understudies. Does Philippines find that this requirement restricts foreign entry?**

*The requirement is not meant to restrict the employment of foreigners but to encourage transfer of skills.*

**20. In the “Operational Requirements” section of the Transport Services – Maritime sub-chapter of the IAP, Philippines states that Executive Order 185 provides that all routes/links must have a minimum of two operators. How is that provision enforced? Is it easy to find multiple operators for every route?**

*As the government agency mandated by law to implement Executive Order No. 185, the Maritime Industry Authority (MARINA), consistent with the domestic shipping deregulation of the maritime industry, issued Memorandum Circular No. 161 which aimed to sustain an efficient domestic water transport industry and to further enhance constructive competition and improve the quality of domestic shipping services in line with the general policy direction of liberalization and to further attract new shipping investments by levelling the playing field for existing and prior ship operators.*

*The said Memorandum Circular mandates that all routes/links shall have a minimum of two (2) operators. Based on our experience, it has never been difficult to have multiple operators in every route. In fact, all routes which have been serviced by an operator for an aggregate period of at least five (5) years shall be open for entry to additional operators provided that such entry will not be a ruinous competition.*

*Realizing the benefits of a fully deregulated domestic shipping industry, the Philippine congress issued Republic Act No. 9295 entitled, “An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines, and for other purposes.*

*Section 8, Chapter III of the said law states that in order to encourage investments in the Domestic Shipping Industry by existing domestic operators and attract new investment from new operators and investors, domestic ship operators are hereby authorized to establish their own domestic shipping rates provided that the effective competition is fostered and public interest is served.*

*The MARINA shall monitor all shipping operations and exercise regulatory intervention where it is established, after due process that public interest needs to be protected and safeguarded.*

*With the implementation of RA 9295, entry of operators in the domestic shipping industry and the fixing of domestic shipping rates have been fully deregulated.*

**21. In the “Operational Requirements” section of Energy Services sub-chapter of the IAP, Philippines states that Philippines is continually pursuing international partnership and cooperation programs which provide investment and technology transfers. Have Philippines found many desirable partners in this regard? Can Philippines give particular examples?**

*Technology transfer and investments in Renewable Energy development in the Philippines:*

*RP-Germany (KFW)*

- *Grant for the feasibility study for wind energy projects in Bayog, Ilocos Norte, Manoc-Manoc, Aklan and Nubueta, Surigao del Sur*
- *Should the projects be found technically, economically and environmentally feasible, a credit facility is provided for project implementation.*

*RP-Spain (Spanish Protocol)*

- *Grant for the feasibility study of hydropower projects in Palawan and Mindoro Islands and some selected islands for wind development*
- *Should the projects be found technically, economically and environmentally feasible, a credit facility is provided for project implementation.*
- *Solar Power Technology Support (SPOTS) Project of Department of Agrarian Reform in cooperation with the Department of Energy.*
  - *Installation of Solar PV packages in 40 Agrarian Reform Communities in Mindanao.*

*RP-Denmark (DANIDA)*

- *Implementation of the 25 MW Bangui Wind Project of Northwind Corporation, grant and project financing in Bangui, Ilocos Norte*
- *Implementation of the 30 MW San Carlos Wind Project of San Carlos Wind Power Corporation in San Carlos City, Negros Occidental*

*RP-Japan*

- *Japan Grass Roots Grand Aid Program for the implementation of 2 micro-hydro projects in Balbalan and Pasil, Kalinga*
- *Sustainability Improvement of Renewable Energy Development in Village Electrification*
- *65-kW Mahagnao Micro-hydro Demonstration Project in Leyte*
- *Center for Micro-hydro Technology at De Lasalle University*
- *Feasibility study for hydropower projects in Mt. Province and Negros Oriental*
- *Financing for proposed hydropower projects in Catuiran, Mindoro Oriental and Timbaban in Aklan*
- *Financing for proposed wind energy project in Ilocos Norte*

*UNDP Assisted Projects*

- *Capacity Building to Remove Barriers in Renewable Energy Development in the Philippines*
- *PV-Wind Diesel Hybrid System in Candawaga, Rizal and Palawan*
- *Centralized PV- Diesel System in New Ibajay, El Nido, Palawan*

*ADB Technical Assistance*

- *Rehabilitation of Renewable Energy Projects with Livelihood Component*
- *Renewable Energy and Livelihood Development in Negros Occidental*

*RP-Czech Government*

- *Partial grant on the electro-mechanical for the 750 kW San Luis Mini-hydro Project in San Luis, Aurora*

*RP-Dutch Government*

- *Delivery of 15,100 units of solar home systems in the rural households of the Philippines under the Netherlands-assisted PNOC Solar Home Systems Distribution Project*

**22. In the “Foreign Entry” section of the Tourism and Travel Related Services sub-chapter of the IAP, Philippines states that foreigners may not own land but a lease agreement is allowed for 25 years (50 years, with possible 25 year extension for projects of 5 million or more). Is this 5 million dollars or pesos? Does the government feel that this is a very restrictive provision? What is the extent of foreign firms leasing land in Philippines? (Number of cases and/or particular examples?)**

*The amount is US\$5 million. This is not a restrictive provision. Incentives on tourism investments are given in return.*

**23. For the last several years, Philippines has not filed the IAP Services sub-chapter for Legal Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Legal Services?**

*Practice of all professions is limited to Filipino citizens save in cases prescribed by law. (Art. XII, Sec. 14 of the Constitution)*

**24. For the last several years, Philippines has not filed the IAP Services sub-chapter for Accounting Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Accounting Services?**

**25. For the last several years, Philippines has not filed the IAP Services sub-chapter for Architectural Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Architectural Services?**

**26. For the last several years, Philippines has not filed the IAP Services sub-chapter for Engineering Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Engineering Services?**

**27. For the last several years, Philippines has not filed the IAP Services sub-chapter for Other Professional Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Other Professional Services?**

*Response to questions D.24-27: Per Professional Regulation Commission (PRC), they have yet to consult the Board of Accountancy, Architecture, Engineering, and other professional services on the matter.*

**28. For the last several years, Philippines has not filed the IAP Services sub-chapter for Communications - Postal Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Communications - Postal Services?**

**29. For the last several years, Philippines has not filed the IAP Services sub-chapter for Communications – Express Delivery Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Communications – Express Delivery Services?**

**30. For the last several years, Philippines has not filed the IAP Services sub-chapter for Construction and Other Engineering Services. Is there a particular reason why Philippines has**

not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Construction and Other Engineering Services?

31. For the last several years, Philippines has not filed the IAP Services sub-chapter for Education Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Education Services?

32. For the last several years, Philippines has not filed the IAP Services sub-chapter for Environmental Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Environmental Services?

33. For the last several years, Philippines has not filed the IAP Services sub-chapter for Health and Related Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Health and Related Services?

34. For the last several years, Philippines has not filed the IAP Services sub-chapter for Recreational Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Recreational Services?

35. For the last several years, Philippines has not filed the IAP Services sub-chapter for Transport - Rail Services. Is there a particular reason why Philippines has not filed the sub-chapter? Is there anything Philippines wants to state concerning the status of Transport - Rail Services?

36. Can Philippines provide the Expert with the list of UR GATS commitments? Most notably, what sectors (and modes) were opened to foreign competition and foreign investment, and which sectors (and modes) are not liberalized?

*The Philippines have commitments in (4) service sectors, namely Transportation, Communication, Financial (Banking and Insurance) and Tourism. Commitments are mostly on mode 3 (Commercial Presence) and mode 4 (Movement of Natural Persons), with certain restrictions. Detailed information may be viewed at [www.wto.org](http://www.wto.org).*

37. What is Philippines' definition of Bogor Goal as it concerns services? Does it include complete non-discrimination and liberalization for all service sectors, or "substantially" all sectors with some exceptions? If latter, what exceptions does the Government feel must be maintained?

*As signatory to APEC, the Philippines adopts the definition of Bogor Goal of achieving the goal of free and open trade and investment in the Asia-Pacific no later than the year 2020, with consideration of the principle of special and differential treatment to developing countries, who are given flexibility for opening fewer sectors, liberalizing fewer transaction, and progressively extending market access in line with their developing situation.*

(Australia)

38. Chapter 3(a)1: Business Services — Legal

Australia notes that the Philippines has not included any information under "Business Services: Legal" in Chapter 3 of their IAP. Australia requests the Philippines to include details on Legal in their next IAP.

*The Philippines notes Australia's comments.*

39. Chapter 3(a)5: Other Professional Services

Australia encourages the examination of further improvements on the restrictions to trade in professional services.

We would like to draw attention to the importance of reducing barriers in the professional services sector such as:

- long-term residency requirements before being able to practice a profession in a host country,
- limited areas of practice (such as in the legal field only being able to provide advice as a "consultant" or in relation to the country in which they are qualified) or
- the restrictions on any repatriation of profits etc.

*The Philippines notes Australia's comments.*

#### **40. Chapter 3(b)3: Communications Services – Telecommunications**

Australia commends the Philippines' progress in promoting electronic security, as well as competition in the telecommunications sector. Australia would like to know when the Philippines plans to ratify the WTO Reference Paper on basic telecommunications.

*The Philippines has committed to observance of regulatory principles which are almost similar to the principles contained in the reference paper.*

#### **41. Chapter 3 (i) - Tourism and Travel Related Services, under the Philippines IAP.**

We note that foreigners can invest as much as 100% in almost all tourism activities pursuant to RA No. 7042 (Foreign Investments Act of 1991) as amended by RA No. 8179, and RA No. 8762 (Retail Trade Liberalization Act of 2000), except for tourist transport which is limited to Philippine nationals pursuant to the Philippine Constitution. However, there are certain restrictions governing the industry, as follows:

- only citizens of the Philippines or corporations or associations at least 60% of whose capital is owned by such citizens may own land other than public lands and acquire public lands through lease; and
- foreigners not allowed to own land, but lease agreement is allowed for 25 years. However, for a 5 million project, lease agreement is allowed for 50 years and renewable for 25 years.

While this appears to be a horizontal requirement, it places a significant restriction on foreign investment particularly in the accommodation sector.

*The Philippine Constitution prohibits foreign nationals from owning land, but lease agreement is allowed under specific laws for 25 years renewable for another 25 years. However, foreign nationals investing in a tourism project with minimum capitalization of US\$ 5 million could not be considered a barrier to providing the services. The said amount aims to encourage big ticket projects/ investments as the country is in dire need of facilities to cope with the growing tourism business.*

*In addition, foreign investors seeking to engage in domestic market enterprise, a minimum paid up capital of more than the equivalent of US\$ 200,000 is required.*

**(United States)**

#### **42. Distribution Services**

**We encourage the Philippines to reduce the capital requirements.**

*The Philippines notes the United States' comment.*

### **E. Investment**

**(New Zealand)**

**1. New Zealand welcomes moves by the Philippines to enhance its investment climate, such as by allowing the long-term lease of private lands to foreign investors. But the existence of constitutional cap of 40% foreign interest in business in the Philippines acts as a continuing disincentive to foreign investors. What further incentives is the Philippines contemplating to encourage foreign investment?**

*Republic Act No. 7042, also known as the foreign Investments Act of 1991, is the basic law that governs foreign investments in the Philippines. This piece of legislation enabled the liberalized entry of foreign investments into the country. Under the said law, foreign investors are allowed to invest up to 100% of the equity in companies engaged in almost all types of business activities subject to certain restrictions as prescribe in the Foreign Investments Negative List (FINL), the latest of which is the 6<sup>th</sup> FINL signed by the President on 30 November 2004. The existence of a constitutional cap of 40% foreign interest in specific investment areas/activities is limited for reasons of security, defense, risk to health and morals, and protection of small and medium-scale enterprises, as provided under “List B” of the said FINL*

*With regard to incentives, several bills have been filed to amend Executive Order 226, otherwise known as the Omnibus Investments Code of 1987 to unify the country’s incentives package with one governing statute that will regulate the grant of incentives as opposed to the present system of having different agencies administer and implement various incentives laws. There are no new incentives proposed in the bills. The main objective is the reinstatement of the capital equipment incentive to qualified registered enterprises. Meanwhile, a review of the entire fiscal incentives system is also being undertaken to identify incentives that overlap, result in “double-dipping”, are obsolete, and/or have inconsistent objectives.*

*Several proposals to alter the fiscal incentives system were filed in the last Congress, and a proposal was included in the package of measures proposed to the President. The legislative proposals filed have the objective of a unified incentives policy with one governing statute to regulate the grant of incentives as opposed to the present system of having different agencies administer and implement various incentives laws. A review of the entire fiscal incentives system is also being undertaken to identify incentives that overlap, result in “double-dipping”, are obsolete, and/or have inconsistent objectives.*

**(ABAC)**

**2. ABAC encourages the Philippines to implement deregulation of the mining sector, particularly with respect to its legal framework, so that foreign investment could execute service contracts for exploration, development, and use of the Philippines’ minerals and petroleum.**

*In a decision likely to boost foreign interest in mineral exploration, the Philippines’ Supreme Court ruled on 01 December 2004 that provisions of the 1995 Mining Act permitting 100% foreign control of mining projects are constitutional. The decision, which reverses an earlier ruling by the court in January 2004, could clear the way for billions of dollars of investment. More broadly, it will help to revive confidence in the business environment by signaling a stronger commitment to liberalization not only of the mining sector but the whole economy.*

**3. ABAC recognises that tax rates for the remittance of dividends, interest revenue and royalties, which are applied for the “pioneer status” companies registered with the BOI, are different from those for companies registered under the PEZA Subic Bay Metropolitan Authority (SBMA) and the Clark Development Corporation (CDC). These tax rates should be standardised.**

*Generally, tax rates for interest, dividends and royalties are uniformly applied to all taxpayers. The only exception to these is those falling under the bilateral tax treaties entered into by the Philippines with several partner countries.*

**4. ABAC asks the Philippines to ensure that its commitment to “stand still” in its progress towards liberalisation is clearly indicated in the Consolidated Negative List (CNL), so that neither backpedaling on liberalisation nor abrupt revocation of any existing liberalisation processes would be allowed.**

*The government is committed to opening up the economy through various liberalization, deregulation, and privatization measures already undertaken and which will continue to be implemented by the present administration. Such measures are embodied in various laws and, therefore, are mandated to be implemented and may only be amended through legislative action.*

**5. The Consolidated Negative List (CNL) also needs to ensure the areas of businesses and regulations that constitute exceptions to liberalisation and regulations. This will help prevent discretionary abuse and sabotage of speedy administration by government officials. Adoption of the Negative List in the area of service and investment will send a positive message to foreign investors that the Philippines is fostering a better investment environment.**

*Republic Act No. 7042, also known as the Foreign Investments Act of 1991, is the basic law that governs foreign investments in the Philippines. It is a landmark piece of legislation that reversed years of protection for domestic companies and enabled the liberalized entry of foreign investments into the country. Under this law, foreign investors are allowed to invest up to 100% of the equity in companies engaged in almost all types of business activities subject to certain restrictions as prescribed in the Foreign Investments Negative List (FINL). The FINL is a short list of investment areas where foreign investment is restricted or limited by the Constitution and existing laws, rules and regulations. There is, therefore, no basis for either discretionary abuse or sabotage of speedy administration by government officials concerned.*

