PHILIPPINES

In 1996, the U.S. trade deficit with the Philippines was $2.0 billion, an increase of $326 million from the U.S. trade deficit of $1.7 billion in 1995. U.S. merchandise exports to the Philippines were $6.1 billion, an increase of $831 million (15.7 percent) from the level of U.S. exports to the Philippines in 1995. The Philippines was the United States' twenty-first largest export market in 1996. U.S. imports from the Philippines were $8.2 billion in 1996, an increase of $1.2 billion (16.5 percent) from the level of imports in 1995.

The stock U.S. foreign direct investment (FDI) in the Philippines in 1995 was $2.6 billion, an increase of 13.9 percent from the level of U.S. FDI in 1994. U.S. FDI in the Philippines is concentrated largely in the manufacturing and banking sectors.

IMPORT POLICIES

Tariffs and Import Charges

Under the Philippine Government's Comprehensive Tariff Reform Program, Executive Order (E.O.) 264 and E.O. 288 generally lowered tariffs for virtually all product lines in the Tariff Code effective January 1996. This phase-down of tariffs is generally in line with the government's stated goal of moving to a uniform tariff rate of 5 percent by the year 2004. New tariff rates for sensitive agricultural products, including grains, livestock and meat products, sugar, certain vegetables, and coffee, were established under E.O. 313, which took effect in May 1996. These tariff rates reflected tariff bindings resulting from the conversion from non-tariff to tariff protection (i.e., tariffication) under the Uruguay Round Agreement on Agriculture and/or relating to the implementation of current or minimum access commitments.

Republic Act (R.A.) No. 8178 established tariff-rate quotas for those products subject to current or minimum access commitments, including live animals, fresh and chilled beef, fresh, chilled and frozen pork, poultry, and goat meat, potatoes, coffee, corn, and sugar. E.O. 313 established in-quota and out-of-quota tariff rates for these and other products. Out-of-quota rates, which range from 40 to 100 percent, will be lowered in July 1997 and again in July 1999 to a range of 35 to 65 percent.

E.O. 313 significantly raised applied tariff rates on frozen beef and meat products, which had previously been imported without other restrictions. Beef is now subject to a tariff-rate quota, with the out-of-quota rate currently set at 60 percent. These out-of-quota rates are scheduled to be lowered to 40 and 45 percent in July 1999. The tariff rates on most processed meat products, on which no minimum access volume (MAV) or in-quota volumes were established, were raised to 100 percent under E.O. 313, to be phased down to 60 percent by July 1999.

Philippines

Agriculture Tariff-Rate Quotas and Import Licensing

The Philippines is the only WTO member which has not implemented its Uruguay Round market access obligations for pork and poultry. The Phillippines delayed enacting the necessary legislation to implement its agricultural commitments by July 1, 1995, as required and agreed to under the Uruguay Round Agreements. In July 1996, as a result of strong pressure from the United States and other WTO members, the Philippines promulgated regulations necessary to issue import licenses. After three more months of administrative delay, licenses were finally issued in mid-October 1996. The licensees, therefore, had little more than two months in which to import the 1995 and 1996 quota volumes. In addition to the late date of issuance of the licenses, the Philippines issued more than 80 percent of the pork import licenses to domestic pork producers with have little incentive to import U.S. pork, which competes with domestic production. Similarly, over 98 percent of the import licenses for poultry were issued to domestic poultry producers, with less than 2 percent of licenses given to processors/importers. The specific minimum access commitments for pork and poultry in 1995 and 1996 were 49,985 tons for pork and 22,252 tons for poultry. Actual imports of pork and poultry were less than 10 percent of the total 1995/1996 commitment.

Expanded Value-Added Tax

Effective January 1, 1997, amendments to the Philippines expanded value-added tax (EVAT) law formally removed the discriminatory provision against imported meat. Prior to this amendment, the discriminatory treatment was corrected by a February 1996 administrative order instructing the Bureau of Customs to release imported meat without imposing the tax by virtue of an indirect provision in the EVAT law exempting transactions stipulated in international agreements, such as the Uruguay Round.

Excise Tax on Distilled Spirits

U.S. producers of distilled spirits complain that current laws have the effect of subjecting imported distilled spirits to a much higher excise tax than that applied to domestic spirits. Distilled spirits produced from indigenously available materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of eight pesos (30 cents) per proof liter; however, distilled spirits produced from other raw materials (which would apply to most imports) are levied a specific tax ranging from 75 pesos ($2.85) to 300 pesos ($11.40) per proof liter (depending on net retail price per 750 ml bottle).

