PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was $403 million in 2008, a decrease of $1.3 billion from $1.7 billion in 2007. U.S. goods exports in 2008 were $8.3 billion, up 7.8 percent from the previous year. Corresponding U.S. imports from the Philippines were $8.7 billion, down 7.4 percent. The Philippines is currently the 31st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the Philippines were $2.0 billion in 2007 (latest data available), and U.S. imports were $2.2 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $2.2 billion in 2006 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $42 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines was $6.7 billion in 2007 (latest data available), down from $7.1 billion in 2006. U.S. FDI in the Philippines is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Tariffs

The Philippines simple average bound tariff was 25.8 percent in 2008, while its simple average applied tariff was 7 percent, according to the Philippine Tariff Commission. The Philippine government has bound all of its agricultural tariffs, but it has bound less than two-thirds of its non-agricultural tariff lines. Among the products that are unbound are autos, chemicals, plastics, textiles, clothing, fish, and paper products. High tariffs are charged on chemical waste, automobiles and motorcycles, and some auto parts. High agricultural tariffs are on citrus, grains, poultry and meat products, and frozen french fries.

Automobile Sector Tariffs

The Philippines government set up a Motor Vehicle Development Program to rationalize the industry and transform it into a regional hub for automotive production. To promote local assembly under the program, tariffs on vehicle components were reduced while tariffs on finished autos and motorcycles subjected to the highest duty rates applied to nonagricultural products. There is a general import prohibition on used cars, although exceptions are granted, including for vehicles imported through Special Economic Zones.

The Philippines imposes a 30 percent tariff on passenger cars, while vehicles for transport of goods, depending on gross vehicle weight, are charged 20 percent to 30 percent; and vehicles for transport of persons, depending on vehicle weight, are charged 15 percent to 20 percent. A 1-percent duty is applied on all completely knocked down kit (CKD) importations by Motor Vehicle Development Program-registered participants, except for CKD intended for the assembly of alternative fuel vehicles, which are duty free. The Board of Investments maintains an Automotive Export Program, under which qualifying imported finished automobiles enter the country at a reduced tariff rate of 10 percent. In addition, the Philippines charges value added-taxes of 12 percent on vehicle imports and excise taxes based on the price of vehicles, with more expensive vehicles taxed at much higher rates.

Safeguards

In response to concerns raised by the United States and other governments in 2007, the Philippines has drafted amendments to the Safeguards Measures Act extending the period to file answers by interested parties from 5 days to 30 days, but these changes have not yet been enacted.

Excise Tax on Distilled Spirits

The Philippines maintains an excise tax regime for distilled spirits that imposes significantly lower excise taxes on locally produced spirits made from indigenous raw materials than it does on imports. The U.S. Government will continue to urge the Philippines to address this issue.

Quantitative Restrictions

The Philippine government imposes a tariff-rate quota (TRQ) on 15 agricultural products, including corn, pork, and poultry. Since 2002, the Philippines has consistently maintained a special safeguard on out-of-quota chicken imports, which effectively doubles the out-of-quota tariff.

The U.S. Government continues to monitor the administration of the TRQ system known as the Minimum Access Volume (MAV) system, which regulates the distribution of import licenses for certain agricultural products, including pork and poultry. The Department of Agriculture announced a review of the MAV system in October 2007, which had been a source of considerable concern to U.S. exporters. In February 2009, the Philippine Department of Agriculture announced the indefinite postponement of any changes to the system.

Customs Barriers

The Philippine government has made progress in improving its customs regime, including implementation of the WTO Agreement on Customs Valuation and taking steps to accede to the World Customs Organization's Revised Kyoto Convention, efforts supported by U.S. technical assistance programs. Reports of corruption and other irregularities persist, however, including undue and costly processing delays, continued private sector involvement in the valuation process, the use of reference prices rather than declared transaction values, and of customs officials seeking payment of unrecorded facilitation fees. The U.S. Government will continue to raise its concerns over these issues to the Philippines.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

The United States is monitoring the Philippine government's application of its Veterinary Quarantine Clearance (VQC) certificate system for meat and poultry imports, as well as its import permit system for fresh vegetables. A VQC certificate must be obtained from the Department of Agriculture's Bureau of Animal Industry before a product leaves the country of origin and is valid for 60 days from the date of issuance, within which time the meat or meat products must be shipped from the country of origin. The Philippine Department of Agriculture Bureau of Plant Industry requires a similar phytosanitary clearance certificate for all imports of fresh fruits and vegetables. Import permits for fruits and vegetables also need to be secured prior to export. The Philippine Fisheries Code permits importation of fresh, chilled, or frozen fish and fish products only when certified as necessary by the Secretary of Agriculture and upon issuance of an import permit by the Department of Agriculture.

