THE PHILIPPINES

TRADE SUMMARY

U.S. goods exports in 2014 were $8.5 billion, up 0.7 percent from the previous year. The Philippines is currently the 33rd largest export market for U.S. goods. Corresponding U.S. imports from the Philippines were $10.2 billion, up 9.6 percent. The U.S. goods trade deficit with the Philippines was $1.7 billion in 2014, an increase of $834 million from 2013.

U.S. exports of services to the Philippines were $2.5 billion in 2013 (latest data available), and U.S. imports were $3.8 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $3.7 billion in 2012 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $31 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines was $4.4 billion in 2013 (latest data available), up from $4.1 billion in 2012. U.S. FDI in the Philippines is led by the manufacturing, nonbank holding companies, and wholesale trade sectors.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Meat Handling Regulations

The Philippines maintains a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local "wet" markets. Under this system, the Philippines imposes much more burdensome requirements on the sale of frozen meat, which is primarily imported, than it does on the sale of freshly slaughtered meat, which is domestically raised exclusively. The United States provided comments in early January 2015 on the risk assessment that the Philippines used to support the two-tiered treatment of frozen and freshly slaughtered meat and will continue to work to address this issue.

Import Clearance

The Philippines Department of Agriculture requires importers to obtain an SPS permit prior to shipment for any agricultural product and to transmit the permit to the exporter. This requirement adds costs, complicates the timing of exports, and prevents the transshipment of products to the Philippines originally intended for other markets. It also prevents an exporter from reselling an imported product if the importer refuses to accept delivery or abandons the shipment.

IMPORT POLICIES

Tariffs

The Philippines' simple average most favored nation tariff is 7.12 percent. Six percent of its applied tariffs are 20 percent or higher. All agricultural tariffs and about 60 percent of non-agricultural tariff lines are bound under the Philippines' WTO commitments. The simple average bound tariff in the Philippines is 25.7 percent. Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fibers, footwear, headgear, fish, and paper products. Applied tariffs on fresh fruit, including grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products, including

frozen fries, are between 7 percent and 15 percent, whereas bound rates are much higher at 35 percent and 45 percent.

High in-quota tariffs for agricultural products under the Philippines' tariff-rate quota program, known locally as the Minimum Access Volume (MAV) system, significantly inhibit U.S. exports to the Philippines. Under the MAV system, the Philippines imposes a tariff rate quota on numerous agricultural products, including corn, coffee and coffee extracts, potatoes, pork, and poultry products. In-quota tariffs range from 30 percent to 50 percent. Sugar has the highest in-quota tariff at 50 percent, followed by rice, poultry, and potatoes at 40 percent. The in-quota tariff for corn is 35 percent, while pork and raw coffee have in-quota tariffs of 30 percent. Since 2005, the Philippines has maintained MAV levels at its Uruguay Round commitments despite dramatically increasing demand in the Philippine market for MAV products. The Philippine government increases in-quota volumes of affected MAV commodities in times of shortages, but because of its lack of predictability, the practice does not serve to relax the Philippines' restrictive import regime.

Quantitative Restrictions

The National Food Authority (NFA) controls rice imports through quantitative restrictions and provides price support to rice growers. The NFA's stated objectives are to achieve self-sufficiency and to ensure sufficiently high and stable food prices to enhance farm incomes and alleviate rural poverty. NFA's policies have contributed to the sector's uncompetitiveness by reducing incentives for farmers to minimize production costs and improve efficiency. Philippine rice farmers are protected from global prices by a high tariff of 40 percent, which U.S. stakeholders report has the unintended consequence of encouraging widespread smuggling.

The Philippines previously benefited from special treatment for rice under Annex 5 of the WTO Agreement on Agriculture. Pursuant to Annex 5, the Philippines maintained a rice quota of 350,000 metric tons (MT), but that special treatment expired on June 30, 2012. In July 2014, the WTO approved an extension of the Philippine rice quantitative restrictions up to 2017. The 2014 to 2017 extension is covered by a waiver of the Philippine obligation to convert quantitative restrictions on agricultural imports into tariff measures. In exchange for the extension, the Philippine's MFN rice import tariff will be reduced from 40 percent to 35 percent, and the MAV quota will increase from 350,000 MT to 805,200 MT. The Philippine government has yet to issue an executive order implementing these changes. In connection with the WTO approval of the extension of rice special treatment, the United States and the Philippines reached a bilateral agreement on Philippine agricultural concessions in June 2014. As part of this agreement, the Philippines will reduce tariffs on a variety of agricultural products, including buttermilk, cheese, grapes, poultry, and walnuts, covering over $66 million of U.S. agricultural exports to the Philippines.

Automobile Sector

The Philippines continues to apply high tariffs on finished automobiles and motorcycles, including a 30-percent tariff on passenger cars; tariffs of 20 percent to 30 percent on vehicles for the transport of goods; and tariffs of 15 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. ASEAN countries and Japan enjoy preferential import tariffs on new vehicle imports under the ASEAN Free Trade Agreement and the Japan-Philippines Economic Partnership Agreement, respectively. The Philippines continues to extend duty-free treatment on imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments.

