

*May 15, 2016 – Final*

**Philippines TPP Accession:  
SPS, SOEs, Cooperation, Trade in Goods, and Trade in Services**

**International Economic Law Practicum  
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## **Executive Summary**

This report will analyze the implications of the Philippines acceding to the Trans-Pacific Partnership Agreement (TPP). This report will specifically address the effects of sections of the TPP on sanitary and phytosanitary measures (SPS), state-owned enterprises (SOEs), cooperation and capacity building, the trade in services, and the trade in goods. Ultimately, this report concludes that accession to the TPP would implicate a series of necessary changes to the SPS measures and SOEs of the Republic of the Philippines. The agreement would also offer some opportunities for cooperation and capacity building. Finally, the TPP would implicate some changes to the Philippine trade in services regulatory regimes, and would offer reduced tariffs on certain Philippine exports of goods.

First, SPS measures are laws, regulations, and other measures that apply to international trade in order to protect human, animal or plant health. Under the TPP Parties' pre-existing WTO commitments, all SPS measures must be science-based, including international scientific standards or an assessment of risk. WTO Members must also ensure that the measures do not arbitrarily or unjustifiably restrict international trade. The TPP does not alter these standards. However, the TPP creates new requirements to ensure that Parties' adoption of SPS measures is efficient and transparent. The Philippines would largely need to implement new regulatory reforms to ensure that their regime meets these requirements.

Second, the SOE chapter of the TPP is inconsistent with the National Food Authority (NFA)'s current role in Philippine society. Contrary to the TPP, the NFA does not take commercial considerations into account in the purchase and sale of rice, discriminates in purchasing from foreign producers, provides noncommercial assistance to Philippine farmers, and sets import prices. To accede to the TPP, the Philippines must adapt the role that the NFA

plays in Philippine society to the TPP guidelines or negotiate a carve-out from the majority of SOE provisions. Vietnam negotiated a similar carve-out for its SOEs in its accession protocol, so the Philippines may succeed in preserving the NFA.

Third, while the TPP does not guarantee cooperation and capacity building initiatives for its Parties, it does establish a framework and committee to regularly discuss such programs. In previous trade agreements, similar frameworks and committees have proven to effectively facilitate cooperation and capacity building. The TPP also does not guarantee financial assistance, so the Philippines must negotiate financial assistance as a condition of its accession. Finally, although the TPP does not impose hard obligations related to cooperation and capacity building, the Philippines should also consider various other international and governmental programs that may facilitate cooperation and capacity building.

Fourth, this report reviews the obligations regarding cross-border trade in services, market access inscription procedures, and domestic regulation of cross-border trade in services are reviewed. Domestic regulatory regimes of the Philippines regarding telecommunications and financial services are analyzed and found to be largely in compliance with the TPP. However, the Philippines must enact reforms to its investment regulatory regime in order to comply with the national treatment provisions of the TPP. These reforms may require the Philippines to amend its constitution, so the Philippines should also consider negotiating a reservation to the TPP for its investment regime.

Fifth, statistical analysis provided by the International Trade Commission on Philippine trade flows reveals that the Philippines could benefit most from tariff rate reductions in trade with Canada. Canadian tariffs on clothing and agricultural products remain high. Likewise, although the Philippines benefits from preferential tariffs for developing countries, these benefits

may not be permanent. In return, Canada would likely ask the Philippines to make cuts to its tariffs on raw materials, crops, and meat products.

The Philippines already receives largely favorable tariff rates from the United States and Japan. The United States and Japan will also likely ask the Philippines to reduce its tariffs on meat, alcohol, and automobiles. However, the Philippines could benefit from rate reductions on exports of bananas to Japan, and exports of clothing to the United States.

In conclusion, we would like to thank Prof. Kuhlmann, Prof. Pauwelyn, Prof. Hillman, Gladys Bagasin, Jonathan Coleman, and the participants of Georgetown International Economic Law Practicum for their support and helpful comments.

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## **SPS Analysis**

Sanitary and phytosanitary (SPS) measures are applied to international trade to protect human, animal or plant life. Under the WTO, Parties are already obligated to base SPS measures on scientific analysis, including international scientific standards or an assessment of risk. In addition, WTO Parties are prohibited from using SPS measures to arbitrarily or unjustifiably restrict trade.

The TPP does not alter the standards for assessing the justifiability of SPS measures, including the standards for assessing conformity to scientific standards or risk assessments. The TPP also does not alter the standard for determining whether measures arbitrarily or unjustifiably restrict trade. However, the TPP creates new requirements to ensure that Parties adopt SPS measures efficiently and transparently.

Recently, the Philippines launched an effort to reform its regulatory agencies.<sup>1</sup> Many of the reforms necessitated by the TPP could, therefore, be enacted concurrently with these ongoing regulatory reforms. If the Philippines chooses to accede to the TPP, the Philippines should attempt to enact changes necessitated by the TPP as part of this ongoing effort.

### **I. Relationship with WTO**

The TPP is a multilateral regional trade agreement, and Parties' commitments under the TPP overlap with Parties' prior commitments under the WTO. The TPP, however, contains additional provisions on Sanitary and Phytosanitary (SPS) Measures, which are measures applied to protect human, plant or animal life. The TPP also covers the same scope of SPS measures as

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<sup>1</sup> Conversation with Segfredo Serrano, Undersecretary of Policy, Planning, Research & Development and Regulations, held at the Embassy of the Philippines in Washington, DC (Mar. 15, 2016).

the Agreement on Sanitary and Phytosanitary Measures and directly incorporates the Parties' pre-existing commitments under the SPS Agreement.<sup>2</sup>

## II. Risk Analysis

Under Article 5 of the SPS Agreement, Parties must base their measures on an assessment of risk as determined by scientific evidence.<sup>3</sup> The TPP incorporates Article 5 of the SPS Agreement by reference.<sup>4</sup> The TPP therefore also requires Parties to base their risk assessments on guidance from WTO SPS Committee.<sup>5</sup>

The United States has protested the Philippines' import regulations for frozen meat, arguing that the regulations do not conform to an assessment of risk.<sup>6</sup> Other countries have similarly argued that the Philippines' pest risk assessment is too lengthy and burdensome.<sup>7</sup> Since the TPP does not affect the standard for assessing risk, the Philippines must continue to address these issues.

The TPP also creates additional procedural requirements for Parties. According to the TPP, the importing Party must provide the exporting Party with an explanation of the information required for the risk assessment.<sup>8</sup> The importing Party must also inform the exporting Party of the progress of the risk assessment.<sup>9</sup>

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<sup>2</sup> Trans-Pacific Partnership Agreement (TPP) art. 7.3; *id.* at art. 7.4.