Quantitative Restrictions

The Philippines implemented its Uruguay Round commitments to replace quantitative and other non-tariff restrictions on agricultural products (except rice) with tariff-only protection effective in May 1996. Under Executive Order 313, effective May 1996, import quota restrictions were lifted and new tariff rates for sensitive agricultural products, including grains, livestock, meat products, sugar, coffee, and certain vegetables, were established. The Philippines retained quantitative restrictions on rice. The rice quota is 65,079 metric tons for 1997 and 68,645 metric tons for 1998, although the country is expected to import considerably more. Rice continues to be imported solely by the National Food Authority.

Customs Barriers

In 1996, the Philippine Government enacted legislation (R.A. 8181) abolishing the use of the Philippines' previous customs valuation practice based on "home consumption value" (HCV), adopting the interim use of "export value" and authorizing a shift to the use of "transaction value" (TV) before the year 2000. While this was welcomed as removing a valuation system previously identified as an unwarranted market access barrier, exporters report continuing problems with how price verification is conducted during the preshipment inspection process, along with practices of the Philippines Customs Bureau under the newly enacted so-called "Brussels Definition of Value," which are not transparent and may conflict with the WTO Agreement on Customs Valuation. The Customs Bureau continues to require a preshipment inspection report ("clean report of findings") issued by the government's contracted customs inspectors for all imports valued at over $500.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Industrial Goods

Local inspection for standards compliance is required for imports of 30 specific products, including lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For other goods, U.S. manufacturers' self-certification of conformance is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal. The Philippines is a signatory of the GATT Standards Code.

Agricultural Goods

Imports of fresh fruit and vegetables, seeds, and other planting material are subject to phytosanitary restrictions. Specific country-of-origin phytosanitary prohibitions for fresh fruit are sometimes arbitrary.

GOVERNMENT PROCUREMENT

The Philippine Government generally does not discriminate against foreign bidders. Competition for contracts in areas of significant interest to U.S. suppliers which are not affected by substantial restrictions include power generation equipment, communications equipment, and computer hardware. However, the Philippine Government does favor domestic firms in public procurement in several sectors and for some specific products. These include rice, corn, pharmaceuticals, and steel materials for infrastructure projects. In addition, petroleum for government agencies must be procured from PETRON, which is government-owned.

EXPORT SUBSIDIES

Enterprises (including exporters) engaged in government-preferred activities may register with the Board of Investment (BOI) to qualify for incentives under the Philippine Omnibus Investment Code. The incentives include income tax holidays, preferential duties for imported capital equipment, tax credits for domestically purchased machinery, and income tax deductions for incremental labor expense. A number of benefits (such as tax credits for imports of raw material and exemption from taxes and duties on imported spare parts) apply specifically to BOI-registered export companies. Export firms in government-designated zones and industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy basically the same incentives as BOI-registered firms.

Firms that export at least 50 percent of production and are registered with the BOI, PEZA, or other government agencies may register under the Export Development Act of 1994 (EDA) for additional incentives available under that law, including: duty-free imports of capital equipment (until 1997); for exporters of nontraditional products, partial tax credit for locally purchased raw materials, equipment, and spare parts (until 1997); tax credit for imported inputs and raw materials not readily available locally (until 1999); and tax credit on incremental annual export revenue. The EDA also provides for the establishment of an Eximbank which will offer preferential and simplified credit schemes to exporters.

In December 1994, the Bangko Sentral launched an Export Development Fund (EDF) facility (the foreign exchange counterpart of its peso rediscounting window).The EDF rates are based on the London Interbank Bid Rate (LIBID) and adjusted periodically. The Bangko Sentral imposes a ceiling on the spread at which financial institutions can re-lend the funds (currently one percent, after applicable taxes).

LACK OF INTELLECTUAL PROPERTY PROTECTION

While some progress has been made in recent years, the Philippines still fails to protect intellectual property rights (IPR) in a consistent and effective manner. Significant problems have included inadequate laws and regulations and insufficient resources for enforcement. In April 1993, a major step forward was taken when the Philippines and the United States signed an agreement to strengthen protection of intellectual property rights in the Philippines. As a consequence, the Philippines was moved from the Special 301 “priority watch list” to the “watch list.” However, recent developments concerning proposed copyright legislation have been a source of concern for the United States and Philippine copyright industry, particularly the software sector. In December 1996, the Philippine Senate passed a version of proposed copyright legislation which includes a provision allowing the decompilation of software programs. Foreign and Philippine software firms are concerned that this allowance is unnecessary and may result in increased piracy of computer programs. The United States is encouraged that the Ramos administration opposes the inclusion of a decompilation provision in the copyright legislation. The United States supports passage of the IPR legislation without the provision for decompilation as soon as possible.

