THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was $609 million in 2010, down $418 million from 2009. U.S. goods exports in 2010 were $7.4 billion, up 27.9 percent from the previous year. Corresponding U.S. imports from the Philippines were $8.0 billion, up 17.5 percent. The Philippines is currently the 30th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to the Philippines were $1.8 billion in 2009 (latest data available), and U.S. imports were $2.5 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $2.6 billion in 2008 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $36 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines was $5.8 billion in 2009 (latest data available), up from $5.6 billion in 2008. U.S. FDI in the Philippines is mostly in the manufacturing sector.

IMPORT POLICIES

Tariffs

In 2010, the Philippine simple average bound tariff was 25.44 percent and the simple average applied tariff was 6.82 percent. Six percent of Philippine tariffs are applied at or above 15 percent. All agricultural tariffs and just under two-thirds of non-agricultural tariff lines are bound. Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fibers, footwear, headgear, fish, and paper products.

Higher tariffs – some at 30 percent – are charged on chemical waste, motorcycles, automobiles, and some automotive parts. Additionally, agricultural products with tariff-rate quotas (TRQs) have high in-quota tariffs ranging from 30 percent to 65 percent. Sugar has the highest tariff at 65 percent, followed by rice at 50 percent. Other products with TRQs are poultry, swine, potatoes, coffee and coffee extracts. Meat and edible meat offal, sausages, prepared and preserved meat, cabbages, carrots, manioc (cassava), sweet potatoes, and animal feeds (except dog and cat food) have applied tariffs between 30 percent and 45 percent.

Philippine commitments under the Association of Southeast Asian Nations (ASEAN) Free Trade Agreement eliminated tariffs on approximately 99 percent of all goods for ASEAN trading partners, with higher tariffs for sensitive products, including sugar (38 percent), and rice (40 percent).

Automobile Sector

The Philippines continues to apply high tariffs on finished automobiles and motorcycles. Finished automobiles and motorcycles are subjected to the highest tariff rates of any nonagricultural product, with a 30 percent tariff on passenger cars, 20 percent to 30 percent on vehicles for the transport of goods, and 15 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. Other countries enjoy preferential import tariffs on new vehicle imports under agreements such as the ASEAN Free Trade Agreement and the Japan-Philippines Economic Partnership Agreement.

President Arroyo issued an executive order in April 2010 revising the eight-year-old Motor Vehicle Development Program (MVDP) to promote domestic automobile production and spur regional exports.

Tariffs on components are low and designed to encourage local assembly. A one percent tariff applies to completely knocked-down (CKD) kits imported by MVDP-registered participants, excluding CKDs of alternative fuel vehicles, which are duty-free. Japan and ASEAN nations enjoy a zero percent import tariff on CKDs.

Exporters of qualified Completely Built Units can earn export credits that may be applied to import duties otherwise due on qualifying imported finished automobiles. This system effectively reduces the applied tariff rate to 10 percent. In addition, the Philippines charges value added taxes of 12 percent on vehicle imports and progressive excise taxes based on the price of vehicles. The revised policy also continues the prohibition on imports of used motor vehicles.

The Philippines also bans heavyweight motorcycles from highways. Permitted by most countries, heavyweight motorcycles are designed for highway use, with traffic studies in most other developing countries demonstrating there is no underlying safety rationale for such a ban. These restrictions severely limit the export potential for U.S.-built motorcycles.

Safeguards

The Philippine government continues to levy import duties on ceramic floor and wall tiles, glass products, steel angle bars, and testliner boards, which it justifies as safeguard measures. The Safeguard Measures Act allows interested parties a short five-day comment period; an amendment to extend this period to 30 days has been pending since 2007.

Excise Tax on Distilled Spirits

In March 2010, the United States requested that the WTO establish a dispute settlement panel regarding discriminatory taxes applied by the Philippines to imported distilled spirits. The Philippines applies tax rates to distilled spirits that differ depending on the product from which the spirit is distilled. Distilled spirits made from certain materials that are typically produced in the Philippines, such as sugar and palm, are taxed at a low rate (*e.g.*, 13.59 pesos per proof liter in 2009), whereas imported distilled spirits are taxed at significantly higher rates (from approximately 10 to 40 times higher). The first meeting of the panel in the dispute took place in November 2010.

Quantitative Restrictions

The Philippine government imposes a TRQ known as the Minimum Access Volume (MAV) system on several agricultural products, including corn, pork, and poultry. Since 2005, the Philippine government has maintained final year MAV levels below its Uruguay Round commitments despite a continued rise in market demand for MAV products.