*The Foreign Investments Act (FIA) covers all investment areas except banking and other financial institutions which are governed and regulated by the Bangko Sentral ng Pilipinas (BSP) or Central Bank of the Philippines.*

**6. ABAC highly recommends that securing of transparency and predictability in investment in the Philippines be ensured. This may include the avoidance of sudden systematic alterations and sudden modifications to tax refund rates for VAT and establishment of new holidays, advance notification of laws and ordinances, provision of information to the public, and application of procedures for public comments.**

*The Philippines maintains transparency in all its actions as part of the democratic process. Public hearing or consultations are usually conducted in the formulation of policies and in enactment of laws (e.g., investment liberalization laws). The Private sector and civil society have representation in certain government councils/committees. As a general rule, laws and rules and regulations cannot take effect until after 15 days following complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines unless otherwise provided.*

*Likewise, the government is committed to promoting transparency and predictability in investment. It exerts all efforts to adhere to the APEC transparency principles, specially on Investment, as earlier agreed upon by the APEC Leaders.*

*The government is committed to promoting transparency and predictability in investment. It adheres to the general and specific APEC Transparency Principles, specifically on Investment, as earlier agreed upon by the APEC Leaders.*

**(Expert)**

**7. What is Philippines' definition of Bogor Goal as it concerns investment? Does it include complete non-discrimination and liberalization for investment in all sectors, or "substantial" liberalization of investment with some exceptions? If latter, what exceptions does the Government feel must be maintained?**

*Investment for the Philippines, as defined under the Bogor Goals, include non-discrimination and liberalization of investment with some exceptions. Exceptions are provided under the Foreign Investment Negative List (FINL) for reasons of national security, protection of health and morals as well as small and medium-sized enterprises with paid-in capital of less than US\$200,000.*

**8. There seems to be many areas of services and investment which are fully or partially restricted to foreigners based on the Constitution. What is the relevant provisions in the Constitution? An**



**English translation of the relevant provisions would be appreciated. What is the economic, political or social justification for the provisions in the Constitution?**

*EO 389 or the 6<sup>th</sup> Foreign Investment Negative List (FINL), signed on 30 November 2004, provides the latest list of investment areas which are limited by the Constitution and other specific laws. Specific sections either in the Constitution and other laws are indicated in the FINL. The FINL is classified according to its economic, political or social justification, as follows:*

*List A – consists of areas of activities reserved for Philippine nationals where foreign equity participation in any domestic or export enterprise engaged in any activity listed therein shall be limited to a maximum of 40% as prescribed by the Constitution and other specific laws; and*

*List B - consists of areas of activities where foreign ownership is limited pursuant to law such as defense or law enforcement-related activities, or which have negative implications on public health and morals, and small and medium-sized enterprises with paid-in capital of less than US\$200,000.*

**9. According to “General Policy Framework” sub-section, the ownership of land by foreigners is restricted, and by R.A. 7652, even private land can only be leased for 50 years, (extendible by 25 years) to foreign investors. What is the social, economic or political justification for this restriction? Does the government feel that this is an unduly tough restriction which restricts foreign investment? If not, why? Are foreign investors using this provision actively?**

*For reasons of national economy and patrimony, the Philippine Constitution limits ownership of lands only to Filipino nationals. Recognizing, however, the need to encourage foreign investments consistent with the above constitutional mandate, RA 7652 was signed on 4 June 1993 granting long-term lease on private lands to foreign investors for the establishment of industrial estates, factories, assembly or processing plants, agro-industrial enterprises, land development for industrial, or commercial use, tourism, and other similar priority productive endeavors for a period of fifty (50) years, extendible for twenty-five (25) more years or a total of seventy-five (75) years. As there is no strong and persistent clamor to amend the relevant Constitutional provision, it is assumed that foreign investors have been actively using the “lease” provision.*

**10. “Non-Discrimination” sub-section states that National treatment is provided subject to constitutional, legislated, and administrative limitations and/or regulations; and that all areas are open to foreign investment except those restricted under negative lists. Can the government provide a comprehensive list of these limitations and negative lists?**

*Yes, as provided under Executive Order No. 389 (attached as Annex E.10) or the 6<sup>th</sup> Foreign Investment Negative List (FINL) signed on 30 November 2004. Effectivity date of the said EO is January 07, 2005.*

**11. “Performance Requirements” sub-section states that WTO Council for Trade in Goods granted Philippines an extension for exemptions in TRIMS for the motor vehicle sector until June 30, 2003. Has the exemption been eliminated or has the exemption been extended?**

*The local content requirement was eliminated effective 01 July 2003 with the issuance of Memorandum Order No. 51, on 22 January 2002, which was further amended by Memorandum Order No. 73, issued on 12 September 2002, amending the Guidelines on the Car Development Program, the Commercial Vehicle Development Program and the Motorcycle Development Program.*

**12. “Transparency” sub-section states that Philippines regularly publishes information on the country’s investment laws and regulations on its website (<http://www.boi.gov.ph>). Does the website include a searchable database of laws and regulations? (The Expert has not been able to find one, but he has not been able to search the website thoroughly due to lack of time)**

*Yes, the BOI website includes a searchable database of laws considered important to investors. Among the laws included are the Regular Foreign Investment Negative List (RA 7042).*

**13. Has Philippines examined its investment regime against APEC's Non-Binding Investment Principles? If so, what were the results? Were there any particular weaknesses in Philippines' investment regime? If so, what measures are there in place to reform the investment regime to be more consistent with the Investment Principles? If Philippines has not examined its investment regime, why has it not done so? Does the Government have any plans to carry out such examination?**

*An examination of the Philippine investment regime against the APEC's Non-binding Investment Principles (NBIP) had been done by the APEC International Assessment Network (APIAN) as part of its study in "Assessing APEC's Progress." The study noted that the Philippines still maintains few exceptions to the liberalization of investment sectors.*

**(Australia)**

**14. The General Banking Law of 2000 allows an unlimited number of foreign banks to own 100 per cent of domestic banks until May 2007 (after which foreign investments will be limited to a 60 percent stake). Is it likely that the Philippines will reconsider its decision in implementing this 60 per cent limit on foreign ownership in the banking sector post-2007?**

*There are no moves or plans for this amendment yet.*

**15. Would the Philippines detail the conditions under which foreign ownership of a local bank can exceed 40 per cent?**

*The existing regulations actually allows up to 60 per cent foreign equity participation. The regulatory regime on the entry of foreign banks in the country was further liberalized with the passage of the General Banking Law (GBL) of 2000 (R.A. No. 8791) on 23 May 2000. Under the GBL, the Monetary Board may allow full foreign capital participation only within a specified period of time and subject to the guidelines of R.A 7721. Section 73 of the GBL specifically provides that within seven (7) years from the effectively of this Act and subject to guidelines issued pursuant to the Foreign banks Liberalization Act, the Monetary Board may authorize a foreign bank to acquire up to one hundred percent (100% of the voting stock of only one (1) bank organized under the laws of the Republic of the Philippines).*

## **F. Standards and Conformance**

**(Hong Kong, China)**

**1. Note that the Philippines is considering participation in APEC Food MRA. We encourage her early participation.**

*The Philippines notes Hong Kong, China's comment.*

**(Expert)**

**2. Does the IAP give a comprehensive list of MRAs signed by Philippines? If not, please give a comprehensive list of MRAs signed by Philippines.**

*Multilateral*

- *ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment.*
- *ASEAN Framework Agreement on Mutual Recognition Arrangements.*
- *Agreement on the ASEAN Harmonized Cosmetic Regulatory Scheme.*

- *APEC Mutual Recognition Arrangement on Conformity Assessment of Electrical and Electronic Equipment.*
- *APEC Mutual Recognition Arrangement on Exchange of Information of Toy Safety.*
- *Pacific Accreditation Cooperation Multilateral Recognition Arrangement on Quality Management System.*

*Bilateral*

- *Agreement between the Standards Australia QA Services Pty. Limited and Bureau of Product Standards of the Department of Trade and Industry on providing audit services in each other's behalf in connection with the Certification and Approval Schemes.*
- *Arrangement between the Standardization Council of Indonesia of the Republic of Indonesia and the Bureau of Product standards of the Republic of the Philippines on Product Certification and Approval Schemes.*
- *Memorandum of Understanding between the Standardization Council of Indonesia of the Republic of Indonesia and the Bureau of Product Standards of the Republic of the Philippines on Technical Cooperation.*
- *Agreement between Japan Electrical Safety and Environment Technology Laboratories (JET) and Bureau of Product Standards on Factory Inspections and Product Tests.*
- *Memorandum of Understanding between ASTM International and the Philippines' Bureau of Product Standards.*
- *Commercial Agreement between ASTM International and the Philippines' Bureau of Product Standards.*
- *Memorandum of Understanding on Technical Cooperation (Inspection of factories and consignment, Certification of products and process, Exchange of technical information, Promotion of each other's schemes and services, and Training) between Sirim QAS International SDN. BHD. and the Bureau of Product Standards of the Department of Trade and Industry of the Republic of the Philippines.*

**3. Has FTAs contributed to increasing the level of standards and conformance in Philippines? If so, please give a short summary, and give some concrete examples.**

*Since goods could easily enter a country within the FTA due to low or reduced tariffs, these should still comply with standards and conformance requirements of the receiving or importing country. This brings to fore the importance of standards and conformance infrastructure of a country.*

*As there will be a Product Certification Multilateral recognition arrangement among APEC member countries, the Philippine through the Bureau of Product Standards is aligning its product certification scheme with ISO/IEC Guide 65, "General requirements for bodies operating product certification systems". Testing laboratories are continuously working towards accreditation to ISO/IEC 17025, "General requirements for the competence of testing and calibration laboratories". These are necessary for the Philippines to participate in mutual or multilateral recognition arrangements.*

**4. The IAP gives many examples of various measures Philippines will take in order to raise the level of conformance and alignment of standards with international standards. However, it seems that these measures are not coordinated. Is there a centralized plan to raise the level of conformance and alignment of standards with international standards? If so, are there any concrete goals? (e.g. Philippines will raise the level of conformity to x% by 2020) If there is no**

**centralized plan in place, are there any plans to put a centralized plan in place? If there are no such plans, does Philippines believe that such plans are not necessary? Why?**

*Yes, the Philippines has an existing plan to accelerate the development and harmonization of Philippine National Standards (PNS) with international standards. Its target is to develop 10,000 PNS and to harmonize 95 % of these standards with international standards by year 2010. The development of PNS will focus on identified priority products, which include products and services that affects life, health, safety and environment, those where there is identified need for harmonization with ASEAN and APEC, as well as identified need for interchangeability of components parts and those belonging to the Department of Trade and Industry's 10 revenue streams listed below.*

1. *Wearable*
2. *Home Furnishings*
3. *Construction Materials*
4. *Food and Food Products*
5. *Electrical and Electronics*
6. *Information Technology (IT)*
7. *Motor Vehicle Parts*
8. *Giftware and Holiday Decors*
9. *Organic and Natural Products*
10. *Marine Products*

#### **G. Customs Procedures**

**(Hong Kong, China)**

**1. The website is undergoing improvements in line with the Philippines' Bureau of Customs comprehensive IT project. We would like to know what improvements will be made to the website.**

*The Bureau of Customs (BOC) is currently carrying out a major upgrading of the previous BOC website.*

**(Japan)**

**2. There is evidence that customs clearance procedures are too time consuming. It is thought that system improvements are called for, can you let us know what your policies are in this regard?**

*Citing the selectivity program that the BOC has, import entries filed and triggered "yellow", customs will require additional documents coming from other government agencies, like the Bureau of Import Services (BIS) (Prior Authority to Import), Board of Investments (BOI), Bureau of Internal Revenue (BIR), and Philippine Drug Enforcement Agency (PDEA).*

**(New Zealand)**

**3. The Philippines is not yet part of the revised Kyoto Convention but it has undertaken to examine the possibility of acceding. What stage has this examination reached? Philippines as an archipelago with difficult-to-police borders faces big challenges from smuggling. What measures are being taken by the Philippines to address the problem of smuggling?**

*The Philippines is currently undertaking the following measures to combat smuggling:*

1. *Creation of the Intellectual Property Office tasked to check entry of intellectual property violators;*
2. *Mandatory examination of all refrigerated containers;*
3. *Strengthening of customs control at Exit Points on high risks areas such as Subic and Clark;*
4. *Close coordination with other regulatory agencies such as Bureau of Plant Industry (BPI), Bureau of Animal Industry (BAI), Sugar Regulatory Authority (SRA), National Food Authority (NFA), etc;*
5. *Intensification of monitoring of smuggling activities in all ports;*

6. *Review and update of selectivity system;*
7. *Destruction of seized agricultural products such as onions, meat vegetables, etc;*
8. *Acquisition of container x-ray machines;*
9. *Vigorously pursue cases brought about against persons involved in smuggling;*
10. *Use of mobile x-ray machines at major ports;*
11. *Selectivity System that automatically selects shipments for examination based on preset criteria;*
12. *Registration of importers pursuant to Customs Memorandum Order (CMO) 149-88 as amended by CMO 23-99;*
13. *requirement of trademark owners to register with the Intellectual Property Unit of the BOC;*
14. *Close coordination with International Law Enforcement Agencies, e.g. RILO ICAC, Project Crocodile, etc;*
15. *Close coordination with PDEA in the interdiction of dangerous drugs and pre-cursors and use of K9 to detect shipments with drugs;*
16. *Deputation of select commanders of the Armed Forces of the Philippines (AFP) and coordination with the Local Philippine National Police (PNP) in remote areas in the apprehension of smuggled sugar, rice, etc;*
17. *Memorandum of Understanding (MOU) with the Philippine Chamber of Commerce and Industry (PCCI) to provide BOC with technical experts to assist BOC personnel in the proper identification of certain commodities;*
18. *Coordination with the various local industry groups to protect local manufacturers; and*
19. *Coordination with the various local producers groups to protect local producers.*

**(ABAC)**

**4. While ABAC appreciates the Philippines' efforts to formulate and update the Customs Integrity Action Plan, it is further requested to raise the level of integrity within its customs administration.**

*The Customs Integrity Action Plan (CIAP) directs the study of international conventions, including the Kyoto Convention. A committee has been created for this purpose.*

*Apart from the 65 activities enumerated in the Philippines Customs Integrity Action Plan (CIAP), which will address the 10 key elements of the Arusha Declaration, BOC is also trying to explore and implement short-term, high impact anti-corruption activities. At the Arrival Operation Division, NAIA, the following are some of their image-enhancement measures:*

- a. *Feedback facility (Immediate, mail or email)*
- b. *Use of "Serving with Honor pins"*
- c. *Closed Circuit Televisions (CCTV) at the examination area*
- d. *Values Formation/Team Building Workshops*

**5. ABAC recognises that standardisation and application of rules on customs procedures throughout the country have not been fully achieved in the Philippines. Thus, ABAC believes that the Philippines needs to strengthen and develop extensive capacity-building programmes targeting its customs officers.**