Motor vehicle production is covered under the Philippine Motor Vehicle Development Program. This program, implemented by the Board of Investments, is designed to spur exports and encourage local assembly through low tariffs on components. A one percent tariff applies to completely knocked-down kits

(CKDs) imported by participants registered under the development program. CKDs of alternative fuel vehicles enter duty free. The policy also prohibits the importation of used motor vehicles.

Manufacture and assembly of motor vehicles, parts, and components is a preferred activity under the 2014 Philippine Investment Priorities Plan (*see Subsidies section below*). Meanwhile, the Board of Investments has identified a set of non-fiscal incentives, including the retirement of old vehicles for the automotive industry, as a key component under the Comprehensive Automotive Resurgence Strategy to improve local demand for motor vehicles. The proposed Executive Order that approves and authorizes the implementation of this program is pending in the Office of the President.

Safeguards

Since 2002, the Philippine Department of Agriculture has maintained a price-based special safeguard on imports of chicken, approximately doubling the effective rate of protection for out-of-quota imports. The imposition of the special safeguard reportedly stems from domestic industry pressure for import protection.

Customs Barriers

Reports of corruption and irregularities in customs processing persist, including undue and costly delays (*e.g.*, irregularities in the valuation process, 100 percent inspection and testing of some products, and customs officials seeking the payment of unrecorded facilitation fees). In particular, despite a firm commitment from the Bureau of Customs to use transaction values to assess duties on imports, as provided for in the Customs Valuation Agreement, importers have reported that reference prices for meat and poultry are still used for valuation. The Customs Bureau has assigned a single reference value for all "other" pork offals (jowls, ear base, tongue, etc.), which does not reflect the actual prices. Traders have reported that reference prices are frequently well above the transaction prices, which has the effect of imposing an artificially high tariff.

GOVERNMENT PROCUREMENT

Government procurement laws and regulations favor Philippine companies and locally produced materials and supplies. The 2003 Government Procurement Act sought to consolidate procurement laws, simplify prequalification procedures, introduce objective and nondiscretionary criteria in the selection process, and establish an electronic single portal for government procurement activities. However, implementation of the Act remains inconsistent. U.S. companies have expressed concern about delayed procurement decisions and payments, as well as differing interpretations of the procurement law among Philippine government agencies.

All government procurements of imported equipment, materials, goods and services require a countertrade requirement of 50 percent of the value of the supplier's supply contract, amounting to at least $1 million, and with penalties for nonperformance of countertrade obligations.

The Philippines is not a signatory to the WTO Agreement on Government Procurement.

SUBSIDIES

The Philippines offers a wide array of fiscal incentives for export-oriented investment, particularly investment related to manufacturing. These incentives are available to firms located in export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority. The available incentives include: income tax holidays or exemption from corporate income tax for four years, renewable for a maximum of eight years; after the income-tax-holiday period, payment of a

special five percent tax on gross income in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, spare parts and supplies, and raw materials; domestic sales allowance of up to 30 percent of total sales; exemption from wharfage dues, imposts, and fees; zero VAT rate on local purchases, including telecommunications, electricity, and water; and exemption from payment of local government fees (*e.g*., mayor's permit, business permit, health certificate fee, sanitary inspection fee, and garbage fee). Furthermore, under the Omnibus Investment Code, which is administered by the Board of Investments, tax incentives are available to producers of non-traditional exports, including electronics, garments, textiles, and furniture, and for activities that support exporters, such as logistics services and product testing.

The Philippine government offers incentives to companies for investment in less developed economic areas and in preferred sectors, as outlined in the Board of Investment's Investment Priorities Plan. The incentives include: income tax holidays; tax deductions for wages and certain infrastructure investments; tax and duty exemptions for imported breeding stock and genetic materials; and tax credits on local purchases of breeding stock and materials. An enterprise with less than 60 percent Philippine equity may enjoy incentives if its projects are classified as "pioneer" under the Investment Priorities Plan. Pioneer status can be granted to Investment Board-registered enterprises that are engaged in the production of new products or using new methods, producing goods deemed highly essential to the country's agricultural self-sufficiency program, or producing or utilizing non-conventional fuel sources. Export-oriented firms, defined as exporting at least 70 percent of production, may also qualify for incentives under the plan.

The Philippines has not filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures since September 1997. In its last trade policy review in 2012, the Philippines maintained that it does not provide export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Philippines was removed from the Special 301 Watch List in 2014 due to sustained efforts by the Philippine government to improve IPR and civil and administrative enforcement. That effort included amendments to the Philippines' Intellectual Property Code in 2013, which contain measures on secondary liability and statutory damages, as well as legislation addressing cable signal piracy and IPR infringement relating to money laundering. The new measures also granted new administrative IPR enforcement powers. Rights holders report improved coordination and effectiveness of the Philippines enforcement efforts and say that incidents of unauthorized camcording remain relatively few in number.

While there have been significant improvements in the Philippine IPR environment in recent years, U.S. rights holders report concerns about increasing Internet-based piracy, counterfeit drugs, and provisions in patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. They also have expressed concerns about the availability of pirated and counterfeit goods in the Philippines and judicial inexperience regarding IPR enforcement.