Since 2002, the Philippine government has maintained a special safeguard (SSG) for out-of-quota chicken imports, which effectively doubles the out-of-quota tariff. In the wake of a series of typhoons in 2009, the Philippine Department of Agriculture temporarily suspended the SSG for 8,000 MT of imported chicken, which contributed to the rise in total poultry imports for 2009 and 2010.

Customs Barriers

The Philippine Bureau of Customs is automating some of its core processes through the Electronic-to-Mobile system, which aims to streamline the payment and permits processes at many Philippine government agencies. The Philippines acceded to the World Customs Organization's Revised Kyoto

Convention in June 2010 but will need to revise its Tariff and Customs Code to achieve compliance with the Convention's provisions.

Despite these efforts, reports of corruption and other irregularities in customs processing persist, including undue and costly delays, continued private sector involvement in the valuation process, the use of reference prices rather than declared transaction values, and customs officials seeking the payment of unrecorded facilitation fees. Some exporters report, for instance, that customs does not recognize their free-on-board prices and instead applies a higher dutiable value based on other information. The U.S. Government will continue to work with the Philippine government to address these issues.

GOVERNMENT PROCUREMENT

Government procurement laws and regulations favor Philippine-controlled companies and locally produced materials and supplies in government procurement. The Government Procurement Reform Act of 2003 aimed 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 remains inconsistent. U.S. companies have expressed concern about delayed procurement decisions, delayed payment, and different interpretations of the procurement law by different Philippine government agencies.

Since 1993, the Philippine government has maintained a countertrade requirement of 50 percent of the price of imports for procurement by government agencies and government-controlled corporations, with penalties for nonperformance of countertrade obligations.

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

EXPORT SUBSIDIES

The Philippines offers a wide array of incentives, such as tax incentives, for export-oriented investment through export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority.

The Philippine government also offers incentives in less-developed economic areas. Companies – including majority foreign-owned companies – may qualify for fiscal incentives for their activities in preferred sectors and geographic areas, as outlined in the Board of Investment's Investment Priorities Plan (IPP). Such incentives include: income tax holidays, tax deductions for wages and some major 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 also enjoy incentives if its projects are classified as "pioneer" under the IPP.

The 2005 WTO trade policy review of the Philippines noted that the Philippines provided tax incentives based on local content requirements under the IPP. Publicly available information regarding the operation of the IPP program indicates that these incentives may still be provided.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Philippines was placed on the Watch List in the 2010 Special 301 report. The United States also conducted an out-of-cycle review in 2010 of the Philippines' IPR protection and enforcement prior to the annual review in 2011. The United States determined on the basis of that review that there were areas of IPR protection and enforcement that continue to represent barriers to U.S. exports and investment. Key issues addressed in the out-of-cycle review included ineffective enforcement of IPR, continued widespread copyright piracy and trademark counterfeiting, and amendments to the patent law that prohibit patents on certain chemical forms unless the applicant demonstrates increased efficacy.

The United States has encouraged the Philippines' ongoing efforts to address inefficiencies in the judicial system, and to establish specialized regional courts with rules designed to improve the legal consistency in rulings so that rights holders have a reliable avenue for recourse and prosecutions move forward effectively and without delay. While welcoming the enactment of an anti-camcording bill, the United States noted that it has not yet been implemented. The United States also encouraged the Philippines to complete its work on legislative reforms needed to strengthen IPR protection, including the implementation of the WIPO Internet Treaties, which have been pending in the Philippine Congress for years.

SERVICES BARRIERS

Basic Telecommunications

Philippine law defines telecommunications services as a public utility, which limits foreign investment 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. The applicability of the public utility designation to value-added services is particularly burdensome and inconsistent with international practice.

Foreign equity in private radio communications is limited to 20 percent, and foreign ownership of cable television and all other forms of broadcasting and media is prohibited.

Financial Services

The Philippines has not ratified the Fifth Protocol to the WTO GATS, which contains its commitments with respect to financial services.

Insurance

Although regulations permit up to 100 percent foreign ownership in the insurance sector, the Philippines only committed to a maximum of 51 percent equity participation in the GATS.