The Philippine Government is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty; it is also a member of the World Intellectual Property Organization and the World Trade Organization. In February 1993, President Ramos created the Interagency Committee on Intellectual Property Rights and charged it with recommending and coordinating enforcement oversight and program implementation. Due to budget constraints, insufficient funding hampers the effective operation of agencies tasked with IPR enforcement. Joint government-private sector efforts have improved administrative enforcement. However, in the past, when IPR owners used the courts to protect their property, enforcement had been slow and uncertain. Moreover, Philippine courts have generally been unwilling to impose deterrent penalties on offenders. Recently, the Philippines moved to name special IPR courts. The Philippine Supreme Court, with Administrative Order No. 113-95, designated 48 courts to handle IPR violations, in an effort to speed adjudication of such cases. The order instructs all judges to terminate "as far as practicable" the trial of IPR cases within 60 days and to render judgment in another 30 days. While a positive step, it remains to be seen if the new courts will, in practice, resolve past problems in providing judicial protection for IPR.

Patents

The present Philippine patent law requires that a compulsory license be issued two years after registration with the Patent, Trademark and Technology Transfer Board if a potential item is not being used in the Philippines on a commercial scale or if domestic demand for the item is not being met to an "adequate extent and on reasonable terms." The requirement could impose a significant burden on patent holders. Other concerns include exceptions for experimental use of patented inventions, government use provisions, "intervening rights" for reissuance of patents, and treatment of plant varieties within the definition of unpatentable inventions.

Trademarks

Although declining, trademark counterfeiting remains widespread in the Philippines. Many well-known international trademarks are copied in many product sectors, including denim jeans, designer shirts, and personal beauty and health care products. Under the terms of the U.S.-Philippine Agreement on the Protection and Enforcement of Intellectual Property Rights, the Philippine Government has sought amendments to the Philippine trademark law to provide protection for internationally well-known marks, but like the other IPR legislation, those amendments have not been passed by the Philippine legislature. Current practice provides that internationally well-known marks should not be denied protection because of non-registration or lack of use in the Philippines.

Copyrights

Piracy of computer software remains a serious problem, leading software owners to organize to protect their rights more effectively. The Philippine Government itself is still a large user of pirated software, though some steps were taken in 1995 to increase purchases of legitimate software by government agencies. Another issue is a presidential decree that permits educational authorities to authorize the reprint of textbooks and other reference material certified by school registrars as required by the curriculum without the permission of the foreign copyright holder if the cost of the material exceeds 250 pesos. Both issues were addressed in the bilateral IPR agreement and should be resolved by the Philippine Government's planned accession to the Berne Convention (Paris Act).

While video piracy is also a problem, the U.S. motion picture industry reports that continuing cooperation with the government's Videogram Regulatory Board (VRB) has had a positive impact. Many copyright infringement complaints have been levied recently against cable television stations that retransmit copyrighted works without authorization from or payment to the copyright owners. To date, Philippine courts have been unwilling to impose penalties which serve as a deterrent for infringement. Often, penalties consist only of the seizure and confiscation of the video cassettes used in the unauthorized cable broadcast.

Philippines

Copyright protection for sound recordings, currently 30 years, is shorter than the internationally accepted norm of 50 years. This problem should be resolved through Philippine implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which provides for a minimum of 50 years copyright protection. In addition, Philippine law is overly broad in allowing the reproduction and adaption of translated published works without the authorization of the copyright owner.

SERVICES BARRIERS

Basic Telecommunications

In the recently concluded WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecom services and adopted some pro-competitive regulatory principles. The Philippines retained a 40 percent foreign ownership limit on telecom services, and did not provide market access or national treatment for satellite services. In addition, the Philippines made no commitment regarding resale or leased circuits/closed user groups.

Insurance

The insurance sector has remained open to majority foreign ownership following the deletion of foreign investment “Negative List C” (i.e. “adequately served” sectors) from the Philippines’ Foreign Investment Act in 1996. Therefore, foreign entry is no longer a barrier.

After being closed for nearly 30 years, the insurance sector was opened to new, 100 percent foreign-owned companies starting October 1994. As a general rule, only the Government Service Insurance System may provide insurance coverage for government-funded projects. To the further detriment of private insurance firms (whether domestic or foreign), a 1994 administrative order extended this requirement to build-operate-transfer (BOT) projects.

Banking

A law signed in May 1994 relaxed banking restrictions in place since 1948. A foreign investor can now enter either on a wholly owned branch basis, or own up to 60 percent (up from 30 percent) of an existing or new locally incorporated banking subsidiary. There is no legal limit on the number of entrants by the latter two modes. However, the new law allows only ten new foreign banks entry on a full service, branch basis (in addition to the four foreign branch banks established before 1948). The new foreign banks are also limited to putting up six branches each. Ten foreign banks were selected in late 1994 out of approximately 25 applications for the 100 percent branch basis license. These banks have already entered the market. A number of banks also have already entered the market by putting up majority foreign-owned, locally incorporated subsidiaries.