<sup>3</sup> The Agreement on Sanitary and Phytosanitary Measures art. 5, Jan. 1, 1995, 1867 U.N.T.S. 493 [hereinafter Agreement on SPS].

<sup>4</sup> TPP art. 7.9.2; *id.* at art. 7.9.4.

<sup>5</sup> *Id.* at art. 7.9.2.

<sup>6</sup> 2014 Report on Sanitary and Phytosanitary Measures, U.S. TRADE REPRESENTATIVE, [https://ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled\\_0.pdf](https://ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled_0.pdf). The Philippines has argued that frozen meat and newly slaughtered meat should be regulated separately, and that frozen meat should be subject to more stringent import restrictions. The United States has disagreed, pointing out that the majority of the meat imported into the Philippines is frozen. Conversation with Segfredo Serrano, Undersecretary of Policy, Planning, Research & Development and Regulations, held at the Embassy of the Philippines in Washington, DC (Mar. 15, 2016).

<sup>7</sup> RENEE JOHNSON, CONG. RESEARCH SERV., R43450, SANITARY AND PHYTOSANITARY (SPS) AND RELATED NON-TARIFF BARRIERS TO AGRICULTURAL TRADE 49 (Mar. 31, 2014).

<sup>8</sup> TPP art. 7.9.7.

<sup>9</sup> *Id.* at art. 7.9.8.



The Philippines does not explain its requirements for a risk assessment, nor has the Philippines informed exporting Parties of the progress of its risk assessment. The United States alleges that the Philippines lacks transparency on these issues in regard to its import regulations on frozen meat.<sup>10</sup> The Philippines would therefore need to address this controversy.

### **III. Competent Authorities and Contact Points**

The SPS Agreement requires each Member to establish an enquiry point, which is an agency responsible for responding to questions from other Members on SPS regulations. Under the TPP, however, each Party must provide other Parties with a list of all competent authorities with responsibilities in SPS, not merely the established enquiry point. Each Party must also provide other Parties with a list of contact points within each of those authorities. These lists must be delivered no less than 60 days after the entry of the agreement into force.<sup>11</sup>

There are twelve competent authorities with responsibilities in sanitary and phytosanitary measures in the Philippines. Most of these authorities are within the Department of Agriculture, including the Office of the Undersecretary for Policy and Planning, the Bureau of Plant Industry, the Bureau of Animal Industry, the National Meat Inspection Service, and the Bureau of Fisheries and Aquatic Resources.<sup>12</sup> The Philippines has already provided WTO Members with the contact information of the National Enquiry Point, which is a component of the Office of the Undersecretary of Agriculture for Policy and Planning.<sup>13</sup> In order to accede, the Philippines

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<sup>10</sup> 2014 Report on Sanitary and Phytosanitary Measures, U.S. TRADE REPRESENTATIVE, [https://ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled\\_0.pdf](https://ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled_0.pdf)

<sup>11</sup> TPP art. 7.6.

<sup>12</sup> Maribel Marges and Kees Van De Meer, *Implementing SPS measures to facilitate safe trade in the Philippines: Country study conducted for the Standards and Trade Development Facility (STDF)*, STANDARDS AND TRADE DEVELOPMENT FACILITY, at 9. The Office of the Undersecretary for Policy and Planning serves a coordinating role for the SPS regulatory regime. The Bureau of Plant Industry inspects and quarantines plant imports. The Bureau of Animal Industry controls the import of animal disease. The National Meat Inspection Service ensures food safety for animal products. The Bureau of Fisheries and Aquatic Resources ensures food safety for fisheries products. *Id.* at 9.

<sup>13</sup> *Id.* at 9.

would need to provide other Parties with a full list of authorities and a list contact points for each of the authorities.

However, the Philippines has expressed concern about its ability to coordinate contact points in multiple authorities.<sup>14</sup> The Undersecretary of Agriculture for Policy and Planning, who is currently the head of the National Enquiry Point under the WTO, believes that providing other Parties with contact information of multiple competent authorities will lead to confusion within the SPS regulatory regime.<sup>15</sup> In order to successfully implement this requirement, the Philippines would need to overhaul coordination between its authorities. Since the Philippines is already engaged in the process of regulatory reform, the Philippines should ideally attempt to address this issue as part of the ongoing reforms.

#### **IV. Adaptation to Regional Conditions**

The SPS Agreement requires Parties to adapt their measures to regional conditions. Parties to the SPS Agreement must allow imports from areas or regions within an exporting country if the areas or regions are free of pests and diseases.<sup>16</sup> The SPS Agreement requires the Parties to analyze regional conditions based on “geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.”<sup>17</sup>

The TPP creates additional procedural requirements for Parties regarding regional conditions. Under the TPP, Parties must communicate to each other when they adopt new measures regarding regional conditions.<sup>18</sup> Additionally, when an exporting Party requests that an importing Party determine regional conditions, the importing Party must respond within a

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<sup>14</sup> Conversation with Segfredo Serrano, Undersecretary of Policy, Planning, Research & Development and Regulations, held at the Embassy of the Philippines in Washington, DC (Mar. 15, 2016).

<sup>15</sup> *Id.*

<sup>16</sup> Agreement on SPS, *supra* note 3, at art. 6.1.

<sup>17</sup> *Id.* at art. 6.2.

<sup>18</sup> TPP art. 7.7.6.

reasonable period of time.<sup>19</sup> The importing Party must also inform the exporting Party of the status of its investigation upon request.<sup>20</sup> Finally, Parties must explain their processes for determining regional conditions to each other upon request.<sup>21</sup>

The WTO's Trade Policy Review Body has not expressed concern about the Philippines' approach to adapting to regional conditions in its Trade Policy Review.<sup>22</sup> Moreover, the United States, Japan and Canada also have not expressed concern. The Philippines' policies on regional conditions therefore will likely not affect its potential accession to the TPP.

## **V. Equivalence**

The TPP incorporates the SPS Agreement's requirement that Parties' criteria for determining equivalence be based on the WTO SPS Agreement and other international standards, guidelines, and recommendations.<sup>23</sup> In addition to the requirements in the SPS Agreement, the TPP also mandates that equivalence determinations must be based on "available knowledge, information and relevant experience, as well as regulatory competence of the exporting Party."<sup>24</sup>

The SPS Agreement requires Parties to base equivalency determinations on whether the measures "achieve the importing Member's appropriate level of sanitary and phytosanitary measures."<sup>25</sup> The TPP has more specific criteria. The ultimate criteria for a determination of equivalency under the TPP is whether the exporting Party's measure (1) "achieves the same level

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<sup>19</sup> *Id.* at art. 7.7.4.

<sup>20</sup> *Id.* at art. 7.7.6.

<sup>21</sup> *Id.* at art. 7.7.5.