The Philippine Department of Agriculture allows the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products, when necessary, undergo a specified cold treatment to control targeted pests. Florida grapefruit and U.S. cherries are permitted, but the United States and the Philippines are still negotiating the import protocols for broccoli, cauliflower, lettuce, carrots, cabbage, and celery. Until the pest risk analysis for these vegetables is completed, the Philippines will allow these products to enter the country only if they are destined for "high-end markets."

In 2006, the Agriculture Department issued new regulations on the accreditation of foreign meat establishments from which meat and meat products are sourced for export to the Philippines. The new guidelines require all exporting countries or individual establishments to obtain either systems or individual accreditation to be eligible as legitimate suppliers. At present, all U.S. meat establishments that are regulated and inspected by the USDA Food Safety and Inspection Service are eligible to export meat and poultry to the Philippines, but the results of the recent audit by Philippine authorities of U.S. meat establishments conducted in July 2008 are still awaited.

GOVERNMENT PROCUREMENT

The Philippines is not a signatory to the WTO Agreement on Government Procurement. The Government Procurement Reform Act of 2003 consolidated procurement laws throughout the government and purported to simplify prequalification procedures, introduce more objective and nondiscretionary criteria in the selection process, and establish an electronic single portal for government procurement activities. However, implementation remains inconsistent. Government procurement laws continue to favor Philippine and Philippine-controlled companies in government procurement.

Since 1993, the Philippine government has maintained a countertrade requirement for procurement by government agencies and government-owned or controlled corporations that set the level of countertrade obligations at a minimum of 50 percent of the price of imports and established penalties for nonperformance of countertrade obligations.

EXPORT SUBSIDIES

Enterprises engaged in activities under the government's Investment Priorities Plan (IPP) may register with the Board of Investments (BOI) for fiscal incentives, including income tax holidays, tax deductions equivalent to 50 percent of the wages of direct-hire workers, and tax and duty exemptions for the importation of breeding stock and genetic materials. BOI-registered firms that locate in less-developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure projects and 100 percent of incremental labor expenses. To qualify for the incentives, enterprises must be at least 60-percent Philippine-owned and export at least 50 percent of their production. Enterprises with less than 60 percent Philippine equity may qualify if they engage in projects listed as "pioneer" under the IPP or they export at least 70 percent of production. Firms in export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority enjoy similar incentives, in addition to simplified trade transaction procedures as well as tax and duty free imports of capital equipment and raw materials.

With the intention of promoting local auto assembly and exports, the Philippine government maintains an Automotive Export Program. This program offers registered automobile manufacturers preferential tariff rates on imports of finished automobiles based on their level of net foreign exchange earnings from their finished vehicle exports.

INTELLECTUAL PROPERTY RIGHTS (IPR)

The Philippines remained on the Special 301 Watch List in 2008, having moved from the Priority Watch List in 2006. Since 2006, the Philippine government has worked to enhance coordination between the various agencies responsible for IPR and to try to step up enforcement efforts. It is beginning to put into place the elements of legislative, regulatory, and judicial reforms needed to build a stronger IPR regime, but the results on the ground are limited so far.

Last year, the Philippine government established an Intellectual Property Research and Training Institute to serve as a center of education, training, and research on intellectual property. An executive order also provided for permanent units to promote, protect, and enforce IPR in various law enforcement agencies and departments of the government, including the Optical Media Board and the intellectual property unit of Customs, although it has not yet been fully implemented because of budgetary issues.