Securities and Other Financial Services

Membership in the Philippine Stock Exchange is open to any company (foreign or domestic) incorporated in the Philippines, while foreign equity in mutual fund and trust management firms is limited to 40 percent.

The revised banking law now allows a foreign branch bank to obtain a "universal banking" license (which was previously limited to Philippine-controlled commercial banks). This will allow a foreign branch bank to engage in the activities of an investment house (primarily securities underwriting for the domestic market), in addition to regular commercial banking functions. The current law governing investment houses continues to impose limitations on foreign equity in securities underwriting companies (i.e., less than 50 percent). A foreign-owned securities underwriting firm may underwrite Philippine issues for foreign markets, but not for the domestic market. Current laws also limit foreign ownership of financing companies to 40 percent. Although there are no foreign ownership restrictions governing shares of mutual funds, current law restricts membership in the board of directors to citizens of the Philippines.

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 specifically limits the operation of public utilities to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises should be Philippine citizens.

Practice of Professions

As a general rule, the Philippine constitution reserves the practice of licensed professions (i.e., law, medicine, nursing, accountancy, engineering, etc.) for Philippine citizens.

INVESTMENT BARRIERS

The Philippine Government has taken important steps in recent years to welcome foreign investment. These include foreign exchange liberalization and more liberal foreign ownership regulations for enterprises not seeking investment incentives. Effective January 1997, the Bangko Sentral lifted previous restrictions on peso borrowing applied to enterprises more than 40 percent foreign owned (which used to be subject to requirements that certain debt-to-equity ceilings be maintained over the term of the debt). Land ownership, however, remains limited to entities that are at least 60 percent Filipino.

The 1991 Foreign Investment Act (FIA) is more liberal than its predecessors. It allows foreign equity in Filipino enterprises to exceed 40 percent, provided no investment incentives are sought and provided the company does not engage in an activity that appears on the two-part "negative" list. This list has two parts. The "A" list restricts foreign investment in certain areas because of either legal and constitutional constraints. Included are mass media, advertising, public utilities, most licensed professional services (accounting, for example) and retail trade. The "B" list is composed of activities regulated for reasons of security, defense, health, and moral concerns, and to protect small and medium-scale enterprises. The FIA requires a minimum paid-up capital of $200,000 for an enterprise to be more than 40 percent foreign-owned. The FIA’s "C" list (activities deemed "adequately served" by existing enterprises) was abolished following March 1996 amendments to the FIA.

Enterprises engaged in preferred activities listed in the BOI annual investment priorities plan must register with the BOI to qualify for tax and non-tax incentives. An enterprise seeking incentives must be no more than 40 percent foreign-owned, unless the proposed activity is classified as “pioneer,” or at least 70 percent of production is for export, or the enterprise locates in areas classified by the government as less developed. The enterprise must agree to divest to a maximum of 40 percent foreign ownership within 30 years from registration with the BOI, unless the enterprise exports 100 percent of production. Currently, the BOI strictly specifies industry-wide local content requirements under the government's progressive manufacturing program for automobiles. Current guidelines also specify that participants in this program generate, via exports, a certain ratio of the foreign exchange needed for import requirements. The government has issued guidelines to phase out these trade-related investment measures by the year 2000.

As a general policy, the Department of Labor allows the employment of foreigners provided there are no qualified Philippine nationals for the position. However, the employer must train Filipino understudies and report on such training periodically. Employees of foreign-owned firms registered with the BOI may retain the positions of president, treasurer, and general manager or their equivalents.

The Philippines has taken significant steps since 1992 to deregulate its foreign exchange system, leading to the full convertibility of current account transactions. Except for some remaining restrictions on foreign investment and foreign debt, the government has also lifted most restrictions on capital account transactions. Current regulations allow the full and immediate repatriation of capital and remittance of profits without the Bangko Sentral's prior approval (including investments made under the government's debt-to-equity swap program).The Philippine government continues to impose a ceiling on the amount of foreign exchange which can be purchased from the banking system for investment abroad. In September 1995, the Bangko Sentral announced that the country had officially joined the ranks of “Article VIII” International Monetary Fund (IMF) member countries, indicating its commitment to an open and liberal foreign exchange and payments regime.

OTHER BARRIERS

Through its Technology Transfer Board, the Philippines reserves the right to require that licensing agreements involving the use of foreign patent or trademarks include technology or economic benefits for the Philippines. Such technology benefits may include establishing local research and development facilities. Economic benefits are defined, inter alia, as a significant contribution to the national export promotion program and the generation of foreign exchange earnings or savings and employment. Implementation of the guidelines is discretionary but can result in the imposition of performance requirements. Technology transfer limitations on royalties and exports apply to unpatented technology protected as trade secrets as well as to patented technology.