*Customs rules, regulation, systems and procedures are issued in the form of Customs Administrative Orders (CAO), Customs Memorandum Orders (CMO) or Customs Memorandum Circulars (CMC). These orders are to be implemented nationwide in all ports and sub-ports of entry in order to achieve uniformity and harmony in application. However, it is acknowledged that there are certain cases when Collector of Customs would sometimes deviate from such orders in order to meet the requirements of the port. Hence, there is need to regularly conduct internal audit whether these systems and procedures are applied by some ports in order to avoid non-uniform application. Right now, BOC does not have this structure on internal audit but it is one of the activities identified in the Customs Integrity Action Plan already underway. Any assistance on capacity building in this area will be highly appreciated.*

**(Expert)**

**6. The “Greater Public Availability of Information” section of the IAP states that Philippines launched a website containing basic information on customs, but it is not yet currently operational as the website is undergoing improvements. Is the website on-line now? If so, what is its URL address? If not on-line, then when will it go on-line?**

*The website is not yet on-line but is part of the bureau’s e-government funded project- ASYCUDA World Project. One of the BOC Portal Information Website shall include the following:*

- *Bureau Profile (national, regional, sub ports)*
- *Frequently asked questions*
- *Site map*
- *Forums/message boards*
- *Help desk*
- *Services*
- *News*
- *Virtual Tour/Kids Section*
- *Events calendar*
- *Exchange rates*
- *Advertisements*
- *Links*

*Timetable for the implementation is 4<sup>th</sup> quarter of 2005.*

**7. The “Greater Public Availability of Information” section of the IAP states that BOC provides data to PhilExport, which distributes copies of customs issuances in CD form. Is the CD provided free of charge? If not, is the CD provided at-cost? Is the same information available on the internet free of charge?**

*The Compendium of Philippine Customs Laws and Regulations CD form is for sale-at cost, at an amount of Php 2,200.00 for PHILEXPORT members and Php 3,300.00 for non-members. Some information are available on the internet, but not as extensive and user-friendly as the CD form version.*

**8. Is there a “single window” where all relevant information on customs procedures can be provided? Is there a website where all relevant information on customs procedures can be found? Does it include a searchable database of laws and regulations?**

*Yes, it shall be part of BOC Portal. The Philippine Bureau of Customs is currently in the process of formulating the mechanics on “Single Window”.*

**9. How actively is the Philippines system of appeals for customs procedure used? The IAP mentions a database. Is the database accessible via internet? If so, what is the URL address?**

*Please see response to question G.6*

**10. If the Revised Kyoto Convention comes into effect, is Philippines ready to abide by all of its provisions? How much time would it take for Philippines to abide the provisions of the Convention? Also, are there any provisions that Philippines is not able to abide?**

*The Kyoto Convention is one of several international conventions and other instruments adopted by the World customs Organization designed to harmonize and simplify customs procedures.*

*It contains the basic principles for all Customs procedures and practices; it also allows international business to meet its Customs obligations as efficiently as possible.*

*The amended Kyoto Convention contains a general annex and by any subsequent amendments, without reservation; however, in contrast, they may accept one or more of the specific annexes.*

While the Philippines undertakes to promote simplicity and harmonization of Customs procedures, a preliminary review of the General Annex indicates that there are provisions which is not in accordance with our Tariff and Customs Code of the Philippines and its implementing rules. Hence, a close review of the following shall be required when BOC shall seriously consider accession to the Kyoto Convention.

#### General Annex

##### Chapter 3 Clearance and other Customs Formalities

###### 3.9 Standard

Before lodging the Goods declaration the declarant shall be allowed, under such conditions as may be laid down by the Customs:

- (a) to inspect the goods; and
- (b) to draw samples

###### 3.13 Standard

Where, for reasons deemed valid by the Customs, the declarant does not have all the information required to make the Goods declaration, a provisional or incomplete Goods declaration shall be allowed to be lodged provided that it contains the particulars deemed necessary by the Customs and that the declarant undertakes to complete it within a specific period.

###### 3.14 Standard

If the Customs register a provisional or incomplete Goods declaration, the tariff treatment to be accorded to the goods shall not be different from which would have been accorded had a complete and correct Goods declaration been lodged in the first instance.

###### 3.45 Transitional Standard

When the Customs sell goods which have not been declared within the time allowed or could not be released although no offence has been discovered, the proceeds of any duties and taxes and all other charges and expenses incurred, shall be made over to those persons entitled to receive them or, when it is not possible, held at their disposal for a specific period.

##### Chapter 4 Duties and Taxes

###### 4.9 Standard

When national legislation specifies that the due date may be after the release of the goods, that date shall be at least ten days after the release. No interest shall be charged for the period between the date of release and the due date.

**11. If data is available, how long does it take for a “typical” manufactured good to clear customs? (Time taken for paperwork as well as physical clearance) How long does it take for a “typical” agricultural good to clear customs? What is the range of time taken for manufactured good and agricultural good to clear customs (paperwork as well as physical clearance)?**

*If data is available, a “typical” manufactured good can be declared from customs in four hours if its selected green and four hours if it is selected yellow assuming all the documentary requirements have been compiled with and an average of two days if its selected red. The above-mentioned number of hours to clear the shipment does not however include the time incurred in the actual physical release of the goods from Asian Terminal Incorporated.*

**12. What further improvement in customs clearance is envisioned? (Paperwork, physical clearance, paperless trading, integrity)**

*What is being envisioned in the future is a paperless customs clearance.*

**13. Is Philippines currently in compliance with WTO Valuation Agreement? If not, when does the Government expect Philippines to comply fully with the Valuation Agreement?**

*The Philippines is compliant with WTO Valuation Agreement.*

**14. Does Philippines have an official position concerning the desirability of WTO negotiations in Trade Facilitation? What measures would Philippines like to include in the WTO negotiations in Trade Facilitation?**

*The Philippines has agreed to negotiate new rules on trade facilitation, a policy decision which the Philippines had earlier adopted for purposes of the APEC Meeting of Ministers Responsible for Trade (MRT) in Pucon, Chile, last June 2004.*

*The negotiations on trade facilitation should also address other specific negotiating objectives to include:*

- *Importance of technical assistance and support, including infrastructure development from developed countries.*
- *Exemption of developing countries to undertake infrastructure expenditures (Physical and legal) beyond their means.*
- *Where technical support and assistance for infrastructure are forthcoming, and the developing country lacks capacity, implementation will not be required.*

**15. What are the criteria Philippines uses to identify higher risk goods and classify goods for “green” “yellow” “red” and “super green” lanes? Can the government give a short summary on the differences in customs procedures undertaken for the goods in these four classifications? In other words, what processes are required for customs clearance in each of these classifications?**

*The parameters used to identify higher risk goods and classify goods as “green” and “red” are determined by the Risk Management Group. “Super Green” lane shipments do not pass thru the Selectivity Screen.*

*For shipment triggered red the goods has to be examined physically, if it is yellow, it requires documents scrutiny only, for green lanes, subject import entry will have to be processed without examination, instead the payment of duties and taxes will have to be matched of the collection division, then immediately released from Customs custody. For super green lane entries, these are extra special entries, which requires processing or lodgment on their offices of the importer, and that super green lanes entries do not pass/or not to be triggered by the selectivity program.*

**(Australia)**

**16. Does the Philippines’ Bureau of Customs have regular consultation with industry?**

*Yes, the Philippine Chamber of Commerce and Industry (PCCI) is holding regular dialogues where the Commissioner of Customs is being regularly invited. In addition, the Bureau of Customs, the Japanese Chamber of Commerce and Industry, and other industry sectors/associations hold regular monthly meetings.*

**H. Intellectual Property Rights**

**(New Zealand)**

**1. The Philippines has in place laudable legislation for the protection of intellectual property but enforcement remains a challenge. What measures are the Philippines taking to tighten the enforcement of laws protecting intellectual property?**



*In declaring an all-out war against pirates and counterfeiters, the President of the Philippines herself directed the enforcement agencies to intensify operations against these criminals. The Office's response to this call has been immediate, IPOPhil immediately set up an IP Enforcement Services unit to carry out its enforcement activities. IPOPhil's enforcement initiatives border on: Policy, Coordination and Information, Enforcement, and Advocacy.*

#### **A. Policy, Coordination and Information Initiatives**

*The Intellectual Property Office (IPO) convened representatives from government enforcement agencies and from the private sector, such as the academe, research and development institutions, business, trade and IP organizations. Known as the Intellectual Property Rights Enforcement Action Panel (IP-REAP), As of the present, the following sit in the Panel as members: Intellectual Property Office-Philippines (IPOPhil), Supreme Court of the Philippines (SC), Department of Justice (DOJ), Department of Trade and Industry (DTI), National Bureau of Investigation (NBI), Bureau of Customs (BOC), Philippine National Police (PNP), Bureau of Food and Drugs (BFAD), National Telecommunications Commission (NTC), Philippine Center on Transnational Crime (PCTC), Optical Media Board (OMB), IP Coalition (IPC), Intellectual Property Alliance (IPA), Council to Combat Piracy and Counterfeiting of Patents, Copyrights and Trademarks (COMPACT), Intellectual Property Association of the Philippines (IPAP), Philippine Internet Commerce Society (PICS), Brand Protection Association (BPA), Electronics Industry Association of the Philippines, Inc. (EIAPI), Association of Video Distributors of the Philippines (AVIDPhil), Filipino Society of Composers, Authors and Publishers (FILSCAP), Asosasyon ng Musikong Pilipino Foundation (AMPF), Philippine Cable Television Association (PCTA), National Book Development Board (NBDB), Pharmaceutical Healthcare Association of the Philippines (PHAP), Philippine Reproduction Rights Organization (PRRO), Quezon City Chamber of Commerce & Industry, Inc. (QCCCII), Davao City Chamber of Commerce & Industry, Inc. (DCCCII) and the Philippine Association of the Record Industry (PARI). The IPO Enforcement Service unit acts as secretariat to the Panel. The Panel identified the following priority areas to push forward effective enforcement:*

#### **B. Enforcement Initiatives**

**Local Government Unit (LGU) Ordinance** – *a template ordinance drafted to guide LGUs in crafting local laws on IPR, that will ban the sale of counterfeit goods in their respective jurisdictions. The ordinance imposes a condition on business permits and licenses issued by the LGUs that the establishment shall not engage in the sale, rental and/or storage of counterfeit or pirated goods and such similar activities infringing IPR. A violation of such condition will result in the suspension or even revocation of business permits or licenses. Such prohibition is envisioned to extend to the perimeter area of the establishment. Also, being considered as part of the ordinance are penal provisions.*

*Since its introduction to the local government units, the following cities: Iloilo, Naga, Makati, Quezon and the Municipality of Tuba, Benguet have promulgated their respective local IP ordinances. The cities of Cebu, Davao, Baguio and Balanga are seriously considering adopting the IP Ordinance. As an offshoot of this campaign, the Department of Interior and Local Government issued a DILG Memorandum Circular No. 2003-229 on December 8, 2003 enjoining all Provincial Governors, City Mayors and Municipal Mayors to help enforce intellectual property rights in the country through the passage of a local ordinance on IP.*

- **IP Campaign Caravans** are organized to promote the IP-REAP projects in selected key cities in the Philippines where there are incidents of IP violations.
- **IPR Units** – The creation of Intellectual Property Units in relevant government agencies were pursued. In 2003, the Bureau of Customs established its permanent IP Unit under the Intelligence and Enforcement group (IEG) by virtue of Customs Special Order No. 19-2003 (CSO 19-2003). There is an existing IP Unit at the National Bureau of Investigation and also at the Criminal Investigation and Detection Group of the Philippine National Police, specifically to handle IP cases. Efforts are also being undertaken to establish an IP Unit at the National Telecommunications Commission to address IP issues in the cable TV industry.
- **Public Education Program** – a series of basic IP and enforcement seminars for the academe, enforcement agencies, legal practitioners, small and medium scale enterprises, and industry

associations were organized. The Education Committee of the IPREAP chaired by the Department of Justice works closely in implementing IPOPhil's public education programs. On March 26, 2004 the IPOPhil conducted a Workshop- Consultation on the Handbook on Investigation of IP Cases to enhance knowledge of the law enforcers in the conduct of operations against violators of IP rights. The Handbook is basically designed to guide them in the determination and identification of the offenses committed, the conduct of search and in properly filing criminal cases in courts. The Philippine National Police Academy have seriously considered including such handbook in its curriculum.

To enhance the prosecution of IP cases pending in the judiciary a Colloquium for Judges on Intellectual Property Rights Law was held on 21-23 September 2004. The Colloquium was organized by the IPO, the Philippine Judicial Academy (PHILJA) and the EC-ASEAN Intellectual Property Rights Co-operation Programme (ECAP 2).

PHILJA itself has conducted ten (10) seminars/lectures on Intellectual Property. Their resource speakers included local and foreign experts on IP.

On the prosecutorial side, Filipino prosecutors were updated on best practices in Europe with regard to prosecution of intellectual property rights cases during a two-day seminar entitled "The EC-ASEAN Seminar for Public Prosecutors on Intellectual Property Rights organized by IPO, the Department of Justice (DOJ), and the EC-ASEAN Intellectual Property Rights Co-operation Programme (ECAP 2) on October 25-26, 2004. The activity included a round table discussion on the "future of criminal enforcement of IP infringements in the Philippines".

In conjunction with the Education Program of the IPREAP to include intellectual property rights in the Mandatory Continuing Legal Education Program (MCLE) for lawyers, the National Prosecutors League of the Philippines under the Department of Justice organized Seminars for Prosecutors on IP at Tagbilaran City in the Visayan region (September 16-18, 2004) and at Cagayan de Oro City in Mindanao region (October 19-21, 2004). The series of seminars culminated on November 16-18, 2004 in Luzon. The three activities were attended by almost 700 prosecutors, private practitioners, judges in the localities where they were conducted

IPO initiatives likewise cut across businesses by conducting consultation meetings with SMEs in coordination with the Department of Trade and Industry and the local and foreign chambers of commerce and industry.

- **Communication Plan** – Spearheaded by the IP Coalition, which is composed of IP owners, the Plan aims to demystify IP through a multimedia approach and by confronting the problem on different fronts – legal, moral, economic and social issues.
- **IP Seal** – a marketing communication tool that aims to enhance the stature of retail establishments that deal exclusively with genuine products by accrediting them and affixing the Seal in their outlets.
- Advocated for the organization of the Department of Justice's Task Force on Anti-Intellectual Property Piracy that is composed of 28 specially trained prosecutors on IP.
- Advocated for the special designation of 34 IP Courts which function is now vested with the 65 Special Commercial Courts by virtue of a Resolution issued by the Supreme Court on June 17, 2003. These 65 Special Commercial Courts are now conferred jurisdiction over cases involving intellectual property rights, among others.
- Worked for updating of expertise and skills of the judges of specially designated courts and prosecutors through trainings and seminars, both foreign and local, on intellectual property law through partnership with various local and international agencies (i.e. World Intellectual Property Organization, International Intellectual Property Institute, US Patent and Trademark Office, Japan Patent Office, IPO-Singapore, European Patent Office, among others)
- Endorsed to the Court of Appeals (CA) the establishment of an IPR Division in the Court of Appeals. The initiative is under study by the CA Justices.
- Encouraged the inclusion in a contract between mall owners and the lessees, of a "catch all" provision that would prohibit sale of illegal products inside commercial establishments or malls.