<sup>22</sup> WTO SECRETARIAT, *WTO Trade Policy Review, The Philippines, Economic Environment*, WTO Doc. WT/TPR/S/261 (2012).

<sup>23</sup> TPP art. 7.8.1.

<sup>24</sup> *Id.* at art. 7.8.5.

<sup>25</sup> Agreement on SPS, *supra* note 3, art. 4.

of protection as the importing Party’s measure” or (2) “has the same effect in achieving the objective as the importing Party’s measure.”<sup>26</sup>

Japan, the United States and Canada have not yet determined that any of the Philippines’ SPS procedures are equivalent to their own. If the Philippines accedes to the TPP and wishes to gain equivalency with the United States, Japan or Canada, the Philippines would need to conform to the TPP’s equivalency standards. However, the Philippines has not indicated a desire to gain equivalency with the United States, Japan or Canada.

The TPP also creates new procedural criteria for the process of asking another country for a determination of equivalence. The only procedural requirement in the SPS Agreement stipulates that Parties enter into consultations on equivalency determinations upon request.<sup>27</sup> Under the TPP, however, an importing Party must respond to a request for equivalence by an exporting Party within a reasonable period of time.<sup>28</sup> Upon request, the importing Party must also explain its process for determining equivalency to the exporting Party.<sup>29</sup> The importing Party must also notify the exporting Party of its decision within a reasonable period of time.<sup>30</sup> If the importing Party declines to grant equivalency, the importing Party must provide the exporting Party with the rationale for its decision.<sup>31</sup>

The Philippines has already granted equivalency to the United States, Japan and Canada for some products. Although the Philippines would need to bring its process for granting equivalency into compliance, the TPP would therefore not significantly alter its relations with the United States, Japan or Canada.

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<sup>26</sup> TPP art. 7.8.6.

<sup>27</sup> Agreement on SPS, *supra* note 3, art. 4.

<sup>28</sup> TPP art. 7.8.3.

<sup>29</sup> *Id.* at art. 7.8.4.

<sup>30</sup> *Id.* at art. 7.8.7.

<sup>31</sup> *Id.* at art. 7.8.9.

If the Philippines wished to request a determination of equivalency from any TPP country, the Philippines could benefit from the procedural requirements in the TPP. However, the Philippines has not indicated that it intends to request any such determinations.

## **VI. Audits**

The SPS Agreement does not contain any provisions on audits. The TPP, however, standardizes the importing Parties' mechanisms to audit the SPS controls of an exporting Party.<sup>32</sup> The TPP grants each importing Party the right to audit the SPS controls of an exporting Party.<sup>33</sup> Audits must be systems-based and must be designed to check the effectiveness of the regulatory controls.<sup>34</sup>

The importing Party must also give the exporting Party the opportunity to comment on the findings of the audit, and the importing Party must take these comments into account before taking any action.<sup>35</sup> Any action taken as a result of an audit must be based on “objective evidence and data that can be verified”<sup>36</sup> and must conform to the Parties' WTO commitments.<sup>37</sup>

The WTO does not grant countries the right to conduct audits nor does it require countries to respond to requests for audits. The Philippines has not implemented policies addressing either of these issues.<sup>38</sup> The Philippines would need to create such policies in order to accede to the TPP.

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<sup>32</sup> TPP art. 7.10.

<sup>33</sup> *Id.* at art. 7.10.1.

<sup>34</sup> *Id.* at art. 7.10.2.

<sup>35</sup> *Id.* at art. 7.10.5.

<sup>36</sup> *Id.* at art. 7.10.6.

<sup>37</sup> TPP art. 7.10.3.

<sup>38</sup> WTO SECRETARIAT, *WTO Trade Policy Review, The Philippines, Economic Environment*, WTO Doc. WT/TPR/S/261 (2012).

## **VII. Import Checks**

The TPP regulates how Parties may prohibit or restrict the importation of goods as a result of adverse import checks.<sup>39</sup> The SPS Agreement contains no such provisions. Under the TPP, Parties prohibiting or restricting the importation of goods as a result of an adverse import check must notify the affected exporting Parties within seven days.<sup>40</sup> The importing Party must include with its notification (1) the reason for the prohibition or restriction, (2) the legal basis for the prohibition or restriction, and (3) information on the status of affected goods.<sup>41</sup>

Importing Parties prohibiting or restricting the importation of goods as a result of an adverse import check must also provide exporting Parties with the opportunity to review the decision and submit information related to the review.<sup>42</sup>

The WTO has not expressed concern about the Philippines' approach to import checks.<sup>43</sup> The United States, Japan and Canada also have not expressed concern. The Philippines' policies on import checks will likely not affect its potential accession to the TPP.

## **VIII. Certification**

The SPS Agreement does not contain certification provisions. SPS certifications include veterinary certificates and other health and safety documentation. The TPP, however, standardizes criteria for importing Parties to issue SPS certificates to exporting Parties.<sup>44</sup> Under the TPP, Parties must only certify goods to the extent necessary to protect human, plant or animal life.<sup>45</sup> Therefore, Parties need not require any information for certification that is not

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<sup>39</sup> TPP art. 7.11.

<sup>40</sup> *Id.* at art. 7.11.6; *id.* at art. 7.11.7.

<sup>41</sup> *Id.* at art. 11.7.

<sup>42</sup> *Id.* at art. 7.11.8.

<sup>43</sup> WTO SECRETARIAT, *WTO Trade Policy Review, The Philippines, Economic Environment*, WTO Doc. WT/TPR/S/261 (2012).

<sup>44</sup> TPP art. 7.12.

<sup>45</sup> *Id.* at art. 7.12.2.

relevant to protecting human, plant or animal life.<sup>46</sup> The Parties are also encouraged, but not required, to develop model certificates.<sup>47</sup>

The WTO has not expressed concern about the Philippines' approach to certification.<sup>48</sup> The United States, Japan and Canada also have not expressed concern. The Philippines' policies on certification will likely not affect its potential accession to the TPP.

## **IX. Transparency**

The TPP has more specific transparency requirements than the SPS Agreement. Like the SPS Agreement, the TPP requires Parties to notify each other of proposed changes to SPS measures that have a significant effect on the trade of other Parties.<sup>49</sup> Notifications must be submitted through the WTO SPS Notification System.<sup>50</sup> Under the TPP, Parties are also obligated to notify each other of such proposed changes.<sup>51</sup> However, parties also must make legal justifications for any changes available to the public.<sup>52</sup> In addition, they must make risk assessments available to each other upon request.<sup>53</sup>

Since the entry into force of the SPS Agreement, the Philippines has reliably notified the WTO of proposed changes to its SPS regulations. The Philippines has submitted 350 such notifications since 1995.<sup>54</sup> The Philippines would therefore not need to amend or change its protocol for notifying the WTO.