Despite these efforts, the United States continues to have serious concerns about IPR in the Philippines and will continue to raise these concerns with the Philippine government. Key among these concerns are the lack of progress in successfully prosecuting and convicting IPR violators in Philippine courts, the spread of illegal activity to new areas such as camcording and the downloading of copyright material onto mobile devices in retail outlets, and the effect of new pharmaceuticals legislation. U.S. distributors continue to report high levels of piracy of optical discs of films and musical works, computer games, and business software, as well as widespread unauthorized transmissions of motion pictures and other programming on cable television systems. Trademark infringement is also widespread, with counterfeit merchandise openly available.

Intellectual Property Laws

The 1997 Intellectual Property Code provides the basic legal framework for IPR protection in the Philippines. The 2000 Electronic Commerce Act extends this framework to the Internet, although its provisions relating to the rights of copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works are vague. It also contains burdensome restrictions affecting contracts to license software and other technology.

The Philippines is a member of the World Intellectual Property Organization (WIPO) and has acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (known collectively as the WIPO Internet Treaties), which took effect in the Philippines in 2002. However, the Philippine government has not yet enacted necessary amendments to its Intellectual Property Code that would fully implement the requirements of these treaties into domestic law.

In 2008, the Philippine Congress implemented legislation amending the Intellectual Property Code with respect to patent registration for pharmaceuticals, increasing uncertainty in the market for U.S. pharmaceutical companies. The United States will closely monitor implementation of the new legislation.

Enforcement

The United States and U.S. rights holders continue to have serious concerns about the lack of consistent and effective IPR enforcement in the Philippines. While raids and seizures appear to have increased over the past three years, there have been few successful prosecutions in Philippine courts, and cases can remain unresolved for as long as two decades. In 2008, there were only three convictions for IPR crimes in the Philippine court system, according to Intellectual Property Office (IPO) statistics. Of the 20 or so convictions since 2001, most involve relatively small players. No large-scale manufacturer or distributor of pirated optical disks has been convicted. Moreover, some search warrants have been quashed under challenge, with courts frequently releasing suspects and dropping cases on technical grounds.

Given persisting problems with the legal system, IPO's Bureau of Legal Affairs is continuing to develop an administrative process for resolving cases involving intellectual property violations.

SERVICES BARRIERS

Basic Telecommunications

The Philippine Constitution of 1987 limits the operation of certain utilities to firms with at least 60 percent ownership by Philippine citizens. The Philippine government has interpreted telecommunications services as falling within the definition of a public utility, thereby limiting foreign ownership to 40 percent. Foreign firms typically are reluctant to invest in more capital-intensive applications, such as broadband, without majority control, so market entry has been limited. In addition, foreigners are restricted from serving as executives or managers of telecommunications companies, and the proportion of foreign directors in telecommunications companies may not exceed that of the foreign component of a company's capital stock. The United States has urged the Philippines to legally define telecommunications services as outside the definition of utility, as it has done for such services as electricity generation. Foreign equity in private radio communications networks is constitutionally limited to 20 percent. Operation of cable television and other forms of broadcasting and media are also reserved for Philippine nationals.

Financial Services

The Philippines has not yet ratified the Fifth Protocol to GATS, which embodies its obligations under the WTO Financial Services Agreement.

Insurance

Although current regulations permit up to 100 percent foreign ownership in the insurance sector, the Philippines committed in the GATS to a maximum of 51 percent equity participation and grandfathered existing insurers with more than 51 percent foreign equity. 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 interests. Private insurance firms, both domestic and foreign, regard this as a significant trade barrier. Current regulations require all reinsurance companies operating in the Philippines to cede to the industry-controlled National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Banking

There are numerous limitations on foreign participation in the banking sector. The central bank put a moratorium on the issuance of new bank licenses, effective in 1999, to encourage consolidation in the banking system, which in practice has limited foreign investment to existing banks. Majority Philippine-owned domestic banks must at all times, control at least 70 percent of total banking system assets. Foreign banks cannot open more than six branches, and are prohibited from providing full service at those branches they do open. If a bank creates a subsidiary, it may not own more than 60 percent of the equity in that subsidiary. Four foreign-owned banks operating in the Philippines prior to 1948 are partially exempt, and may each operate up to six additional branches.

Existing laws require financial institutions to 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 in general, 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. The mandatory lending provisions are more burdensome on foreign banks for a number of reasons, including their lack of knowledge and experience with these sectors, their constrained branch networks, and constitutionally-mandated foreign land ownership restrictions which impede their ability to enforce security rights over land accepted as collateral.