*Violation of such provision will result to revocation of their lease agreement, suspension and/or even revocation of business permits or licenses.*

- *The IP-REAP, together with the Association of American Publishers (AAP) conducted several raids that has resulted in the seizure of infringing machines and pirated books. This also resulted to the conviction of a distributor of illegally copied medical books; Mandaluyong City RTC judged her guilty for ten (10) counts of violation of Sec. 174 of the IP Code.*
- *The IPOPhil, together with the Association of Booksellers, Association of Book Publishers and the Association of Universities and Colleges will be conducting seminars, trainings and information dissemination activities and printing and distribution of posters on universities and colleges in Metro Manila.*

### **C. Advocacy**

#### **Legislative Initiatives**

- *On 11 February 2004, Pres. Macapagal-Arroyo signed Republic Act 9239, the Optical Media Act, into law. The law intends to eradicate optical disc piracy by getting to the source – the manufacturers of pirated optical media. A maximum penalty of Php1,500,000.00 million in fines and six years imprisonment will be imposed to pirates. IPOPhil actively participated in the deliberations and discussions in both Houses of Congress.*
- *Congress also previously enacted Republic Act No. 8792, the Electronic Commerce Act, which took effect in June 2000. Section 33 thereof is an encompassing provision which penalizes, among others, “hacking” and “piracy” or the unauthorized copying, reproduction, dissemination, distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signatures or copyrighted works including legally protected sound recordings or phonograms or information material on protected works through the use of telecommunication networks, such as, but not limited to the internet. Hence, the E-Commerce Act is a potent weapon to combat on-line piracy. IPOPhil again was deeply involved in the formulation of the IP-related provisions of the law.*
- *IPOPhil was also actively involved in the crafting of the IP provisions of R. A. 9168 or the New Plant Varieties Protection Act, which took effect on July 20, 2002.*
- *Through IPOPhil advocacy, the Senate ratified Philippine membership to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, thus updating and enhancing copyright and related rights protection in the country.*
- *The IPOPhil is also following the development and is actively participating in the deliberations and discussions of the following House Bills at the Philippine Congress:*
  - *HB 00322 Act Amending IP Code. This bill seeks to amend the IP Code through the integration of comprehensive, efficient and adequate strategies designed to respond to internet piracy. The bill is also aimed to implement the WIPO Internet Treaties to which the Philippines has acceded in 2002.*
  - *HB 00275 Cable TV Act. This bill recognizes the cable TV industry as a separate industry meant to supplement and complement broadcasting and telecommunication.*
  - *HB 02093 Cybercrime Prevention Act. This bill seeks to impose penalties for illegal access to a computer system, illegal interception, data and system interference, misuse of devices, computer forgery and fraud and unsolicited commercial communication.*

#### **(ABAC)**

### **2. Philippines is encouraged to participate in the APEC IPR Service Center scheme and to establish a Center or Centers at the earliest convenience.**

*Last December 16, 2004, the IPOPhil upgraded its website, making it more accessible and more user friendly. The new IPOPhil website will serve as the Office’s “Virtual IPR Service Center” as it is linked with the APEC-IPEG website, and that the Office is currently studying the possibility of creating an “IP*

Hotline” unit within the Office premises where IP concerns of right holders and the general public may be addressed.

**(Expert)**

**3 Has Philippines carried out any formal or informal research about the amount of harm (or gains) from violations of intellectual property rights in Philippines? If so, can the government give details about the amount of harm (or gain), and particular areas of harm (or gain)?**

*Statistics on the harm that piracy has inflicted in a country normally comes from the affected sectors and not through a formal or informal study. The IPOPhil, through the IP-REAP, however, collects data from the enforcement agencies and the courts on the actual seized and confiscated goods and on pending IP cases, respectively. Below is a compilation of statistical data (January-June 2004) collected from various IP-REAP Member Agencies.*

*The Philippine National Bureau on Investigation (NBI) – Intellectual Property Rights Division of the NBI conducted 136 Search Warrant Operations against various establishments nationwide. 126 of the operations were reportedly positive. The IPRD terminated 151 cases, 47 of which were filed with the DOJ and 104 cases were filed with the NBI Legal Division for evaluation before filing in the courts. Confiscated/seized fake products estimated at Php 90,230,000 were classified as: light bulbs; backpack bags; perfumery; rubber shoes; men’s underwear; leather products; shoe polish; vehicle parts and computer software.*

*The Philippine National Police (PNP) – Criminal Investigation and Detection Group conducted 66 Search Warrant Operations and 3 Inspection Operations. 81 suspects were arrested for violation of unlawful acts. A total of 52 cases of IP violation were filed with the proper courts. 26,761 pcs. of confiscated goods were estimated at Php775,975. The confiscated goods were classified as: light bulbs; multi-branded liquefied petroleum gas (LPG); VCDs/CDs; clothing; wristwatches; cellular phones.*

*The Optical Media Board (OMB) – Intelligence & Inspection Division of the OMB conducted a total of 319 Inspection Operations (IO) against establishment’s selling/distributing pirated DVDs/VCDs. A total number of 308,732 videograms were seized; valued at Php15,436,600. Confiscated 5 CD Burners were valued at Php300,000. No Search Warrant Operation was recorded.*

*The BOC – Intellectual Property Unit reported Four (4) seizures in 2004. Confiscated counterfeit goods were seized at the Port of Manila (POM) and at the Ninoy Aquino International Airport (NAIA). The goods were classified as rubber shoes; DVDs; toothpaste*

**4. Can Philippines give more details on what concrete measures (e.g. public campaigns, strengthened enforcement of existing laws, amount of penalties collected, number of people arrested or fined, etc) the government has taken to protect intellectual property rights?**

*Please refer to answers on question numbers 1 and 3. With regard to other details requested these are not readily available but will have to be specially researched.*

**5. The “effective enforcement of IP Rights” sub-section states that IPES was formed in 2003. After a year of operation, has IPES proven effective in enforcing IPR? What changes and improvements (if any) does the Government plan for IPES?**

*Please refer to the answer on question numbers 1 whereby IPES has been instrumental in conceptualising and pursuing most of the projects enumerated.*

**(United States)**

**6. TRIPs Article 41 requires member states to enact enforcement procedures to permit effective action against any act of infringement of intellectual property rights, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further**

**infringements. Please describe any recent laws, rules, decrees that the Philippines has promulgated to comply with this article.**

- *Revised Customs regulations to strengthen border control measures in the Philippines an offshoot of which is the creation of a permanent IP Unit in the Bureau of Customs.*
- *Issuance by the Supreme Court of the “Rule on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights” that became effective on 15 February 2002. Whereas, under existing rules, a court could issue a writ of search and seizure only in criminal cases and only after due notice and hearing, in the new rule, a right holder or his duly authorized representative may apply ex parte for the issuance of such writ in civil cases. Such application may be made even if no civil case has yet been filed*

**7. Article 39.3 of the TRIPs Agreement obliges members, when requiring (as a condition of approving the marketing of pharmaceutical or agricultural chemical products) the submission of undisclosed test or other data, to protect such data against unfair commercial use and disclosure. Please explain how the Philippines complies with this provision.**

*It is the position of the Philippines that it is in full compliance taking into account the following:*

- *The Intellectual Property Code defined intellectual property rights as including undisclosed information or know how.*
- a) *The Philippine Bureau of Food and Drugs has an existing Administrative Order requiring its personnel to keep confidential data being submitted by applicants.*
- *Philippine Government personnel in general are prohibited to disclose documents or records that are confidential in nature under the country’s Administrative Code and Civil Code.*

## **I. Competition Policy**

**(New Zealand)**

**1. We have already commented on the Constitutional limitations on foreign competition. In addition, oversight of competition policy falls to a range of statutes and enforcement agencies leading to fragmentation of responsibilities. Does the Philippines have plans to develop a more generic, economy-wide approach to competition policy more consistent with APEC competition principles of promoting non-discrimination, comprehensiveness, transparency and accountability?**

*The Philippines is committed to enact a comprehensive competition policy/law consistent with APEC competition principles of promoting non-discrimination, comprehensiveness and accountability.*

**(Expert)**

**2. Do the laws listed in the “general policy framework” sub-section apply to all industries and sectors in Philippines, or only selected industries? If latter, does Philippines have plans to introduce an economy-wide competition policy legislation?**

*There are a number of laws dealing with competition policy in the Philippines. The Constitution itself provides that the State shall regulate or prohibit monopolies when the public interest so requires, no combinations in restraint of trade or unfair competition shall be allowed. In addition, the Penal Code, Civil Code and Consumer Act prescribe penalties for unfair competition and deceptive, unfair and unconscionable sales practice. However, the implementation of these laws have been minimal due to a number of factors including lack of jurisprudence, vagueness in the working of the law, lack of comprehensiveness and administrative mechanism for effective enforcement, among others.*

*Despite the number of laws and their diverse nature, competition has neither been fully established in all sectors of the economy nor has existing competition been enhanced in other sectors. Since each law is*

*meant to address specific situations, there runs the risk of one law negating the positive effects of another.*

*Nonetheless, the Philippines is committed to introduce a comprehensive competition policy/law. A number of bills has been introduced in Congress addressing the multifaceted concerns of competition.*

**3. Because the IAP concentrates mainly on legal framework and descriptions are short, it is not easy to get an idea on how Philippines enforces competition policy. Can Philippines give some short case examples of competition policy related legal cases? In other words, what lawsuits or legal measures were brought against which firms for which violations, and what criteria were used for these particular cases?**

- *San Miguel Beer vs. Asia Brewery's Beer na Beer*
- *Interlocking directorate case filed by San Miguel Corporation vs. John Gokongwei*
- *Insider trading filed by the Securities Exchange Commission vs. Dante Tan*

**4. Can private individuals or firms bring a competition policy case against those firms which engage in anti-competitive practices; or is it the case that only the government can bring cases?**

*Yes, private individuals or firms can bring competition policy case against those firms which engage in anti-competitive practices.*

**5. Has Philippines examined its competition policy regime against APEC's Principles on Competition Policy and Deregulation? If so, what were the results? Were there any particular weaknesses in Philippines' competition policy regime? If so, what measures are there in place to reform the competition policy regime to be more consistent with the APEC Principles? If Philippines has not examined its competition policy regime, why has it not done so? Does the Government have any plans to carry out such examination?**

*The competition policy of Philippines regime is not fully consistent with APEC's competition principle of comprehensiveness. The pending bills in Congress nonetheless seek to create an effective anti-trust law that is comprehensive containing definite prohibitions on clearly defined unfair competition practices, and governing rules on monopolies, cartels, restrictive agreements, mergers and acquisitions, among others.*

**(Australia)**

#### **6. General policy framework**

**We note that the Philippines plans to continue to review existing laws on competition. Does the Philippines have a schedule for this review and reform of legislation?**

*There are currently a plethora of competition policy laws in the Philippines. There are also numerous sectoral laws, such as the Downstream Oil Industry Deregulation Law, which may have different definitions of key terms (such as "cartel") and different enforcement mechanisms.*

*The existing competition laws are being continuously reviewed with the end view of harmonizing them for effective implementation.*

#### **7. General policy framework**

**We note that the Philippines does not have a comprehensive competition law and policy. Are there any plans to develop a comprehensive, national competition policy framework?**

*A contentious issue being discussed is whether competition policy is to be implemented in an holistic fashion, or on a sectoral basis, i.e. whether to apply it to the entire economy at once, or to reform a sector at a time.*

*On the issue of removing artificial barriers to entry through antitrust, the answer is clear. It is logically inconsistent to apply antitrust legislation to firms in one industry and not in another. Indeed, it is the*

*antithesis of the philosophy underpinning antitrust to have antitrust apply in one sector and not in another. Thus, antitrust must be applied in all areas of the economy simultaneously.*

*However, given the shortage of resources, it may be appropriate to focus enforcements efforts in a particular sector initially. Even in developed countries, this occurs, with the US currently focusing on the emerging issue of antitrust in the information technology sector at present. Under such an approach, the enforcement authority could identify sectors where anticompetitive activities are particularly rife. In fact, such an approach is perhaps most appropriate in order to obtain early successes and impacts in prosecuting antitrust policy, and to ensure that scarce antitrust resources are utilized in a manner likely to generate the largest positive impact.*

#### **8. Competition institutions (including enforcement agencies)**

##### **Are there any plans to form a national agency to enforce competition laws in the Philippines?**

*Present institutional arrangements in the Philippines to enforce competition policy are weak. Some four main agencies and 14 sectoral agencies control aspects of the present antitrust policy. As such, the creation of single authority that is responsible for enforcement is proposed in the competition bills introduced in Congress.*

#### **9. Competition institutions (including enforcement agencies)**

##### **Who do the current departments which enforce anticompetitive practices report to?**

*Executive departments are extension of the Office of the President and therefore competition authorities are under the control and supervision of the President.*

*An ideal arrangement being taken into consideration is for a constitutional competition body that is independent of the executive and legislative branches of the government.*

#### **10. Measures to deal with horizontal restraints**

##### **What types of horizontal and vertical restraints are prohibited?**

###### Horizontal

- *Price fixing agreement*
- *Market sharing agreement*

###### Vertical

- *'Tie in' arrangement*
- *Resale price maintenance*

#### **11. Measures to deal with horizontal restraints**

##### **How many cases of each type of prohibited conduct were identified in the past year?**

*Cases of prohibited conduct have been suspected but no formal complaints were filed before concerned regulatory agencies.*

#### **12. Measures to deal with abuse of dominant position**

##### **How does the Philippines deal with abuse of dominant position and anticompetitive mergers?**

*In the telecommunications sector, telecom firms are required in the franchises given to them by Congress to go back to the legislature for consent if there are significant changes in their corporate structures or if there is a buy-out or a merger.*

*Deals that promote monopolies, cartels or unfair trade practices violate the law liberalizing the telecommunications sector. Congress can revoke the franchises if the grantees do not seek the*

*concurrence of the legislature, on buy-outs, mergers and similar deals.*

**(United States)**

**13. We would be interested in an assessment of the advantages and disadvantages of having no central agency responsible for implementing competition laws and policies. Is there any requirement for coordination among agencies that handle competition-related issues to ensure consistency?**

*There being no comprehensive competition policy/law in place and no central enforcement agency instituted, enforcement is spread through several agencies which rarely operate in a coordinated manner and sometimes produce conflicting policy. Responsibility is too diffused and accountability for implementation of the laws is difficult to locate or fix.*

**14. The IAP mentions as one of the planned further improvements that the Philippine government will “continue advocacy programs on competition policy.” We would like a description of a few recent examples of competition advocacy.**

*Presentation of Philippine paper in APEC – sponsored training programs on competition policy/law*

- *Conduct of regional information campaign on the latest developments in tariff and trade policies, including competition policy/law*
- *Conduct of seminars/workshops on competition policy in collaboration with foreign fair trade bodies*
- *Lobbying in Congress for the sponsorship of competition bills*

**15. The basic statute which prohibits unfair trade practices, monopolies and combinations in restraint of trade is the Law on Monopolies and Combinations as amended. Please provide a few examples of recent enforcement actions and identify the agency (ies) involved.**

*Issuance of warnings by Congress on the planned sale by the Hongkong-based First Pacific Group of its shares in the Philippine Long Distance Telephone Co. (PLDT) to the Gokongwei Group.*

*Congress contended that if the Gokongwei group succeeds in acquiring First Pacific’s 22.5 percent stake in PLDT, it will have control over PLDT and Piltel and Smart, which are PLDT subsidiaries, plus its own telecom firm Digitel.*

*PLDT and Digitel are leaders in fixed lines, with the former accounting for more than 50 percent of land-line phones.*

*Smart, on the other hand, is the leading mobile phone service provider. Congress opined that such acquisition by the Gokongwei group will, in the final analysis, consolidate all the network capacities, subscribed lines and all subscribers, and bandwidth assignments of PLDT, Digitel, Smart, and Piltel into a telecommunications monopoly, both in the fixed-line and mobile sectors.*

**16. With respect to “monopolies and combinations in restraint of trade,” what is the relationship between this law and the Revised Penal Code? For example, what is the difference in conduct covered by each and the agency (ies) involved?**

*Article XII, Section 19, 1987 Philippine Constitution provides:*

*“The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.”*

*The Constitution does not prohibit monopolies by themselves. There is no legal presumption on the illegality of monopolies. However, the government can prohibit or regulate monopolies on the ground of public interest. Combinations in restraint of trade as well as unfair competition, however, are illegal per*



se. They are to be prohibited without exception.