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<sup>46</sup> *Id.* at art. 7.12.4; *id.* at art. 7.12.5.

<sup>47</sup> *Id.* at art. 7.12.6.

<sup>48</sup> WTO SECRETARIAT, *WTO Trade Policy Review, The Philippines, Economic Environment* WTO Doc. WT/TPR/S/261 (2012).

<sup>49</sup> Agreement on SPS, *supra* note 3, art. 7.

<sup>50</sup> *Id.* at art. 7.

<sup>51</sup> TPP art. 7.13.3.

<sup>52</sup> *Id.* at art. 7.13.5.

<sup>53</sup> *Id.* at art. 7.13.6.

<sup>54</sup> Marges and Van De Meer, *supra* note 12, at 9.

However, the Philippines does not release its legal justifications to the public, nor does the Philippines make its risk assessments available upon request.<sup>55</sup> The Philippines therefore must alter its procedures in order to comply with the TPP. The Philippines would also likely need to update its agency websites in order to better communicate relevant information.<sup>56</sup>

Likewise, after the Parties submit a notification, they must allow at least 60 days for other interested Parties to submit written comments.<sup>57</sup> The Parties must respond to all of the written comments.<sup>58</sup> The Philippines does not always permit other Parties to submit written comments within 60 days, nor does the Philippines respond to all written comments.<sup>59</sup>

Under the TPP, Parties are also obliged to notify the contact points of other Parties of (1) significant SPS risks in the exporting Party, (2) urgent situations in animal or plant health in the exporting Party, (3) significant changes to regionalized pests or disease, (4) new scientific findings on food safety, pests or disease, or (5) significant changes to their food safety, pest, disease or eradication policies.<sup>60</sup> The Philippines would need to implement policies to address these notification requirements.

When a measure is finalized, the Party must make the final measure available to the public and through the WTO SPS notification submission system.<sup>61</sup> If feasible, the final measure should not go into effect until at least six months after its publication.<sup>62</sup> If a Party altered the final measure from the proposed measure, the Party must include in the final notice (1) an explanation

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<sup>55</sup> *2014 Report on Sanitary and Phytosanitary Measures*, U.S. TRADE REPRESENTATIVE, [https://ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled\\_0.pdf](https://ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled_0.pdf). The USTR has not made risk assessment on frozen meat available to the United States.

<sup>56</sup> See Marges and Van Der Meer, *supra* note 12, at 9.

<sup>57</sup> TPP art. 7.13.4.

<sup>58</sup> *Id.* at art. 7.13.4.

<sup>59</sup> WTO SECRETARIAT, *Committee on Sanitary and Phytosanitary Measures Notification*, WTO Doc. G/SPS/N/PHL/320, <https://docs.wto.org/imrd/directdoc.asp?DDFDocuments/t/G/SPS/NPHL320.DOC> (Feb. 3, 2016).

<sup>60</sup> TPP art. 7.13.11.

<sup>61</sup> *Id.* at art. 7.13.8-9.

<sup>62</sup> *Id.* at art. 7.13.12.



of the rationale of the measure, (2) an explanation of how the measure advances that rationale, and (3) the substantive revisions made to the proposed measure.<sup>63</sup>

The Philippines continuously submits information to the WTO SPS notification submission system.<sup>64</sup> However, the the Philippines needs to adapt its policies to ensure the submission of information related to final notices; this change will not pose significant barriers to the Philippines' accession to the TPP.

The Philippines may have difficulty implementing the necessary changes. Under the existing regulatory regime, some SPS authorities are restricted from changing their transparency requirements.<sup>65</sup> The Department of Agriculture, for example, cannot issue transparency orders without the permission from the committee overseeing its budget. This committee is primarily comprised of representatives from private industry.<sup>66</sup>

However, these transparency requirements are among the most important requirements in the TPP. If the Philippines chooses to accede to the TPP, the Philippines therefore must address these issues. The Philippines should ideally attempt to incorporate reform of SPS transparency into its ongoing regulatory reforms.

## **X. Emergency Measures**

The SPS Agreement has no provisions on emergency measures. However, the TPP creates procedures for the adoption of emergency SPS measures.<sup>67</sup> Under the TPP, Parties must promptly notify each other of the adoption of emergency measures.<sup>68</sup> Parties do not have to

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<sup>63</sup> *Id.* at art. 7.13.10.

<sup>64</sup> *WTO SPS Notification System*, WORLD TRADE ORGANIZATION, <http://spsims.wto.org/>.

<sup>65</sup> Conversation with Segfredo Serrano, Undersecretary of Policy, Planning, Research & Development and Regulations, held at the Embassy of the Philippines in Washington, DC (Mar. 15, 2016).

<sup>66</sup> *Id.*

<sup>67</sup> TPP art. 7.14.

<sup>68</sup> *Id.* at art. 7.14.2.

respond to all comments on emergency measures, but they must take into consideration the responses of other Parties.<sup>69</sup>

Since the entry into force of the SPS Agreement, the Philippines has reliably notified the WTO and other Parties of the adoption of emergency measures. The Philippines also has designated authorities within the Department of Agriculture to respond to comments on the adoption of emergency measures.<sup>70</sup> The Philippines would therefore not need to enact any new regulations to comply with these provisions.

Parties must also review emergency measures after six months to assess the scientific basis.<sup>71</sup> If the Party leaves the emergency measure in place after six months, the Party must continue to review the measure periodically.<sup>72</sup> The Philippines has not notified the WTO of any reviews of emergency measures.<sup>73</sup> The Philippines therefore must implement a system for reviewing emergency measures after six months and periodically thereafter.

## **XI. Cooperative Technical Consultations**

In the TPP, cooperative technical consultations (CTCs) are a mechanism through which Parties may initiate discussions on matters affecting trade.<sup>74</sup> No Party may seek recourse for a matter under dispute settlement without first attempting to resolve the matter through CTCs.<sup>75</sup> If a Party receives a request for CTCs, the Party must respond within seven days to discuss the matter.<sup>76</sup> All Parties involved in CTCs should aim to resolve the matter within 180 days.<sup>77</sup>

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<sup>69</sup> *Id.* at art. 7.14.2.

<sup>70</sup> These authorities are the National Enquiry Point and National Notification Authority. *See* Marges and Van De Meer, *supra* note 12, at 9.

<sup>71</sup> TPP art. 7.14.2.

<sup>72</sup> *Id.* at art. 7.14.2.

<sup>73</sup> *WTO SPS Notification System*, WORLD TRADE ORGANIZATION, <http://spsims.wto.org/>.

<sup>74</sup> TPP art. 7.17.2.

<sup>75</sup> *Id.* at art. 7.17.8.