Generally, only the state-owned Government Service Insurance System (GSIS) may provide coverage 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 the GSIS at least to the extent of the government's interest. Private insurance firms, both domestic and foreign, regard this as a significant market access barrier. 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

The Philippines applies restrictions on foreign participation in the banking sector in two tiers. Those foreign banks that meet specific requirements, such as diversified ownership, public listing in the country of origin, and global or national rankings, are limited to 60 percent equity of a locally-incorporated banking subsidiary. However, those banks that do not meet the criteria, as well as non-bank investors, are subject to a lower 40 percent ownership ceiling.

Majority Philippine-owned domestic banks must control at least 70 percent of total banking system assets.

Foreign investments are limited to existing banks due to a central bank moratorium on the issuance of new bank licenses since 1999. Furthermore, foreign banks cannot open more than six branches. As an exception, the four foreign banks operating in the Philippines prior to 1948, which are partially exempt from this limitation, may operate up to six additional branches each.

Financial institutions must set aside loans for certain preferred sectors. The Agri-Agra Law requires banks to earmark at least 25 percent of their loan portfolios for agricultural credit, with at least 10 percent dedicated to agrarian reform program beneficiaries. The Magna Carta for Micro, Small and Medium Enterprises (MSMEs) requires banks to set aside at least 10 percent of their loan portfolios for MSME borrowers. These mandatory lending provisions are more burdensome on foreign banks for a number of reasons, including constrained branch networks and foreign land ownership restrictions that impede their ability to enforce rights over land accepted as collateral.

Securities and Other Financial Services

Foreign equity in securities underwriting and finance companies is limited to 60 percent. With respect to mutual funds, all members of the board of directors must be Philippine citizens, although no foreign ownership restrictions apply. The 2007 Lending Company Regulation Act sets forth majority Philippine ownership for those few classes of 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, as mentioned earlier, not electricity generation), telecommunications, and transport. All executive and managing officers of such 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 broadly to include law, medicine, nursing, accountancy, engineering, 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.

Civil Aviation

The Philippine government imposes the Common Carrier Tax and Gross Philippine Billing Tax on foreign airlines operating in the Philippines. The International Air Transportation Association (IATA) asserts that these taxes are discriminatory, are inconsistent with ICAO resolutions, and have contributed to the departure of some foreign carriers from the Philippine market. The Secretary of Tourism, who assumed office in July 2010, has publicly expressed support for the repeal of certain duplicative taxes on foreign airlines.

INVESTMENT BARRIERS

Significant restrictions apply to foreign investment in the Philippines. The February 2010 updated Foreign Investment Negative List enumerates foreign investment restrictions in two parts -- restrictions mandated by the Constitution or specific laws (List A) and restrictions mandated for reasons of national security, defense, public health, safety, and morals (List B). Collectively, the list outlines sectors in which foreign investment is prohibited (*e.g.*, mass media, practice of professions, small-scale mining) or limited (*e.g.*, natural resource extraction, firearms, explosives). Foreign ownership also is limited to 40 percent in small- and medium-sized enterprises (SMEs) with less than $200,000 in capital. If the SME activity involves advanced technology, or the company employs at least 50 direct employees, the 40 percent ownership restriction applies only to enterprises with $100,000 capitalization or less.

The business community reports that a lack of transparency in regulations and laws also hinders foreign investment in the Philippines. For example, businesses report that their efforts to comply with taxation laws and regulations are frustrated by the lack of clarity and accessibility of tax information. The business community has also expressed concern about weak enforcement of anti-smuggling laws and regulations as an obstacle to investment.

The 1987 Philippine Constitution prohibits foreigners from owning land in the Philippines, but allows for the leasing of land for 50 years with one 25-year renewal. However, establishing clear ownership to lease land is complicated by an ambiguous deed and property system and inefficient judiciary, such that unresolved land disputes can extend for long periods of time. Some U.S. investors report that unresolved land disputes are a particularly significant barrier to investment in the mineral exploration and processing sector.

Trade Related Investment Measures

The Board of Investments imposes a higher export performance requirement for foreign-owned enterprises (70 percent of production) than for Philippine-owned companies (50 percent). Some investors claim that the Philippine government maintains unwritten “trade balancing” requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation scheme.

OTHER BARRIERS

Corruption is a pervasive and longstanding problem in the Philippines. Reports of corruption remain common. Foreign and domestic investors express concern over the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking and about the lack of transparency in these processes. There also are reports of courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce. President Benigno Aquino III, who assumed office in June 2010, ran on a platform of good governance and has vowed to address government corruption as a top priority of his administration.