*It must be noted, however, that there are no constitutional definitions of what would constitute monopolies, or combinations in restraint of trade or unfair competition, or a constitutional provision for the impossible sanctions for any violations. Hence, separate legislation and/or judicial interpretation of the constitutional provision were needed for these purposes.*

*The basic, and probably the oldest, law addressing anti-competitive behavior is penal or criminal in nature. Article 186 of the Revised Penal Code (R.A. 3815) defines and penalizes monopolies and combinations in restraint of trade and provides penalties such as imprisonment (prison mayor) of six years and one day to twelve years or fine ranging from Two Hundred Pesos (₱200.00) to Six Thousand Pesos (₱6,000.00) or both.*

**17. Is the Corporation Code of the Philippines the only law that governs mergers and acquisitions? We would appreciate a general description of this law, the factors taken into account in evaluating a merger and acquisition and the agency (ies) involved.**

*The Corporation Code of the Philippines is basically the law that provides for the rules regarding mergers and consolidations, and the acquisition of all or substantially all the assets or shares of stock of corporations. The Revised Securities Act, as amended by the Securities Regulation Code (R.A. 8799), complements the Corporation Code. The Act proscribes the manipulation of security prices and insider trading. The corporation and securities laws are particularly relevant for evaluating vertical or horizontal cartels or arrangements.*

*The Securities and Exchange Commission (SEC) of the Philippines deals with mergers and acquisitions and regards “efficiency gains” as more important than competition considerations in mergers and does not have a mandate to challenge mergers unless it can demonstrate they are against the public interest.*

*On the other hand, the Bangko Sentral ng Pilipinas (BSP) approves proposed mergers of banking institutions.*

## **J. Government Procurement**

### **(Hong Kong, China)**

**1. We commend the Philippines’ efforts in recent years to modernize its GP regime to enhance efficiency, economy, transparency and integrity. We however note that the Philippines still provides preferential treatments to local suppliers in a number of areas. We encourage the Philippines to move towards a more open and non-discriminatory GP regime.**

*The Philippines does not discriminate against foreign suppliers. Fundamentally, the Government recognizes its obligations under international treaties or agreements, and allows participation of foreign suppliers. However, in the interest of availability, practicality, efficiency and timely delivery of goods, the Government may give preference to domestically-produced and manufactured goods that meet the desired quality. We are not closing our eyes to this concern for a more open and enhanced GP regime.*

### **(New Zealand)**

**2. We note that the 1987 Constitution obliges the state to promote the preferential use of Filipino labour and materials and places limits on the extent to which non-Filipino companies can be involved. On the other hand we welcome the proposal mentioned in the IAP to improve transparency by consolidating the range of existing laws affecting government purchasing and to further develop and link the websites listing contracts open for bidding. What strategy does the Philippines have to improve compliance with APEC Non-binding principles on Government Procurement?**

*The Philippines is currently in the process of improving its procurement processes to be in line with the APEC Non-binding principles on government procurement. To promote transparency and efficiency, information and communications technology is currently being utilized in the conduct of procurement procedures. The Government Electronic Procurement System (G-EPS) presently serves as the primary source of information on all government procurement. All procuring entities are required to post all procurement opportunities and results of the bidding in the G-EPS bulletin board. The G-EPS is currently being enhanced to include electronic payment and electronic bid submission. Moreover, to enhance transparency in the procurement process, Republic Act (RA) No. 9184 (The Government Procurement Reform Act) provides that a representative from a recognized private sector and from a non-government organization shall be invited as an observer during bidding proceedings.*

*The implementation of a consolidated law on procurement or the Government Procurement Reform Act (RA 9184) is a significant achievement towards the continuous adoption and enhanced application of the elements of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination.*

#### Transparency

*The new law serves as the focal point for regulations on GP, establishing the GPPB (Government Procurement Policy Board) as the principal contact point for inquiries on all matters concerning government procurement. Whereas before numerous regulations spread across over 101 fragmented laws and issuances created confusion in the implementation processes, the operational environment is more predictable at this time.*

*Procurement opportunities are widely disseminated principally through advertisements in newspapers of general circulation, and the Internet, through a central portal, [www.procurement-service.org](http://www.procurement-service.org), to provide eligible suppliers equal access to these opportunities with details of the purchase requirements to include: the nature of the product or service to be procured, specifications, quantity, time frame for delivery, closing times and dates, where to obtain tender documentation, where to submit bids, and contact details from which further information can be obtained.*

*The criteria for evaluating bids are likewise set out in the tender documentation to ensure fairness and integrity, and awards of contracts published at the website including the name of the successful supplier and the value of the bid.*

#### Value for Money

*Because of the plurality of suppliers participating, the government is able to identify best value-offers vis-à-vis a number of factors, e.g., application of standards so that the government may not over-specify or under-specify the attributes and performance required to accomplish objectives, assessment of need, and analyzing and refining this initial statement of need, setting out of anticipated costs and benefits on a whole of life basis, institution of procurement plans and programs, and dealing only with duly licensed and reputable suppliers with proven track record so that unnecessary costs are avoided and other costs reduced wherever possible.*

*RA 9184 requires all government agencies to prepare their annual procurement plan which shall include: (a) the type of contract to be employed; (b) the extent/size of contract scope/packages; (c) the procurement method to be adopted; (d) the time schedule for each procurement activity; and (e) the estimated budget for the contract.*

#### Open and Effective Competition

*Any qualified, eligible bidder is always afforded the chance of competing in any procurement project conducted by any agency under an open, competitive, predictable bidding environment.*

*Request for offers are made in good time, clear and succinct to allow sufficient time for tendering to enable interested suppliers to prepare their best offer.*

#### *Fair Dealing*

*Contact between procurement and evaluation personnel and tenderers and prospective suppliers are on formal basis once the procurement process starts. The rules of the game are made clear especially with respect to the obligations and expectations of all parties to a proposed transaction in order to gain public confidence in the procurement process and mutual trust and respect between procuring agencies and suppliers.*

*Suppliers are accorded equal opportunity at all stages of the procurement from access to pre-tender information to award of contracts, and consideration of complaints.*

*Technical specifications are prepared in accordance with particular needs of end-users, and the evaluation is conducted by a composite team or a committee to avoid biases.*

*Professionalization of procurement officials and personnel is being undertaken to make them aware of their responsibilities and accountabilities.*

#### *Elements of Accountability and Due Process*

*Under the new law (RA 9184), the system of accountability is well in place, where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.*

*A protest mechanism has also been put in place for handling complaints about procurement processes or alleged breaches of procurement laws/regulations/policies/procedures which cannot be resolved through direct consultation with the procuring agency in the first instance.*

#### *Element of Non-discrimination*

*In practice, all potential suppliers are given equal opportunity to bid in government projects. Opportunities are posted on the Net to afford wider dissemination of information. The system allows automatic notification of notices of bids to suppliers for purposes of transparency, avoiding them the hassle of having to call agencies for their requirements.*

**(Expert)**

**3. Philippines is not a signatory to the WTO Plurilateral Agreement on Government Procurement (GPA). Why? Does Philippines plan to sign the WTO GPA in the near future? Which provisions of the GPA make Philippines reluctant about signing on to the GPA?**

*The main reason for not being a party to the WTO/GPA is on the national treatment provisions which may run counter to the provisions of the Philippine Constitution. The 1987 Philippine Constitution still provides for the preferential use of Filipino labor, domestic materials and locally produced goods.*

**4. What was Philippines' position regarding the transparency of government procurement negotiations in the WTO? Why did Philippines take that position?**

*Developing countries like the Philippines require policy space, including government procurement policies, which can serve as a useful tool to achieve economic development objectives. A multilateral framework will only contain such policy space. If there should be an agreement in the WTO, all it should require is the publication and notification of the government procurement-related laws and regulations.*

**5. The "non-discrimination" sub-section of the IAP lists various preferences offered to domestic producers and consultants. Does Philippines have any plans to change these discriminatory provisions in the near future?**

*Preferences to Filipino suppliers/consultants/contractors are provided for in the 1987 Philippine Constitution. The preference is applied in particular for purely locally-funded projects. Foreign firms are invited only in cases where there are no local firms available to provide the goods/services. However, for projects funded by International Financial Institutions (IFIs), foreign suppliers/contractors/consultants may participate in association with Filipino entities in the interest of transfer of technology.*

*There are plans to amend the Constitution and the subject provision will perhaps be reviewed in line with the World Trade Organization (WTO) and globalization principles.*

**6. The IAP mentions that government procurement in Philippines is highly decentralized. However, the IAP also mentions some measures Philippines has taken to standardize the government procurement procedures, and it also mentions that there is one contact point for information. There also seems to be a single internet based procurement system for small purchases from all government agencies, namely [www.procurement-service.org](http://www.procurement-service.org). (Is this the correct URL address?) Is my impression correct that this website handles small purchases for all agencies? Are there plans to expand this website in the future so that there will be one centralized website which acts as a central consolidated site for procurement by all agencies?**

*The Government Electronic Procurement System (G-EPS), which is being administered by the Department of Budget and Management (DBM), currently handles only common supplies/goods. There are plans to expand the G-EPS to include online submission of bids for large-sized supplies/goods, infrastructure, and consultancy contracts.*

*This website is intended support not only small purchases but almost all types of purchases-be it goods, civil works and consulting services. The system is undergoing enhancements and is expected to be operational by the end of 2005.*

**7. Has Philippines examined its competition policy regime against APEC's Non-Binding Principles on Government Procurement? If so, what were the results? Were there any particular weaknesses in Philippines' government procurement regime? If so, what measures are there in place to reform the government procurement regime to be more consistent with the APEC Principles? If Philippines has not examined its government procurement regime, why has it not done so? Does the Government have any plans to carry out such examination?**

*The Government Procurement Reform Act (RA 9184), in line with the Government's commitment to good governance, adheres to the principle of transparency, accountability, equity, efficiency, and economy and generally complies with APEC's non-binding principles.*

*RA 9184 is a consolidation of over 101 fragmented laws and issuances, and its deemed to be comprehensive in application, and an examination of its consistency with the APEC principles may not be needed at this time.*

(United States)

**8. The Philippine Constitution requires the State to promote the preferential use of Filipino labor, domestic materials and locally produced goods. Foreign tenders are only invited for purchases where there is no locally made product available. Further, the foreign supplier must be associated with a Filipino entity when it is allowed to participate in a tender. As development progresses, do the Philippines have a framework for increasing tender possibilities for foreign suppliers?**

*Please see response to question J.5*

**9. Is there a timeline for the Philippines to increase tender possibilities for foreign suppliers?**

*We suppose that there are no framework/timelines for this. In fact, plans are underway to reinvigorate the provisions of Commonwealth act No. 138 or the Flag Law of 1936. The Flag Law is not about being nationalistic. The whole world is slowly realizing that the economy is not just about the free flow of goods but also of services and people. Just as the APEC principles are non-prescriptive, the GP regime would want to be flexible in the application of this principle depending on the existing level of economic development.*

**10. It would be helpful to know how the preferences for local suppliers are applied.**

*There are two types of preferences:*

- (a) One in favor of unmanufactured articles materials or suppliers of the growth or production of the Philippines, and of manufactured articles, materials and suppliers produced, made and manufactured in the Philippines substantially from articles, materials or supplies of the growth, production or manufacture of the Philippines.*
- (b) The other, in favor of domestic entities, that is citizens of the Philippines or corporate bodies or commercial companies, duly organized and registered under the laws of the Philippines, 75% of whose capital is owned by citizens of the Philippines, and who are habitually established in business engaged in the manufacture or sale of the merchandise covered by their bid.*

*The Flag Law may be invoked only against a bidder who is not a domestic entity, as defined in the law, or against a domestic entity who offers imported articles, materials or those made or produced in the Philippines from imported materials.*

**11. How do foreign suppliers know when they are eligible to participate in a tender?**

*Through the Government Electronic Procurement System (G-EPS), the central portal for procurement opportunities and information. The Public Tender Board is a feature of this portal which allows the posting of notices of bids, and the eligibility requirements that go with these tenders. In addition, the advertisement usually specifies whether the tender/contract is open to foreign suppliers/contractors/consultants or limited to Filipino firms only.*

## **K. Deregulation/Regulatory Review**

(New Zealand)

**1. What action is being taken to deregulate the economy and encourage privatisation in the Philippines?**

*Deregulation of the domestic regime has been undertaken in tandem with privatization and liberalization. The details are outlined in the IAP under the section "Industry/Sector Specific Regulation".*

(Expert)

**2. Philippines does not seem to have a single unified plan for deregulation and regulatory reform, and it also does not seem to have a single agency in charge of deregulation and regulatory reform. Is this impression correct? If so, are there any plans for a comprehensive regulatory reform program?**

*While it is true that there is no single agency in charge of deregulation and regulatory reform, the impression that the Philippines does not have a single unified plan for deregulation and regulatory reform is not correct. As indicated in the IAP, the identification and review of regulatory policies are guided by the Medium-Term Philippine Development Plan (MTPDP), which serves as the framework for economic development.*

**3. Does the government seek advice from stakeholders (e.g. private sector, businesses, consumers) for deregulation or regulatory reforms in various areas? Does the government regularly seek advice from foreign businesses concerning deregulation or regulatory reform in market liberalization, investment liberalization, enhancing transparency, and in improving the regulatory environment in general?**

*As indicated in the IAP, public hearings or consultations are conducted in the formulation of policies. Private sector and civil society are represented in a number of government councils or committees. Local and foreign businesses are welcome to submit comments and position papers.*

**4. Does Philippines maintain a centralized database of regulations? If so, is it accessible by the public; and is it accessible by internet?**