<sup>76</sup> *Id.* at art. 7.17.4.

<sup>77</sup> *Id.* at art. 7.17.4.

CTCs are a new mechanism for dispute resolution in the TPP, and no similar mechanism exists under the SPS Agreement.<sup>78</sup> The Philippines therefore must create new protocols for participating in the CTC regardless of their current policies.

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<sup>78</sup> See Agreement on SPS, *supra* note 3.

## **SOEs Analysis**

The TPP is an unprecedented free trade agreement, because it requires stricter controls on the operations of state-owned enterprises (SOEs). The TPP regulates the behavior of SOEs that are engaged in commercial activity with a primary purpose of protecting private actors.<sup>79</sup> An examination of the primary SOE commitments elucidates likely effects of accession to the TPP agreement on the Philippines National Food Authority (NFA). First, this analysis provides an overview of the NFA and its role of Philippine society. Then, this analysis demonstrates that the NFA is an SOE under the TPP, and details the provisions thus governing the NFA under the TPP. Third, conflicts between the NFA and SOE provisions are highlighted. Finally, this analysis recommends some strategies that the Philippines could consider undertaking to protect NFA function under the TPP by negotiating a carve-out for the NFA, focusing more on NFA service-provision, and making national security arguments for the NFA's existence.

### **I. The National Food Authority**

#### **a. Role in Philippine Society**

The National Food Authority (NFA) has the exclusive authority to import and export rice in the Philippines, purchasing both rice and corn domestically and from exporters.<sup>80</sup> The NFA thus plays a critical role in Philippine society, because rice accounts for 20.3 percent of the value added in the agricultural sector, and changes in the price of rice can cause labor unrest.<sup>81</sup> The main dependents on rice are the poor, who spend up to thirty-four percent of their food

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<sup>79</sup> USTR, SUMMARY OF THE TPP, STATE-OWNED ENTERPRISES 2 (2015), <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-State-Owned-Enterprises.pdf>; TPP art. 17.3.

<sup>80</sup> WTO SECRETARIAT, *WTO Trade Policy Review, The Philippines, Economic Environment*, WTO Doc. WT/TPR/S/261 (2012), at 66.

<sup>81</sup> PHILIPPINE POLICY BRIEF, SENATE PLANNING OFFICE, SUBSIDIZING THE NATIONAL FOOD AUTHORITY: IS IT A GOOD POLICY? (December 2010), available at <https://www.senate.gov.ph/publications/PB%202010-12%20-%20Subsidizing%20the%20NFA.pdf>.

expenditure on the purchase of rice.<sup>82</sup> The NFA has a dual mandate of (1) stabilizing the price of rice and (2) providing food security through control of rice importation.<sup>83</sup>

**b. Price Stabilization**

The NFA purchases and sells rice to consumers to insulate the countries' farmers and poor consumers from international fluctuations in the price of rice. The NFA espouses a “buy-high-sell-low” policy by offering rice to Philippine consumers at below market prices, while simultaneously inflating prices paid to rice farmers.<sup>84</sup> In 2009, the NFA had a deficit of 8.1 billion PhP, a direct result of its “buy high-sell low” strategy.<sup>85</sup> That year, the NFA purchased a total of 470,798 metric tons of palay.<sup>86</sup> The NFA sells its purchased rice to “accredited dealers” at predetermined wholesale and retail prices.

An integrated political process determines the procurement prices implemented by the NFA. The Rice Inter-Agency Committee analyzes the market and recommends the NFA's purchase price to the Secretary of Agriculture.<sup>87</sup> The Secretary of Agriculture and the NFA Council (board of directors of the NFA) then make recommendations to the President who sets the final procurement price.<sup>88</sup> Farmers are not required to sell their rice to the NFA and have the option through the Farmers Option Buy Back scheme to repurchase their rice to reap the benefit of a global price hike.<sup>89</sup>

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 2.

<sup>84</sup> *WTO Trade Policy Review*, *supra* note 80, at 3.

<sup>85</sup> PHILIPPINE POLICY BRIEF, *supra* note 81, at Table 6. 8.1 billion PhP is equivalent to roughly USD \$170,000,000.

<sup>86</sup> *Id.* at Table 1.

<sup>87</sup> *WTO Trade Policy Review*, *supra* note 80, at 68.

<sup>88</sup> PHILIPPINE POLICY BRIEF, *supra* note 81, at 2.

<sup>89</sup> *WTO Trade Policy Review*, *supra* note 80, at 69.

**c. Effectiveness of Price Stabilization**

The effectiveness of the NFA in delivering on its mandate have been mixed. Domestic rice prices in the Philippines were more stable than the world prices from 1996 to 2003, but the prices of rice domestically were twice as high as the world price.<sup>90</sup> NFA rice constitutes only thirteen percent of rice expenditure for the poorest quintile of Philippine society, and up to forty-one percent of NFA rice is purchased by richer quintiles of society.<sup>91</sup> The flow of rice to richer members of society may call into question its role in poverty reduction.

**d. Rice Import and Export Control**

The NFA controls all rice importation in the Philippines. The President of the Philippines may allow the NFA to import rice when necessary to stabilize prices and grant export permits when domestic consumption requirements have been fulfilled.<sup>92</sup> The NFA allocates import quotas to licensed private sector participants such as farmers, cooperatives, or private grain businesses, who import all in-quota rice shipments. The NFA is the largest importer in the country and imports 2.3 million metric tons per year.<sup>93</sup> The WTO hopes that new private actors will defray some of the commitments of the NFA and allow the organization to pay down its substantial debt.<sup>94</sup>

The WTO Trade Policy Review for the Philippines asserts that the deficit-ridden NFA is a drag on the Philippine economy, increasing its vulnerability to international uncertainty.<sup>95</sup> Nevertheless, the WTO granted the Philippines an extension on its waiver of WTO tariff rates for

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<sup>90</sup> PHILIPPINE POLICY BRIEF, *supra* note 81, at 4.

<sup>91</sup> *Id.*

<sup>92</sup> 2012 WTO Trade Policy Review, The Philippines, WT/TPR/S/261, at 66.

<sup>93</sup> PHILIPPINE POLICY BRIEF, *supra* note 81, at 4.

<sup>94</sup> *WTO Trade Policy Review*, *supra* note 80, at 66.