Securities and Other Financial Services

Foreign equity in securities underwriting companies is limited to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership on a board of directors to Philippine citizens. A 60 percent foreign ownership ceiling applies to financing companies. The Lending Company Regulation Act–signed into law in May 2007, which established a regulatory framework for credit enterprises that do not clearly fall under the scope of existing laws–requires majority Philippine ownership.

Advertising

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

Public Utilities

The Philippine Constitution limits investment in certain sectors deemed to be utilities (including water and sewage treatment, electricity transmission and distribution, telecommunications, and transport) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens.

Practice of Professions

The Philippine Constitution generally reserves the practice of licensed professions (*e.g.*, law, medicine, nursing, accountancy, and engineering, architecture, and customs brokerage services) to Philippine citizens.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a fully Philippine-owned business to provide local delivery services or establish a domestic company with a minimum of 60 percent Philippine equity.

Retail Trade

The Retail Trade Liberalization Act of 2000 limits retail ventures with paid-up capital less than $2.5 million to Philippine nationals. Foreign investment in retail enterprises is permitted if paid-up capital is $2.5 million or more, provided that investment in each retail store established is not less than $830,000. In addition, at least 30 percent of inventory, by value, must be sourced from the Philippines until 2010.

The parent of a foreign company investing in as retail store must have a net worth of over $200 million. Foreign retailers intending to establish retail outlets in the Philippines must own at least five retail stores elsewhere or at least one outlet with capitalization of $25 million or more.

If foreign retail enterprises specialize in high-end or luxury products, the investment required in each retail store is $250,000, and at least 10 percent of their inventory, by value, must be sourced from the Philippines to 2010. The foreign retailer's parent company must also have a net worth of at least $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores. Retail enterprises with foreign ownership exceeding 80 percent of equity are required to offer a minimum of 30 percent of their shares to local investors within 8 years of the start of operations. Prospective foreign investors in the retail sector also face a reciprocity requirement – only nationals from or entities formed or incorporated in countries that allow the entry of Philippine retailers are allowed to engage in retail trade in the Philippines.

INVESTMENT BARRIERS

Significant restrictions apply to foreign investment in the Philippines economy. The 1991 Foreign Investment Act contains two "negative lists" (List A and List B), collectively called the "Foreign Investment Negative List," enumerating the areas in which foreign investment is restricted. The Act requires the government to update the negative list every two years. A new list is scheduled to be released in the first quarter of 2009.

List A reflects foreign investment restrictions mandated by the Constitution or specific laws. The list includes sectors in which investment is reserved for Philippine nationals (*e.g.*, mass media, small-scale mining) and sectors in which foreign equity participation is limited to a certain maximum share (*e.g.*, natural resource extraction, where foreign equity is limited to 40 percent). List B contains limitations on foreign ownership imposed by the executive for reasons of national security, defense, public health, safety, and morals. Sectors covered include explosives, firearms, military hardware, and gaming activities, with foreign ownership generally limited to 40 percent. List B also restricts foreign ownership in certain small- and medium-sized enterprises (firms capitalized at less than $200,000) to 40 percent.

The 1987 Philippine Constitution bans foreigners from owning land in the Philippines. The 1994 Investors' Lease Act allows foreign companies investing in the Philippines to lease land for 50 years, renewable once for another 25 years. Deeds are often difficult to establish and records are poor. The deeds and property infrastructure is full of ambiguities, which makes it difficult to establish clear ownership and to lease land, a situation that is further exacerbated by the fact that the court system does not settle cases in a timely manner. U.S. and other foreign industry consider unresolved disputes regarding land claims constitute a significant barrier to investment in the mineral exploration and processing sector.

Trade Related Investment Measures

In 1999, the Philippine Department of Justice determined that a 1987 executive order mandating the use of locally-produced raw materials by the soap and detergent industry conflicts with the Philippines' obligations under the WTO Agreement on Trade-Related Investment Measures. Nonetheless, it has not repealed this executive order. In addition, regulations governing the provision of Board of Investment-administered incentives impose a higher export performance requirement for foreign-owned enterprises (70 percent of production) than for Philippine-owned companies (50 percent). The Philippines also