*The National Printing Office publishes the Official Gazette. At the same time, each department/ministry maintains individual websites.*

**5. Does the Philippine government, or some of its agencies, carry out regular reviews of new or existing regulations? If so, does it require a Regulatory Impact Analysis which examines the costs and benefits of regulations? Also, does Philippines utilize sunset clauses which limits the duration of regulations unless they are explicitly renewed?**

*Reviews are conducted and in some cases, as with the Department of Energy for the energy sector, a third party reviewer is engaged.*

**6. Has Philippines examined its regulation regime against APEC's Principles on Competition Policy and Deregulation? If so, what were the results? Were there any particular weaknesses in Philippines' regulation regime? If so, what measures are there in place to reform the regulation regime to be more consistent with the APEC Principles? If Philippines has not examined its regulation regime, why has it not done so? Does the Government have any plans to carry out such examination?**

## **L. WTO Obligations and Rules of Origins**

**(ABAC)**

**1. ABAC asks for the Philippines' complete elimination of the TRIMS in the motor vehicle sector (Memorandum Order No. 51 and No. 73, amending Guidelines on the Car Development Program (CDP), the Commercial Vehicle Development Program (CVDP), and the Motorcycle Development Program (MDP)), without undue delay behind on the schedule as obliged by WTO Agreements.**

*The local content requirement was eliminated effective 01 July 2003 with the issuance of Memorandum Order No. 51, on 22 January 2002, which was further amended by Memorandum Order No. 73, issued on 12 September 2002, amending the Guidelines on the Car Development Program, the Commercial Vehicle Development Program and the Motorcycle Development Program.*

(Expert)

**2. Is Philippines in compliance with all UR/WTO Agreements? The various chapters of the IAP lists some temporary and permanent exemptions from UR/WTO Agreements. What temporary exemptions still remain, and when will they be phased out?**

*The Philippines subscribes to the full and faithful implementation of its UR/WTO commitments within the agreed timeframes. Except for those that are allowed by the WTO, the Philippines has no other temporary and permanent exemptions as far as its obligations under the WTO is concerned.*

*Under the Agreement on Agriculture of the WTO, the Philippines is committed to convert all quantitative restrictions (e.g., import quotas or prohibitions) on agricultural imports to normally applied tariff duties. However, as provided for in Article 4:2 (Market Access) of the same Agreement, the Philippines requested and was granted a delay of 10 years in the tariffication of rice (i.e. until 2004) due to food security concerns.*

*The Philippines, however, should allow the importation of rice, if there is a demand for such import, equivalent to 1% of domestic consumption or about 59,000 metric tons in 1995. This level of importation increased to 2% of domestic consumption in the year 2000, and to 4% by the end of the year 2004. Tariffication for rice will be implemented thereafter.*

**3. What measures has Philippines taken to ensure the impartial, transparent and neutral preparation and application of rules of origin?**

*The Philippines regularly conducts consultations with the private sector as well as government agencies on the proposed rules to ensure transparency in the implementation of ROOs. Any new issuances regarding Rules of Origin are published in two newspapers of general circulation before they take effect. The publication of the rules ensures that parties concerned are properly informed and the rules are applied in a non-discriminatory manner.*

*On 08 October 2004, the Philippines, through its Bureau of Customs (BOC), issued Customs Memorandum Order (CMO) 27-2004 to consolidate and simplify the existing procedures in the issuance of Certificates of Origin (CO) and the verification of imported goods covered by COs whether or not they satisfy the conditions under the Rules of Origin of ASEAN-CEPT and ASEAN-China FTA.*

*At the Bureau of Customs, impartial, transparent and neutral preparation and application of rules of origin are ensured through:*

- a) Strict implementation on Rules of Origin as provided for under the Legislation of the individual importing country;*
- b) Periodic seminar/training of the Bureaus personnel at the Export Offices on the rules of origin;*
- c) Information dissemination thru CMOs and CMCs on the operational procedures, rules and regulations appertaining to the rules of origin;*
- d) To ensure the eligibility of the export goods availing tariff preferential treatment under the scheme of GSP Form A, ASEAN-CEPT Form D and FTA's, the Bureau thru its various export offices conduct pre-exportation verification/evaluation of the goods being applied for such tariff schemes; and*
- e) For purposes of retroactive verification requested by the preference-giving countries, the Bureau's Export Offices are required to prepare the necessary reply/justification within the prescribed period.*

**4. Does Philippines use different Rules of Origin for goods covered by FTAs and goods not covered by FTAs? If so, describe the differences. Does Philippines use different Rules of Origin for different FTAs? If so, describe the differences.**

*The Philippines uses the Rules of Origin for ASEAN-CEPT and ASEAN-China Free Trade Area*

*Under the GSP Scheme, the Philippines follow strictly the specific Rules of Origin prescribed under the Scheme book of the various preference giving countries.*

#### **ASEAN Rules of Origin**

*For products to be qualified for preferential rate, it should be either:*

- I. Wholly obtained*
- II. Processed products should have a ratio 60% imported material and 40% local-ASEAN Content*

#### **ASEAN-China Free Trade Area Rules of Origin**

- I. Wholly Obtained*
- II. Not wholly obtained or produced*
  - a. Not less than 40% of its content originates from any Party; or*
  - b. If the total value of the materials, part or produce originating from outside of the territory of the Party (i.e. non-ACFTA) does not exceed 60% of the FOB value of the product so produced or obtained provided that the final process of the manufacture is performed within the territory of the Party.*

*The Philippines does not apply rules of origin for imports from MFN sources. Preferential rules of origin are applied under regional agreements. The Philippines is a member of ASEAN. Under AFTA, a product is conferred originating status if it possesses an ASEAN content of at least 40% of the FOB value of the product. Under the GSP Scheme, the Philippines follow strictly the specific Rules of Origin prescribed under the Scheme book of the various preference-giving countries.*

*For rules of origin not covered by FTAs, the Philippines issues Certificate of Origin of General Merchandise commonly known as White Co.*

*Categories of Originating Product:*

- 1. Goods wholly obtained and worked in the Philippines.*
- 2. Goods worked on but not wholly produced in the Philippines and the exact value of import content is known.*

**5. What aspects of the current Doha Development Agenda (DDA) does Philippines consider important and crucial? What are Philippines' general views and positions, both on the overall DDA, and the major issues within the DDA? Are there any aspects of the DDA which Philippines finds troubling or problematic?**

*Like majority of WTO Members, the Philippines supports the continuation of the negotiating process. The Philippines, however would like to reiterate that the issues which cover the development aspects of the Doha Development Round should be taken fully in all stages of the negotiations and should not be put in the sidelines.*

#### **M. Dispute Mediation**

**(Hong Kong, China)**

**1. In the section of "Recognition of arbitration agreements and Enforcement of arbitration awards" under "The Philippines' Approach to Dispute Mediation in 2004", it is stated that "The Convention may be implemented through the judicial system with the use of the Rules of Court". We wonder whether the courts of the Philippines have the discretion to implement the New York Convention and whether it would be inconsistent with the Philippines' stand that it is committed to adhere to the New York Convention.**

*The Philippines was one of the first Asian countries to have acceded to the 1958 New York Convention in*



1967. At that time, however, it did not enact a specific law to facilitate arbitration, specifically on international commercial arbitrations. It was only in 2004 that the Alternative Dispute Resolution (ADR) Act of 2004 was legislated into law.

There should be no inconsistency. Section 42 of the ADR Act makes the New York Convention the governing regime for the recognition and enforcement of foreign arbitral awards. Section 42 also provides that an application for the recognition and enforcement of a foreign arbitral award should be filed with the regional trial court in accordance with the rules promulgated by the Supreme Court. While appeals from court decisions on Arbitral Awards are provided for in Section 46 of the Act, this should be read in context and in light of the fact that the only grounds of challenge against recognition and enforcement is on those grounds found in Article V of the New York Convention.

**(Expert)**

**2. Can Philippines give some idea on how much the foreign businesses utilize the various dispute mediation methods listed in the IAP through usage statistics or by illustrative case examples? Please emphasize the usage of mechanisms other than the WTO dispute settlement mechanism.**

Two cases have been brought to ICSID; the first in 2002 by the SGS Société Générale de Surveillance S.A. and another in 2003 by Fraport AG Frankfurt Airport Services Worldwide. The first case has been resolved in favor of the respondent (Philippines), while the second is still pending.

**3. Has Philippines made any studies or other attempts recently (say within the last five years) to see whether businesses (especially foreign businesses) find the dispute mediation and settlement methods in Philippines are satisfactory? If so, please list the results and describe any measures taken to improve the system. If not, does Philippines feel that additional changes in the dispute mediation system are unnecessary?**

The Philippines is not aware if such studies exist. In any case, the passage of the ADR Act of 2004 is a manifestation of the Philippines' policy to promote party autonomy in the resolution of disputes and to "promote the use of alternative dispute resolution as an important means to achieve speedy and impartial justice."

## **N. Mobility of Business People**

**(Mexico)**

### **1 Business Temporary Entry**

**It would be useful to have your information on the APEC Business Travel Handbook.**

The Bureau of Immigration (BI) constantly updates the APEC Business Travel Handbook (Informal Expert's Group on Business Mobility) through the Department of Foreign Affairs (DFA), it being the Philippines' lead agency in this sub-forum.

**(ABAC)**

**2. ABAC urges the Philippines to ensure the 2-week pre-clearance processing time agreed upon in the "Operating Framework" of the APEC Business Travel Card (ABTC) scheme. Authorities are also asked to ensure a smooth update process without causing inconvenience to ABTC holders.**

Pursuant to the Memorandum of Agreement (MOA) that the BI concluded with the DFA, the National Bureau of Investigation (NBI), and the National Intelligence Coordinating Agency (NICA), the Philippines is able to comply with the two-week pre-clearance processing period agreed upon in the Operating Framework of the ABTC scheme. With the cooperation of, and coordination with the DFA,

NBI, and NICA, local electronic applications system for pre-clearance is regularly reviewed and upgraded by the BI to ensure that inconvenience to the ABTC applicants/holders is avoided.

For the period from 01 January to 31 December 2004, ABTC-Philippines registered the third fastest mean processing time for time for pre-clearance of foreign ABTC applications. Only Chile (5) days and the Republic of Korea (10) days recorded a faster pre-clearance period than the Philippines (15) days. This was achieved in spite in spite of technical problems (system breakdown) encountered in the first 3 months of 2004. For the period commencing 01 June and ending December 2004, ABTC-Philippines had a pre-clearing time average of 8 days, which ranked second to Chile's 6 days.

ABTC-Philippines has also conducted information dissemination activities throughout the year targeting immigration and airline authorities to brief them on the ABTC scheme and provide latest developments in the implementation of the scheme.

**3. Only the companies which are authorised by either the Board of Investment (BOI) or the Philippine Economic Zone Authority (PEZA) are able to get 47(a) visas with a processing time of 1 to 2 weeks. ABAC recommends that the Philippines further facilitate the processing time for issuing working visas (Alien Employment Registration Certificates and Pre-Arranged Employee Visas) for all appropriately eligible applicants.**

On 27 November 2002, Memorandum Order No. ADD-02-057 entitled "Immigration Initiatives for Foreign Businessmen and Investors" was issued. It provides among others the following:

- a) processing time for pre-arranged employee and treaty tender/investor visas under Section 9, paragraphs g and d, respectively, of the Philippine Immigration Act shall be as much as practicable be reduced to two (2) weeks.
- b) a special lane, and the corresponding signage, for foreign businessmen and investors shall be maintained at all international airports.

**4. ABAC encourages the Philippines to introduce e-lodgement arrangements for temporary residency applications.**

The present system for visa processing does not yet allow electronic filing of applications. The Philippines recognizes the value of e-lodgement arrangements in facilitating travel.

Hence, among the BI's plans and programs for 2005 are the following:

- a) development of new systems and technologies for the effective and efficient service deliveries to the public; and
- b) completion and full operations of the Computerization Project (Wide Area Network) of the BI.

**5. The Philippines is asked to make visa application forms and visa information available on the web, including on the website of its embassies/consulates in APEC economies and through the APEC Business Travel Handbook.**

Visa information has been made available to all transacting public through its website- [www.immigration.gov.ph](http://www.immigration.gov.ph) – and all immigration forms are therefrom downloadable. They may also consult the electronic APEC Business Travel Handbook.

Likewise, at least 13 Embassies/Consulates of the Philippines out of the 21 APEC member economies maintain official websites containing information pertaining to visa matters. The official website of the Department of Foreign Affairs, [www.dfa.gov.ph](http://www.dfa.gov.ph), also contain important visa information not only for nationals of APEC member economies.

It also bears stressing that holders of passports from 19 APEC member economies are allowed to enter the Philippines without a visa under certain conditions, i.e. if the period of stay does not extend beyond twenty (21) days.

**(Expert)**

**6. What is a typical time required to receive a visa?**

*A 47 (a)(2) visa application is either filed at the Philippine Embassy or Consulate abroad or with the Department of Justice. The visa category applies to a class of special non-immigrant aliens proceeding to the Philippines as professors, scholars, trainees, participants, fellows, students, technicians, personnel and dependents of certain institutions, agencies, programs, foundations and corporations.*

*The processing period for 47(a)(2) visa applications filed at Philippine Embassies and Consulates is similar to the processing of tourist or business visa applications, i.e. within 2 to 5 days.*

*(Processing of working visa applications, including Alien Employment Registration Certificates, falls within the mandate of the Bureau of Immigration and the Department of Labor).*

**7. Has Philippines found the APEC Business Travel Card Scheme to be useful?**

*Filipino businessmen and investors find the ABTC very useful. A number of ABTC participating economies require entry visa from Filipinos. This would require preparing many documents, filing and paying the application fee, waiting for the interview schedule and queuing for the personal interview. Sometimes, the process becomes too tedious. The varying times vary from country to country; ranging from weeks to months. Missed emergency trips are equivalent to lost incomes. With the ABTC scheme, securing entry visas has become more convenient.*

*Successful Filipino ABTC applicants cannot be thankful enough to Australia for coming up with such a wonderful travel facilitation scheme.*

**8. Has Philippines made any studies or other attempts recently (say within the last five years) to see whether businesses (especially foreign businesses) see whether its procedures and regulations on the mobility of business persons are satisfactory? If so, please list the results and what policy measures have been taken to improve the system based on those results.**

*The Bureau of Immigration has open communication with the different government agencies and maintains constant dialogues with the various business organizations (local and international) to keep the cooperative relations with them healthy and strong. Thus, BI policies, rules, regulations, and procedures on businessmen and investors are regularly reviewed "motu proprio" or after consultations with the stakeholders to make them responsive to their needs.*

*a) BI is being expanded both in terms of organization and building structures. More district offices are being established and existing ones enlarged. More plantilla positions are created and filled up with the setting up of more divisions and upgrading of the present offices. An annex building at the main office is being constructed.*

*b) Pursuit of the Wide Area Network (Computerization Program) of the Bureau. Our planned and envisioned modernization of systems has found its way in the midyear of 2003. We have operationalized the various computer applications which is a result of our intensive research among which are the Codes Maintenance System, Administrative Support Information System, Finance Management System, Travel Control Information System, Alien Control and Monitoring System at the Immigration Regulation Division, Alien Registration Information System, and Website.*