<sup>95</sup> *See id.*

rice established under the GATT 1994 until June 2017.<sup>96</sup> This waiver allows the Philippines to set country specific quotas, and the maximum in-quota tariff rate permitted on rice. This waiver came with the condition that the Philippines import a minimum of 350,000 tons of rice at an in-quota tariff rate of forty percent.<sup>97</sup> The Philippines has far exceeded this import quota requirement and is a net food importer.<sup>98</sup> Over 12.2 percent of Philippine rice consumption is imported.<sup>99</sup> When the waiver terminates, the Philippines must implement ordinary customs duties in accordance with Paragraph 10 of Annex 5, Section B, of the Agreement on Agriculture.<sup>100</sup>

Despite some apparent issues in the functioning of the NFA, it nevertheless remains a key feature of the Philippine welfare system. Since rice is the staple crop in the Philippine diet, any limitations on public access to affordable rice have the potential to incite labor unrest.<sup>101</sup> Because of the popular impacts of rice prices, the fate of the NFA creates decisive political repercussions for government officials. Policy contentions on the NFA have been lengthy and detailed,<sup>102</sup> and will no doubt be reignited with any attempt to accede to the TPP.

## **II. TPP Provisions Affecting SOEs**

### **a. Entities Affected: Definition of SOEs and Designated Monopolies**

SOEs are defined in the TPP as enterprises “principally engaged in commercial activities,” in which a TPP Party owns more than 50 percent of the organization’s capital shares, controls more than 50 percent of the voting rights, or holds the power to appoint a majority of

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<sup>96</sup> WTO General Council, Decision on Waiver Relating to special treatment for rice of the Philippines, WTO Doc. WT/L/932 (2014), at 1.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> PHILIPPINE POLICY BRIEF, *supra* note 81, at Table 3.

<sup>100</sup> Decision on Waiver Relating to special treatment for rice of the Philippines, *supra* note 96, at 1.

<sup>101</sup> PHILIPPINE POLICY BRIEF, *supra* note 81, at 1.

<sup>102</sup> *Id.* at 8–9.

directors or any comparable management body.”<sup>103</sup> A designated monopoly is defined as a privately owned monopoly that a member nation designates or has designated.<sup>104</sup>

**b. Commercial Considerations**

The TPP agreement requires SOEs within member nations to take “commercial considerations” into account when undertaking “commercial activities.”<sup>105</sup> “Commercial considerations” include “price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry.”<sup>106</sup> “Commercial activities” are behaviors associated with the goal of profit-making, generally involving the provision of goods or services to a customer at a set price.<sup>107</sup> “State designated monopolies” are also required to act in accordance with commercial considerations in commercial transactions as defined by Article 17.1.<sup>108</sup>

The obligation to consider commercial forces does not extend to situations in which this consideration would require an SOE to act inconsistently with a government mandate to provide public services.<sup>109</sup> A “public service mandate” involves a direct provision of services to citizens, including the distribution of goods and the supply of general infrastructure measures.<sup>110</sup> In other words, an SOE can undertake activities for cost-recovery or not-for-profit endeavors without violating the TPP.<sup>111</sup>

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<sup>103</sup> *Id.* at art. 17.1. Note that the agreement applies only to SOEs with threshold drawing rights over 200 million, as calculated in the formula in Annex 17-A.

<sup>104</sup> TPP art. 17.1.

<sup>105</sup> USTR SUMMARY OF THE TPP, *supra* note 79, at 2.

<sup>106</sup> TPP art. 17.1.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at art. 17.4.2(a).

<sup>109</sup> *Id.* at art. 17.4.1(a).

<sup>110</sup> *Id.* at art. 17.1.

<sup>111</sup> See NEW ZEALAND FOREIGN AFFAIRS AND TRADE, STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES FACT SHEET 4 (2015).



**c. Non-Discriminatory Treatment**

The TPP also includes a series of non-discriminatory treatment provisions in SOE purchasing and selling. When *purchasing* a good or service, member-nation SOEs must accord goods and services supplied by other TPP Party’s enterprises treatment as favorable as they give to goods and services provided by domestic enterprises or those of third parties.<sup>112</sup> For instance, if an SOE purchases a good from a domestic producer for \$5, it must also purchase a good from a TPP producer at that same price, unless commercial considerations justify discriminatory treatment.<sup>113</sup> The article also permits SOEs to refuse to purchase or sell goods or services if commercial considerations justify this action.<sup>114</sup>

Each TPP Party must further ensure that its SOEs treat goods and services provided by an enterprise that is a “covered investment ” in that Party’s territory treatment as favorable as they provide to other like goods and services supplied by enterprises of third parties.<sup>115</sup> “Covered investments” are investments of another Party in the territory of a member of the TPP.<sup>116</sup> In purchasing, designated monopolies are also required to provide treatment as favorable as they accord to the goods or services supplied by any other trading partner or domestic enterprise to the enterprises of all TPP nations.<sup>117</sup>

In the *sale* of goods and services by domestic enterprises, TPP nations must give enterprises of another TPP Party treatment as favorable as is provided to domestic enterprises, or any other trading partner.<sup>118</sup> Finally, in the sale of goods or services, SOEs must give “covered investment” enterprises treatment as favorable as they accord to investments of any other nation

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<sup>112</sup> TPP art. 17.4.1(b)(i).

<sup>113</sup> *Id.* at art. 17.4.3(a).

<sup>114</sup> *Id.* at art. 17.4.3(b).

<sup>115</sup> *Id.* at art. 17.4.1(b)(ii).

<sup>116</sup> *Id.* at art. 1.3.

<sup>117</sup> TPP art. 17.4.2(b).

<sup>118</sup> *Id.* at art. 17.4.1(c)(i).

or domestic enterprise in their territory.<sup>119</sup> The TPP imposes these same obligations on state designated monopolies.<sup>120</sup> Further, a designated monopoly must not use its monopoly position to engage in, either directly or indirectly, anticompetitive practices in a non-monopolized market in its territory.<sup>121</sup>

Some exceptions apply to functions of SOEs and designated monopolies under this section. Monopolies and SOEs may engage in discriminatory treatment outside of commercial activities like buying and selling. For instance, New Zealand will be able to continue its provision of public health services, education, transport and research and development.<sup>122</sup> SOEs and designated monopolies may also purchase or sell goods or services on different terms or conditions, or refuse to sell goods or services, as long as differential treatment is administered in accordance with commercial considerations.<sup>123</sup>

#### **d. Jurisdictional Considerations**

In addition to these requirements, each member nation is required to give its courts jurisdiction over claims by foreign enterprises in a similar manner that it affords enterprises owned by its own nationals.<sup>124</sup> Each TPP Party must also ensure that its administrative bodies exercise regulatory discretion over SOEs in an impartial manner.<sup>125</sup>

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<sup>119</sup> *Id.* at art. 17.4.1(c)(ii).

<sup>120</sup> *Id.* at art. 17.4.2(c)

<sup>121</sup> *Id.* at art. 17.4.2(d).

<sup>122</sup> *See* NEW ZEALAND FOREIGN AFFAIRS AND TRADE, *supra* note 111, at 4.