SERVICES BARRIERS

Telecommunications

Philippine regulators have defined telecommunications services as a public utility, which under the Philippine Constitution limits foreign equity ownership in telecommunications companies to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and the number of foreign directors allowed is tied to the proportion of foreign investment in the company. The United States has urged the Philippines to reclassify telecommunications outside of the utility definition, as it has done for electricity generation. Efforts to liberalize the foreign investment regime in the telecommunications

sector suffered a setback in 2013 when the Philippines Security and Exchange Commission, based on a 2011 Philippines Supreme Court ruling, upheld an expansive interpretation of what constituted a utility. This action effectively limited foreign ownership to levels set out in the Philippines General Agreement on Trade in Services (GATS) schedule.

The Philippines also applies the public utility designation to value-added services, which is particularly burdensome to service suppliers and inconsistent with international practice. Finally, foreign equity in private radio communications is limited to 20 percent, and foreign ownership of cable TV and all other forms of broadcasting and media is prohibited.

Insurance

While the Philippines only binds foreign ownership in the insurance sector at 51 percent in its GATS commitments, it permits up to 100 percent foreign-ownership in the insurance sector. Minimum capital requirements increase with the degree of foreign equity.

Generally, only the state-owned Government Service Insurance System may provide insurance for government-funded projects. A 1994 order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from this insurance system at least to the extent of the government's interest. All reinsurance companies operating in the Philippines must cede to the industry controlled National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Banking

A law signed on July 15, 2014, liberalizes the entry of foreign banks into the Philippine market. If the banks meet certain requirements, such as reciprocity, diversified ownership, and public listing in the country of origin, foreign banks can establish foreign branches or be permitted to own up to 100 percent of the voting stock of locally incorporated subsidiaries. The new law indefinitely abandons a provision in a 1994 law that capped the number of foreign bank branches in the Philippines at ten and generally limited the ownership of foreign banks in local banking institutions to 60 percent. Banks that seek entry as foreign branches under the new law cannot open more than six branch offices.

As a general rule, foreign non-bank investors are subject to a 40 percent ownership ceiling in domestic banks (reduced from 70 percent under the 1994 law).

Other Financial Services

For a mutual fund, all members of the board of directors must be Philippine citizens. Current laws limit foreign ownership of financing and of securities underwriting companies to 60 percent of voting stock.

The 2007 Lending Company Regulation Act requires majority Philippine ownership for credit enterprises not clearly under the scope of other laws.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Public Utilities

The Philippine Constitution limits foreign investment in the operation and management of public utilities to 40 percent. Philippine law defines "public utility" to include a range of sectors, including water and sewage treatment, electricity transmission and distribution (although not electricity generation), telecommunications, and transport. All executive and managing officers of public utility companies must be Philippine citizens, and foreign investors may serve on governing bodies only in proportion to their equity.

Professional Services

The Philippine Constitution limits licensing for the practice of professions to Philippine citizens. Under Philippine law, the practice of professions is defined to include law, medicine, nursing, accountancy, engineering, criminology, chemistry, environmental planning, forestry, geology, interior design, landscape architecture, and customs brokerage.

Express Delivery Services

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Retail Trade

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-up capital of $2.5 million or more, an $830,000 minimum investment per store, and parent company net worth of over $200 million. In addition, the retailer must either own at least five retail stores elsewhere or have at least one outlet with capitalization of $25 million or more. For retailers of high end or luxury products, the minimum investment in each retail store is $250,000, and the net worth of the parent company must exceed $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

INVESTMENT BARRIERS

Significant restrictions apply to foreign investment in the Philippines. The Foreign Investment Negative List enumerates foreign investment restrictions in two parts: List A details restrictions mandated by the Constitution or in specific laws, while List B lists restrictions mandated for reasons of national security, defense, public health and morals, and the protection of small and medium sized enterprises (SMEs). Foreign investment in sectors enumerated in the negative list may be prohibited outright (*e.g.*, mass media, practice of professions, small-scale mining) or subject to limitation (*e.g.*, natural resource extraction, investment in SMEs). The current list was issued in October 2012. In May 2013, the Philippines Security and Exchange Commission issued guidelines to monitor corporations for compliance with the foreign equity restrictions mandated by the FINL. Removing investment restrictions in specific laws cited in FINL has been identified as a priority by the Aquino Administration.

The Philippine Constitution prohibits foreigners from owning land in the country, but allows for 50-year lease, with one 25-year renewal. An ambiguous deed and property system can make it difficult to establish clear ownership of leased land, however, and an inefficient judiciary results in land disputes that can extend

indefinitely. U.S. investors report that these disputes can be a particularly significant barrier to investment in mineral exploration and processing sectors.

Trade Related Investment Measures

The Board of Investments imposes a higher export performance requirement on foreign-owned enterprises (70 percent of production) than on Philippine-owned companies (50 percent of production).

OTHER BARRIERS

Corruption is a pervasive and longstanding problem in the Philippines. Both foreign and domestic investors have expressed concern about the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking and about the lack of transparency in judicial and regulatory processes. Concerns also have been raised about courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.