**9. While it is recognized that economies may legitimately restrict mobility of business people to protect public health, safety and property, undue restrictions are undesirable for its adverse effects on both domestic and international economies. Has Philippines taken any measures recently (last five years or so) to make the system more efficient; that is raise the protection for the domestic economy, while at the same time, increasing the mobility of business people? Have Philippines taken any international cooperative efforts toward this goal recently?**

*The Philippines has a very liberal visa regime for citizens of APEC member economies. Almost all economies are allowed to enter the Philippine without a visa or are granted visa-upon-arrival under certain conditions.*

*To make the systems at the BI more efficient, it has restructured and upgraded its Computer Unit so that it is now called Information Technology and Computerization Division which shall provide the BI with effective and efficient Information Technology (IT) resources focused on providing quality client and public services, output based and strategically linked with other government agencies to facilitate validation of required documents and data.*

*The following are among the international cooperative efforts that the Philippines through the BI has taken to protect public health, safety and property:*

- 1. By year 2004, the BI is fully implementing the Personal Identification and Secure Comparison and Evaluation System (PISCES), a project by the United States of America aimed at interdicting global terrorism.*
- 2. At the same year, the Philippine Documents Examination (Forensic) Laboratory has been operationalized at the main office and at the BI Office at the Ninoy Aquino International Airport I (NAIA I) through the assistance of the Australian government. Its supervision has been placed under our Anti-Fraud Division.*
- 3. Focus of late has been directed on the East Asia Growth Area (EAGA) consisting of Brunei Darussalam, Indonesia, Malaysia and the Philippines (BIMP) with emphasis on customs, immigration, quarantine, and security (CIQS) issues giving rise to a series of BIMP-EAGA CIQS conferences.*

*The goal of this sub-regional cooperation is to promote trade, tourism, investments in the focus area of the member countries (Mindanao and Palawan in the case of the Philippines) with a key strategy to facilitate the movement of people, goods and services in the sub-region. It committed to commence the harmonization of the CIQS rules, regulations and procedures of the member countries as they affirmed their commitment to fight human and goods smuggling, human trafficking, and all threats to regional and national security.*

- 4. The BI significantly implements two Memoranda of Understanding between the Philippines and the People's Republic of China, especially on cooperation against the illicit traffic and abuse of narcotic drugs, psychotropic substances and precursor chemicals. The parties concerned agreed to promote various modes of cooperation to effectively prevent and control the aspects of said crime, and establish channels of communications between their competent agencies on matters related to the investigation of drug offenses. They also commit to combat transnational crimes and serious threats to national security and interests of both states.*
- 5. A major milestone in the country's fight against SRAS happened in May 14, 2003, when delegates from ASEAN countries in the ASEAN + 3 Aviation Forum on the Prevention and Containment of SARS in which programs and concrete plans to contain the said dreaded disease were formulated.*

#### **(Australia)**

**10. Australia acknowledges the efforts undertaken by the Philippines to streamline entry for APEC economies and in particular, appreciates the huge effort made by The Philippines to achieve the 14 day service standard in respect of foreign pre clearance requests under the APEC Business Travel Card scheme and its promotional efforts.**

*The Philippines will continue to initiate actions and measures to further facilitate the movement of people, and services, including the upgrading of its application system for ABTC pre-clearance to enable us to continue to comply with, if not shorten, the process period.*

**11. Australia notes the reorganisation of the Bureau of Immigration and appreciates the detailed information on this.**

*In spite of the budgetary constraints, good governance and public service demand that the BI expands itself both in terms of organization, manpower, and physical structures to cope with its increasing clientele.*

**12. Australia seeks information on whether the 9(a) privilege of 60 days will be extended to APEC card holders who currently receive 59 days? The 60 days requirement is stated in the APEC Business Travel Card Operating Framework’.**

*The Philippines will consider granting an initial 60-day stay for ABTC holders consistent with its commitment under the ABTC Operating Framework.*

*The BI will recommend to the Department of Foreign Affairs (DFA) the granting of a 60-day 9(a) visa (temporary visitor’s visa) for holders of APEC Business Travel Card (ABTC) as agreed upon in its Operating Framework. The decision on the matter rests with the DFA.*

**13. Australia notes the quick processing time of 5 days or less for intra company transferees and other provisions to facilitate the mobility of temporary residents engaged in trade and investment activity.**

*The Philippines will continue to adopt measures to ensure the fast and smooth movement of business people within the region.*

**14. Regarding the restructure of the BI, Australia requests information on whether the new arrangements for ensuring integrity and professional service meet the agreed APEC BMG Professional Service standards including code of conduct training and whistleblower protection. Australia reminds The Philippines of the availability of APEC TILF funding for training visits by the BOI to assist with the implementation of BMG standards.**

*The Philippines, through the BI, is exerting its best efforts to abide by the Professional Standards set up by APEC’s BMG. While we have created the Internal Affairs (Integrity) Division primarily to ensure the efficiency and effectiveness in the operations and services of the Bureau, and the Philippine Immigration Academy (PIA) that is managed and operated by our Training and Research Center (CTR), we will welcome and will be very grateful for ant assistance for further training on integrity, professional service, and code of conduct from APEC.*

**15. Australia also requests information on progress made in implementing agreed BMG standards in respect of:**

- travel document examination**
- travel document security**
- transparency.**

**Australia looks forward to being able to present to The Philippines the Advance Passenger Information (API) Feasibility Study Report early in 2005.**

*In line with the operationalization of the Philippine Documents Examination (Forensic) Laboratories, the Bureau is conducting continuous training of its officers and personnel manning them.*

*The immigration counters at the Ninoy Aquino International Airports have been equipped with passport machine readers.*

*The Philippine Immigration Academy, the BI’s operating arm in developing professionalism among its workforce, continuously hones the skills of its officers and personnel through training, workshops, and seminars. Research works on immigration and related subjects are being gathered from local and foreign sources and collated by our CTR to enable it to improve its curriculum and modules. Right now, we are completing its facilities and upgrading the existing ones.*

*Travel Document Security*

*The BI, in view of the imperative need to maximize and improve efficiency and security of its alien registration, identification and monitoring system in the light of the increasing traffic in the country's numerous ports and the heightening threats of terrorists, transnational criminals and aliens with criminal records, launched the ACR-I Card Project on February 1, 2004.*

*Procedural system on the production of Alien Certificate of Registration (ACR) Identify (I) Card has been put in place. It is a micro-chip based credit card-sized identification card with biometric security features capable of data management and can be updated electronically. It is issued to all registered aliens who are given until 30 March 2005 to apply for it.*

*Further, the Philippines will be issuing its first machine-readable passport and visa this year. The machine-readable passport and visa contains biometric and security features that comply with the standards of ICAO, particularly Document 9303.*

**O. Information Gathering and Analysis**

**(None at this time)**

## Annex 2: List of Meetings in Manila, the Philippines and List of Participants

### Meeting Schedule and List of Participants APEC Peer Review In-Economy Visit 11-13 January 2005

Time	Topic	Agency	Venue
<b>11 January 2005, Tuesday</b>			
8:30- 8:45	Opening Session	DTI, DFA	BOI
9:00-10:00 am	Deregulation/ Regulatory Review	NEDA, DTI, DFA	DTI
10:00-11:00 am	Competition Policy	TC, NEDA, DTI, DFA	DTI
11:00- 12:00 pm	Tariffs	TC, DA, DTI, DFA	DTI
2:00-4:00 pm	Implementation of WTO Obligations (inc ROO)	TC, DA, NEDA, BOI, BOC, DTI, DFA	DTI
4:00-5:00 pm	Non-Tariff Measures	DA, GTEB, DTI, DFA	DTI
<b>12 January 2005</b>			
8:00-9:00 am	Telecommunications Services	NEDA, NTC, DTI, DFA	DTI
9:00-9:30 am	Transport Services	NEDA, MARINA, CAB, ATO, DTI, DFA	DTI
9:30-10:30 am	Financial Services	NEDA, BSP, DOF, DTI, DFA	DTI
10:30-11:00 am	Tourism and Travel-related Services	NEDA, DOLE, DOT, DTI, DFA	DTI
11:00-11:30 am	Energy Services	NEDA, DOE, OIMB, NGO, NPC,NEA, DTI, DFA	DTI
11:30-12:00 pm	Distribution Services	NEDA, BOI, DTI, DFA	DTI
2:00-3:00 pm	Government Procurement	NEDA, DBM, NPC, DTI, DFA	DTI
3:00-4:30 pm	Investment	BOI, DTI, DFA	BOI
<b>13 January 2005</b>			
8:30-9:00 am	Standards and Conformance	DTI, DFA	DTI
9:00-10:00 am	Customs Procedure	BOC, OIMB	DTI
10:00-11:00 am	Intellectual Property Rights	IPO	DTI
11:00-12:00 pm	Dispute Mediation	DOJ, IPO, DA, DTI, DFA	DTI
12:30-2:00 pm	Working Lunch with APEC Senior Official		DFA
2:00-3:00	Mobility of Business People	BI, DFA, DOLE, DTI	DFA
3:00-3:30	Closing Session	BI, DFA, DOLE, DTI	DFA

**Air Transportation Office**

Officer-in-Charge Ricardito M. Eguna, *Chief*  
Mr. Andrew Bonsalbe, *Assistant Chief*

**Bangko Sentral ng Pilipinas (BSP)**

Mr. Wilfrido Pastrana, *Deputy Director*  
Ms. Teresita S. Luchico, *Bank Officer*

**Board of Investments (BOI)**

Atty Pascual de Guzman, *Director, Legal Services Division*  
Mr. Domingo Bagaporo, *OIC-Director*  
Ms. Corazon Halili, *Chief, Investment*  
Mr. Cris Capistrano, *Division Chief*  
Ms. Bernardita G. Hipolito, *Assistant Division Chief*

**Bureau of Customs (BOC)**

Mr. George Jereos, *Commissioner*  
Sonia Togonon, *Deputy Collector*  
Ms. Josephine I. Nagallo, *OIC-Director*  
Atty. Louie Adviento, *Chief*  
Mr. Antonio Melito Pascual, *Asst. Chief*

**Bureau of Immigration**

Atty. Marcela P. Malaluan

**Civil Aeronautics Board**

Mr. Porvenir Porciuncula, *Chief*

**Department of Agriculture (DA)**

Mr. Noel Padre, *OIC-Director*

**Department of Budget and Management**

Mr. Sixto V. Antonio, Jr., *Chief*

**Department of Energy (DOE)**

Mr. Mario C. Marasigan, *Assistant Director*  
Mr. Ramon V. Oca *Assistant Director*  
Mr. Editho S. Barcelona *Assistant Director*  
Ms. Irma C. Excode, *Chief SRS*  
Mr. Arnel S. Andriano, *Senior SRS*

**Department of Finance (DOF)**

Mr. Hermino Runas, *Economist*

**Department of Foreign Affairs (DFA)**

Undersecretary Edsel T. Custodio  
Mrs. Ma. Angelina M. Sta. Catalina, *Special Assistant*  
Mr. Daniel Espiritu, *Special Assistant*  
Mr. Gunther Sales, *Special Assistant*  
Mr. Arnel Sanchez, *Special Assistant*  
Mr. Christopher B. Montero, *Director, Visa Division*  
Ms. Janeth Concepcion, *Research Assistant*  
Ms. Geraldine Gamoso, *Research Assistant*  
Ms. Bennet Miemban-Ganata, *Research Assistant*



Mr. Rosemarie Ramos, *Research Assistant*  
Mr. Emmanuel Garcia, *Staff*

**Department of Justice**

Undersecretary Ricardo V. Paras III, *State Counsel*  
Atty. Bernadette Ongono

**Department of Labor and Employment**

Ms. Ma. Teresa Soriano, *Executive Director*  
Mr. Jose S. Sandoval, *Chief*

**Department of Tourism**

Mr. Rolando Cañizal, *Director*  
Ms. Arlene A. Alipio, *Director*  
Mr. Alex M. Macatuno, *Senior Tourism Specialist*

**Department of Trade and Industry (DTI)**

Undersecretary Thomas G. Aquino  
Mr. Ramon Vicente T. Kabigting, Bureau of International Trade Relations (BITR), *Director*  
Mr. Jesus L. Motoomull, Bureau of Product Standards (BPS), *Director*  
Mr. Angelo Salvador M. Benedictos, BITR, *Asst. Director*  
Ms. Marie Sherylyn Deleña Aquia, *Sr. Trade & Industry Development Specialist*  
Mr. Isagani C. Erna, *Supervising Trade & Industry Development Specialist*  
Ms. Tida Joice E. Reyes, *Trade & Industry Development Analyst*  
Ms. Eliza B. Interior, *Trade & Industry Development Analyst*

**Garments and Textile Export Board (GTEB)**

Mr. Serafin N. Juliano, *Executive Director*

**Intellectual Property Office**

Deputy Director-General Pacifico Avenido, Jr.  
Ms. Carmen G. Peralta, *Director*  
Mr. Louie Calvario, *Attorney V*  
Mr. Nathaniel Arevalo, *Attorney IV*

**Maritime Industry Association (MARINA)**

Ms. Lilian Javier, *Director*

**National Economic and Development Authority (NEDA)**

Asst. Director General Margarita R. Songco  
Mr. Elmer Doarado, *OIC-Director*  
Ms. Glenda Reyes, *Supervising Economic and Development Specialist*

**National Electrification Administration (NEA)**

Mr. Rod Padua, *Director*

**National Power Corporation (NPC)**

Mr. Melburgo Chua, *Vice President*  
Mr. Roland Cabasa, *Department Manager*  
Ms. Sonia Diamante, *Manager*

**National Telecommunications Commission (NTC)**

Mr. Samuel S. Sabile, *Engineer IV*

**Oil Industry Management Bureau (OIMB)**

Ms. Zenaida Y. Monsada, *Director*  
Ms. Melita V. Oblen, *Chief SRS*  
Ms. Hideliza V. Ludovice, *Supervising SRS*

**Tariff Commission (TC)**

Chairman Edgardo Abon  
Mr. Emmanuel Cruz, *Director*  
Ms. Marilou Mendoza, *Chief Trade Specialist*

**In-Economy Visit Secretariat and Support Staff**

Ms. Marie Sherylyn Deleña Aquia  
Ms. Tida Joice E. Reyes  
Mr. Joseph L. Lacerna  
Mr. Gerardo Cumpas  
Mr. Andres Lauden

## Discussant's Remarks on Philippines IAP

### Introduction

Good Morning,

1. First of all I would like to say that it is an honor to be able to participate today as the "Discussant" for the IAP Peer Review of the Philippines.
2. I would like to express my confidence in the IAP Peer Review Process, mechanism of fundamental value to the overall assessment that APEC must undergo this year to evaluate progress towards free and open trade and investment.
3. Mr. Junsok Yang has put together a report, which to my eyes is a comprehensive, clear and fair assessment, and the questionnaire submitted by economies to the Philippines has been answered properly.
4. It is somehow hard to have a single assessment of progress on a Goal, which seems to have sometimes more than a slight difference of interpretation between APEC economies. Nevertheless, the Bogor Goals have set a direction for action through the Osaka Action Agenda (OAA), by which each economy can be measured.
5. I will raise specific issues in several areas of the Philippines Trade Policy. I will comment on aspects in which, to my belief, the Philippines has made progress on its aim to achieve a free and open environment for trade and investment and others where further work is still needed.
6. As I said before, the report, to me is a very exhaustive one and I believe little can be added and I know how tight we are on time so I will endeavor to be brief in my comments.