<sup>123</sup> TPP art. 17.4.3.

<sup>124</sup> *Id.* at art. 17.5.1.

<sup>125</sup> *Id.* at art. 17.5.2.

**e. Non-Commercial Assistance**<sup>126</sup>

The SOE provisions of the TPP work to limit the “non-commercial assistance” provided by TPP Parties to their SOEs to promote fairness in competition. “Non-commercial assistance” is the provision of assistance by the government to an entity because of the government’s control over that entity.<sup>127</sup> Such assistance may take the form of: (1) a direct transfer or funds or the potential transfer of funds from the government of a TPP Party to an SOE such as a grant or debt forgiveness; (2) provision of loans or financing provided on terms more favorable than exist in the market; (3) provision of equity capital inconsistent with market practices (4) goods or services other than general infrastructure provided on more favorable terms than are commercially available.<sup>128</sup>

This type of assistance cannot (A) cause adverse effects to the SOEs of other TPP Parties or (B) injury to their domestic industries.

**i. Adverse Effects**

No Party to the TPP may cause “adverse effects” to the interests of another Party through its non-commercial assistance to SOEs in (1) the production and sale of their goods, or (2) in the supply of services either domestically or in the territory of another Party, or (3) through an

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<sup>126</sup> Non-commercial assistance in the TPP differs from countervailable subsidies in the Agreement on Subsidies and Countervailing Measures for two reasons. First, disputes regarding non-commercial assistance under the TPP must be settled through dispute settlement rather than with trade remedies. *See id.* at art. 17.6. Second, non-commercial assistance is forbidden for any enterprise that is controlled by government. The Appellate Body in *US – Anti-Dumping and Countervailing Duties (China)* expressly rejected the notion that all government-controlled entities are “public bodies” under the meaning of the Agreement. Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, ¶ 36, WTO Doc. WT/DS379/AB/R (adopted Mar. 11, 2001); *see also* Agreement on Subsidies and Countervailing Measures, art. 1.1, Jan. 1, 1995, 1869 U.N.T.S. 14. Subsidies to state-owned enterprises are only countervailable if the enterprise possesses, exercises or is vested with governmental authority. Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, ¶ 36, WTO Doc. WT/DS379/AB/R (adopted Mar. 11, 2001). A Party would be more likely to successfully challenge subsidies under the non-commercial assistance provisions to the TPP than under the Agreement on Subsidies and Countervailing Measures because the TPP applies to more types of state-owned enterprises.

<sup>127</sup> *Id.* at art 17.1.

<sup>128</sup> TPP art 17.1.

enterprise that is a covered investment in any other nation.<sup>129</sup> “Adverse effects” may arise when the good produced or sold by an SOE receiving noncommercial assistance displaces or impedes imports or sale of a like good of another Party to the TPP.<sup>130</sup> Further, TPP governments must ensure that their SOEs do not cause adverse effects through the use of non-commercial assistance.<sup>131</sup> A service supplied by a SOE within that Party’s territory cannot cause adverse effects within a domestic market.<sup>132</sup>

Adverse effects may arise when the effect of noncommercial assistance allows an SOE to “displace or impede” like *goods* produced by another TPP nation or imports of a like good from that other TPP nation.<sup>133</sup> “Displacing or impeding” a good includes any case in which there has been a ‘significant change in relative shares of the market’ to the disadvantage of the like good.<sup>134</sup> ‘Significant change in relative shares of the market’ will result if (1) an SOE’s market share in a good or service significantly increases, (2) an SOE’s market share remains constant when it should have declined significantly, or (3) an SOE’s market share declines at a significantly slower rate than it would absent noncommercial assistance.<sup>135</sup> Adverse effects emerge if noncommercial assistance allows a significant price undercutting by a good produced by a Party’s SOE in the domestic market of another TPP nation.<sup>136</sup>

Noncommercial assistance will also create adverse effects if a *service* supplied by a Party’s SOE displaces or impedes a like service supplied by an enterprise of another Party or third party.<sup>137</sup> Adverse effects will similarly result if noncommercial assistance creates a

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<sup>129</sup> *Id.* at art. 17.6.1.

<sup>130</sup> *Id.* at art. 17.7.1(a) and (b).

<sup>131</sup> *Id.* at art. 17.6.1 and 17.6.2.

<sup>132</sup> *Id.* at art. 17.6.4.

<sup>133</sup> TPP art. 17.7.1(c)(i)

<sup>134</sup> *Id.* at art. 17.7.2.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at art. 17.7.1(c)(ii).

<sup>137</sup> *Id.* at art. 17.7.1(d).

significant price undercutting through a *service* it supplies as compared with the price of a like service supplied by another Party in the same market.<sup>138</sup>

Adverse effects do not occur from the initial capitalization of an SOE or the acquisition by a TPP nation of a controlling interest in an enterprise engaged in the supply of services within the territory of that Party.<sup>139</sup>

ii. Injury

TPP nations must also commit not to cause “injury” to domestic industries of other parties through use of non-commercial assistance provided to SOEs for the production and sale of a good in the territory of another Party.<sup>140</sup> “Injury” means any material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of an industry.<sup>141</sup>

**f. Transparency**

Parties to the TPP are required to publish a list of their SOEs and designated monopolies.<sup>142</sup> Upon written request from any other Party, a TPP Party must provide information on the activity of SOEs and designated monopolies, including: market share, government titled management, special voting privileges, revenues, and assets of any entities receiving noncommercial assistance.<sup>143</sup> The information must be sufficient for a requesting Party to understand the form of noncommercial assistance provided by the government program, the legal basis and policy objectives of the funding, and the duration of the program.<sup>144</sup>

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<sup>138</sup> TPP art. 17.7.1(e).

<sup>139</sup> *Id.* at art. 17.7.6.

<sup>140</sup> *Id.* at art. 17.6.3.

<sup>141</sup> *Id.* at art. 17.8.1.

<sup>142</sup> *Id.* at art. 7.10.1 and 7.10.2.

<sup>143</sup> TPP art. 7.10.4.

<sup>144</sup> *Id.* at art. 7.10.5.

**g. Technical Cooperation**

The TPP encourages parties to engage in technical cooperation where appropriate, such as information sharing and best practice policies.<sup>145</sup> A committee on SOEs will be established with representatives from each Party to hold consultations for questions under Article 17 and to develop cooperation under the chapter.<sup>146</sup>

**h. Price, Import and Export Controls**

Pricing requirements and import/export controls are also targeted by the TPP and thus will affect the activities undertaken by the Philippines government through its SOEs. The TPP prevents any member nation from adopting or maintaining export and import price requirements and incorporates the import and export obligations present in Article XI of GATT 1994.<sup>147</sup> Article XI provides for the general elimination of quantitative import restrictions, specifically prohibitions or restrictions made effective through quotas, import or export licenses, or other measures maintained on the importation of any product from the territory of any other contracting Party or on the exportation of any product destined for the territory of another Party.<sup>148</sup> The agreement also incorporates provisions forbidding import licensing conditioned on the fulfillment of a performance requirement, and prohibits voluntary export restraints inconsistent with Article VI of the GATT 1994.<sup>149</sup> Further, no Party may adopt or maintain a measure inconsistent with the WTO's Import Licensing Agreement.<sup>150</sup>

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<sup>145</sup> *Id.* at art. 7.11.