### Tariff and Non-Tariff Measures

1. The Philippines has achieved substantial progress towards Bogor by cutting tariffs on a unilateral basis. The simple average applied tariff rate, which is around 7%, is one of the lowest in the Region for a developing economy. However, further progress could be achieved in sectors where tariff peaks are far higher than the simple average applied tariff.

2. To enable a more in depth assessment of the Philippines tariff regime, the percentage of bound tariff lines and its average bound tariff must be considered appropriately. When bound tariffs are considered, overall progress could become a little blurry to some, due to the fact that only 56% of the Philippines tariff lines are bounded.
3. The bottom line regarding assessing progress of a specific tariff regime towards free and open trade is not only about how much liberalization has been achieved so far, but its predictability to keep that pace and progress in the future, which creates the necessary conditions for an adequate atmosphere for free trading to take place.
4. I mention predictability as a key factor due to the fact that the Philippines modified its tariff regime in 1999, as a means to give temporary relief to the agriculture and manufacturing sectors from import competition after the 1997 financial crisis.
5. In relation with the above, the increase in the number of Anti-Dumping measures adopted around 1997, while possibly legitimate, they seem to have a close relationship with the Asian financial crisis, which could create some doubts on the motivations for the use of this mechanism.
6. Concerning the Philippines tariff regime, I would like to ask if the process towards a flat tariff rate of 5% that begun in 1981 and later was put on hold due to the Asian Financial Crisis is still considered a possibility.

### **Bilateral and Regional Trade Agreements**

1. The fast increasing amount of Bilateral and Regional Trade Agreements (FTAs/RTAs) is a reality. Ministers endorsed a “Best Practice for FTAs/RTAs” last year, as a meaningful reference for APEC members in their FTAs/RTAs negotiations, as a means to achieve high standard agreements in the Region and help ensure that these agreements contribute to the achievement of the Bogor Goals.
2. In relation with the above I would like to ask The Philippines how are sensible sectors such as Agriculture being addressed in bilateral negotiations and if any changes in policy are planned for the near future?

### **Services**

1. Given the lack of sectorial information, it is difficult to evaluate the overall level of liberalization achieved in this area, especially in those sectors for which information is not available at this time. Consequently, my first observation refers to the reasons given by the Philippines to explain such gap.
2. The Philippines’ argument, based on its condition of “developing economy”, can explain to an extent the current situation.

3. Nevertheless, I encourage the Philippines to make a strong effort in order to provide the international trade – business community with complete, accurate and updated information in this area.
4. I believe that providing the APEC community with such information constitutes a necessary step to effectively implement APEC sector – specific transparency standards, and therefore, contribute to trade facilitation according to the CTI priorities set for in 2004 and this year.
5. Secondly, many of the sectors for which information is not available are relevant ones in terms of trade. For instance, postal services, express delivery, engineering, construction, etc, are relevant in terms of trade, as they have shown to be very dynamic and tightly associated to certain industries. A good example is the relationship between the internet retailing industry and the express delivery services.
6. Additionally, these sectors are relevant in terms of the GATS disciplines associated to them, particularly Domestic Regulation.
7. Thirdly, the investment ceilings for foreign investors (40%) on Telecommunications, Transportation, and Energy services could constitute barriers to the development of those important sectors.

### **Investment**

1. First of all, it is clear that the Philippines has taken positive steps in order to liberalize the foreign investment regime in key sectors of its economy. Two remarkable examples are the Manufacturing sector and the Mining industry, which now allow 100% foreign equity.
2. However, constitutional ban on land acquisition by foreigners, and the legal restrictions on foreign equity participation in certain industries and public utilities (ceiling), remain in place.

### **Standards and Conformance**

1. The efforts towards achieving the Bogor Goals, the notable increase in Preferential Trade Agreements and the hopefully successful conclusion of WTO negotiations are setting a new tariff profile for the region and the world. In this relatively new global trade environment, the issue of standards, technical regulations and conformity assessment are acquiring increased relevance.
2. In this regard I would like to welcome the fact that improvements have been achieved since the Philippines' last IAP, especially in the areas of alignment and participation in regional and bilateral initiatives in this area.
3. Special emphasis should be paid to the efforts made by the Philippines to have a significant proportion of its standards aligned with international

standards, especially considering that the Philippines technical regulations are born often from the mandatory status given to voluntary standards.

4. Moreover, I would like to highlight the program established by the Philippines, which seeks to align domestic standards with international ones. Ten industrial sectors have been set as priority areas for establishing new standards and the Philippines hopes to establish 95% of alignment by 2010 and 100% by 2020.
5. This program must be considered as a great effort made by the Philippines to achieve the Bogor Goals and an example to follow. It is a fact that Technical Barriers to Trade is increasingly becoming one of the prime obstacles to international trade, given the development of a new tariff arena in the last few years.

### **Competition Policy**

1. The report clearly states out that the Philippines submitted a bill to Congress, which will establish a central implementation body for competition policy. This initiative, if approved, would be a significant step to comply with APEC Principles on Competition, but that legislative act would be fruitful only if there is a decisive implementation of this act with its budgetary allocations.

### **Intellectual Property Rights**

1. As clearly pointed out in the Experts' report, the Philippines gives great importance to the protection of Intellectual Property Rights (IPR), being considered an important factor to promote the free flow of trade, investment and technology. Philippines is member of the World Intellectual Property Organization (WIPO) and is fully compliant with TRIPS.
2. In order to adapt to the challenges imposed by new technologies, the Philippines is currently introducing new IPR legislation, with stronger sanctions and investigative powers. The Optical Media Act (March 2004) is a clear example of the efforts being undertaken to protect IPR. Thus, it prescribes harsher penalties and establishes an eventual presumption of illicit acts. Without going any further, the Act enables authorities to prove an infraction by demonstrating that the equipment has not been properly registered.
3. Moreover it seems that concerns on IPR should be focused on the compliance with IPR laws. In this regard we welcome the launching of an active education plan to reduce the demand of counterfeiting and pirated goods for businesses and individuals.
4. Nevertheless, the achievement of effective punishments once an illicit behavior has taken place is still pending.
5. Finally, the strong amounts of resources needed to implement a broad IPR protection strategy takes us inevitably to ask the Philippines how have they

managed to create the necessary awareness among all sectors, in order to allocate further resources to IPR protection in an economy where this area may not be considered a priority too many.

With this I have concluded my remarks for today.

Thank you very much.

IAP Peer Review of the Philippines  
01 March 2005

Additional Written Questions

**AUSTRALIA**

*Standards*

The Philippines continues to progress its international standards harmonisation program, with the auto parts sector listed as one of 10 priority industrial areas.

*Tariffs/Non-Tariff Measures*

Australia notes that:

- Rather than reducing tariff rates on completely built-up units and motorcycles to 5 percent as scheduled for 2004, The previous tariff rate of 30% has been extended through 2007 (for non-ASEAN economies).
- Tariffs on completely knocked-down vehicles will drop from 10 percent to 5 percent in 2004 as scheduled.
- The Philippines has changed the automotive excise tax structure from one based on engine displacement to one based on vehicle value. This will widen the category of vehicles that will be subject to the excise.
- The Philippines restricts the importation of second hand vehicles and components. A number of economies, including Australia, have measures in place to restrict the importation of such vehicles.

*Accounting Services*

Australia notes that the Philippines have not reported on accounting services because of resource constraints. In relation to professional services generally, the Philippines Constitution limits professions to Filipino citizens unless otherwise provided by law.

Is there specific legislation in the Philippines relating to the accounting profession?

To what extent do accounting standards in the Philippines align with International Financial Reporting Standards?



## *Financial Services*

Australia seeks clarification regarding what is meant by the Philippines' intention to 'calibrate the market' (pg 15) before further liberalisation, including an indication of potential timeframes.

## **CANADA**

- The expert notes that Foreign Direct Investment could play a larger role in the Philippines' economy. What plans do the Philippines have for attracting more FDI? We would be interested in both investment promotion and investment facilitation.
- The expert's report was quite discouraging on the subject of government procurement, noting that the Philippines is not in compliance with two of the APEC non-binding principles on government procurement: non-discrimination, and value for money. Canada believes strongly that these principles are important not only for their contribution to trade liberalization, but also for their contribution to national development, and wise stewardship of public resources (especially in a highly concentrated economy.) What plans do the Philippines have to improve performance in this regard?

Canada would be grateful for a full, written response.

## **JAPAN**

### *Competition Policy*

1. The report writes that the Government has a difficult time implementing and enforcing competition policy because the current enabling legislation enforcing the constitutional provision is criminal in nature, thus requiring a proof of guilt "beyond reasonable doubt" which is difficult to achieve.

Does the mentioned legislation currently under consideration in Congress focus on increasing criminal penalty against anti competitive activities? And what law allows a party to sue for civil damage twice the amount of the damage by anti competitive actions?

2. As it referred to the substantial change in market shares by stating "The Philippines authorities have enforced competition policy on certain industries such as telecommunications and air transportations, and reduced concentration in those areas", what authorities have enforced competition policy on these sectors?

3. The report writes that new competition law will undertake the competition clauses even in existing sector specific laws. Will the competition related sections at the existing authorities in specific sectors be merged into central competition authority?

4. As the Philippines answers to a question that a number of bills has been introduced in Congress addressing the multifaceted concerns of competition, what bill, as the most promising candidate competition law to be enacted, is referred to as the basis in this report?

## **REPUBLIC OF KOREA**

### ***Distribution Services (Chapter 3(d))***

- The Retail Trade Liberalization Act of 2000 allows foreign retailers to open branches/stores in the Philippines without any limits only if the amount invested exceeds USD 830,000. Korea believes that the minimum capital requirement should be reduced to a lower ceiling. Does the Philippines have plans to amend this regulation ?

### ***Investment (Chapter 4)***

- The Philippines restricts foreign investment in certain areas with the objectives to protect national security, health and domestic business, whereby in the following areas investment barriers exist.
  - Restricted areas: media and mass-communication, engineering, medical services, accounting, construction, customs intermediaries, forestry, legal services and retail services
  - Local contents requirement: passenger cars (40%), trucks (27%), motorcycles (51%)
  - Minimum capital requirement: USD 200,000 minimum capital requirement in cases of domestic market firms or exporting firms dealing with depleting resources
- Korea would like to know whether the Philippines has plans to change the above-mentioned measures without compromising the objectives.

### ***Standards and Conformance (Chapter 5)***

- Korea is curious what the concrete plans are for the Philippines to conform domestic standards (PNS) to the ISO 14000.
- Korea would like to ask the Philippines to provide us with concrete information on the Technical Committee which is engaged in developing domestic standards on medical devices.

## UNITED STATES OF AMERICA

### *Government Procurement*

- 1) The Philippine Constitution requires the State to promote the preferential use of Filipino labor, domestic materials and locally produced goods. Foreign tenders are only invited for purchases where there is no locally made product available. Further, the foreign supplier must be associated with a Filipino entity when it is allowed to participate in a tender. Does the Philippines have a framework and a timeline to increase government procurement eligibility for foreign suppliers? (value for money)
- 2) How are preferences for local suppliers administered? (transparency)
- 3) How are foreign suppliers able to know when they are eligible to participate in a tender? (transparency)

Thank you for sending the response from the Philippines to:

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### **A B A C** **(APEC Business Advisory Council)**

#### *General Questions:*

In the Philippines own assessment, how far along is it towards achieving the Bogor Goals?

Please comment on the Philippines' FTA strategy.

#### *Specific Questions:*

According to the Expert in charge of evaluating the Philippines' IAP, this economy has made an excellent progress in moving towards the Bogor Goals in free trade in goods. Substantial progress has been made in the reduction of tariffs (simple average applied tariff is 7.06% and import-weighted tariff is 3.42%), non-tariff barriers, customs procedures, IPR and standards and conformance.

However, the Expert is concerned about whether the Philippines will be able to achieve the Bogor Goals because of the significant market barriers it has in trade in services, investment and government procurement.

## ***Services***

Limits to foreign investment in general but in the services sector specifically affect not only the quantity but also the quality of the services available in an economy, affecting the final consumers and other businesses that need them for their production processes.

In the Philippines the services sector represents 47% of GDP and is the fastest growing sector (transportation, communication and financial services).

The Philippines maintains several discriminatory measures against foreign services providers. The Constitution states that “the practice of all professions in the Philippines shall be limited to Filipino citizens save in cases prescribed by law”.

1. What percentage of the local working population is employed in the services sector?
2. Which sectors are allowed to hire foreign nationals and what percentage is permitted?
3. Have these types of regulations proven to be effective in generating employment and competitiveness? Are there any programs to train nationals to perform competitively in those sectors where it is prohibited to hire foreign nationals?
4. Do local employees earn the same amount as foreign employees? Is there a regulation for this?

## ***Investment***

Most likely due to the barriers in investment, the Philippines has one of the lowest FDI flows as well as one of the lowest GDP per capita in the APEC region.

The Constitution limits investment in several important service sectors. They have investment ceilings and limits on land ownership. The reasons for these provisions range from “protecting domestic industries from foreign control” to “national security” and “the need to develop local industry”.

Although the Constitution has provisions that limit foreign investment, the list of industries to which these apply is established by the National Economic Development Agency, and the Executive and Legislative Branches, so that could be a way to limit the scope of those provisions without amending the Constitution.

1. How feasible is it for these institutions to limit the negative list to a minimum? Is there a time frame for this?
2. Is the Government aware that its restrictions on investment result in low FDI flows and therefore in losing the opportunity of generating jobs and increasing income?
3. In an environment of free trade and free competition, are arguments such as “protecting domestic industries from foreign control” and “the need to develop local industry” valid?
4. Has the Government evaluated the relationship between the level of openness in investment and FDI flows, GDP growth and employment in other economies?

## ***Government Procurement***

Unless the procurement is for a foreign assisted project, if a Filipino can supply a good or service, the Government must procure from the domestic source. And even then, domestic

suppliers have a 15% cost preference. It does not consider possible cost savings which may be gained from foreign suppliers.

When a government decides not to make efficient purchases this affects its population. Government procurement is a necessary process for the State to fulfill its role of providing health, education, justice, security, etc. Thus it should make sure that it is spending the tax payer's money in the most efficient way searching for the best quality at the best possible price.

Although it is important to boost the development of local businesses, government procurement should not be a means for this. The government should focus in helping those businesses to be competitive, and by spending efficiently, it will have more resources for this cause which will help create more jobs and increase income. Businesses should not depend on government procurement.

1. Is the Government allocating its resources efficiently?
2. Has the Government evaluated how much more money it is spending because of these restrictions in government procurement?
3. Is Government, local business and the population in general aware of the consequences of restricted government procurement?
4. How much do businesses in the Philippines depend on government procurement?

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