<sup>146</sup> *Id.* at art. 17.12.

<sup>147</sup> *Id.* at art. 2.11.2.

<sup>148</sup> TPP art. 2.11.1.

<sup>149</sup> *Id.*

<sup>150</sup> TPP art. 2.13.1.

**i. General Exceptions**

Several exceptions accompany the agreement.<sup>151</sup> Responses to national or global economic emergencies are exempt from non-discriminatory and non-commercial assistance provisions.<sup>152</sup> Financial services are also permissible pursuant to government mandate to support imports and exports that are not intended to replace commercial financing and will not be deemed to cause “adverse effects.”<sup>153</sup> An exception to the non-discriminatory treatment provisions is also included for temporary ownership remedies to foreclosure of enterprises located in other nations.<sup>154</sup> Non-discriminatory treatment provisions, non-commercial assistance provisions, transparency, and the committee provisions will not apply to an SOE with a threshold revenue amount as calculated under Annex 17-A of the agreement.<sup>155</sup>

**III. The TPP and the NFA**

**a. Defining the NFA under TPP**

Under the TPP, the NFA would be considered a SOE, as it is “principally engaged in commercial activities” (i.e. selling and purchasing rice), and the Government of the Philippines has stated that the NFA is a government owned and controlled corporation.<sup>156</sup> The NFA functions as essentially a government agency, and the President of the Philippines appoints the members of the NFA’s governing body, the NFA Council.<sup>157</sup> Thus the tenets of Article 17 of the TPP covering SOEs will apply directly to the operation of the NFA.

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<sup>151</sup> *Id.* at art. 17.13.

<sup>152</sup> TPP art. 17.13.1.

<sup>153</sup> *Id.* at art. 17.13.2.

<sup>154</sup> *Id.* at art. 17.13.3.

<sup>155</sup> *Id.* at art. 17.13.5.

<sup>156</sup> See TPP art. 17.1; MANDATE, MISSION, VISION, AND CORE VALUES OF THE NFA WITH LIST OF OFFICIALS, GOVPH, <http://nfa.gov.ph/about-us/mission-vision-and-mandate> (last visited Feb. 12, 2016); PHILIPPINE POLICY BRIEF, *supra* note 81, at 1.

<sup>157</sup> See COUNCIL OFFICERS, GOVPH, <http://nfa.gov.ph/about-us/nfa-council> (last visited Feb. 12, 2016).

**b. Philippine Accession Options**

Since the TPP has sweeping effects for the NFA, a Philippine ascension would involve either acquiescence to the provisions present in the agreement or a negotiated alternative. If the Philippines accedes to the TPP, negotiators would potentially be able to create a carve out for the role the NFA plays in social welfare support within the Philippines, similar to carve outs negotiated by other members. If the Philippines is unable to negotiate a carve out, the NFA's role in Philippine society would have to shift to bring its function in line with the TPP mandates.

**c. TPP Accession Without Negotiated Exceptions**

The NFA primarily operates to “stabilize supply and prices of staple cereals both at the farm and consumer levels.”<sup>158</sup> In keeping with this mandate, the NFA uses price floors to ensure that Philippine farmers receive fair returns, and price ceilings to make sure that the Philippine people have access to food. However, this price tinkering runs afoul of the TPP's prohibition on “export or import price requirements.”<sup>159</sup> The current price of imported rice is set at 25 pesos per kg, in conflict with Article 2.11.2 of the TPP.<sup>160</sup> Thus, if the Philippines accedes to the TPP, this price setting will have to cease unless an exemption can be negotiated.

As a promulgator of both import licenses and export licenses, the Philippine government, acts contrary to the provisions of GATT 1994, Article XI, Section 1. As this provision is incorporated within Article 2.11.3(c) of the TPP, the Philippines would likely be required to cease its practice of allowing exports to other TPP nations only by licensed exporters. Moreover, imports from TPP nations would be required to enter the country through private channels outside of the NFA and its licensed importers. Current NFA practices are in clear conflict with

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<sup>158</sup> See MANDATE, MISSION, VISION, AND CORE FUNCTIONS WITH LIST OF OFFICIALS, *supra* note 156..

<sup>159</sup> TPP art. 2.11.2(a).

<sup>160</sup> NFA, SUMMARY OF EXISTING NFA PRICES, NATIONAL FOOD AUTHORITY, BUYING AND SELLING PRICES, <http://nfa.gov.ph/buying-selling-price> (last visited Feb. 15, 2016).



this provision, so if a carve out could not be negotiated, this function of the NFA would have to be suspended.

Since the NFA works as a buffer to stabilize the prices of rice paddy purchased and sold within the Philippines, its historical focus has not been preoccupied with commercial considerations. To some extent, it may be true that the NFA takes commercial considerations like “price, quality, availability, marketability, transportation, and other considerations” into account when making its pricing decisions regarding rice. However, other TPP Parties would likely argue that the organization does not treat commercial considerations with great weight because the NFA runs such massive deficits.

The TPP does have provisions permitting an SOE to disregard commercial considerations that would cause it to act inconsistently with the mandate to provide a public service.<sup>161</sup> The NFA directly adjusts the sale and purchase prices of rice paddy, and this function does not fall under the traditional conception of a “public service.” Though the NFA does perform some coordination and harvesting services to farmers, that is not its primary role. Instead, the NFA’s provision of rice falls more readily within the definition of a “purchase or sale” of goods, since the NFA buys rice from farmers and sells it directly to consumers. Consequently, it appears that it engages in commercial activities under Article 17.1 of the agreement and must act in accordance with commercial considerations under Article 17.4.

Beyond the commercial considerations, the TPP’s non-discrimination requirements also run contrary to the current function of the NFA. Article 17.4.1(b)(i) of the TPP requires SOEs, in the purchase of goods and services, to provide treatment as favorable as that provided to goods and services provided by its own enterprises to the enterprises of other TPP nations.<sup>162</sup>

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<sup>161</sup> See TPP art. 17.1.

<sup>162</sup> *Id.* at art. 17.4.1(c)(i).

Consequently, the function of the NFA to purchase rice from local producers at inflated prices would need to be extended to the producers of rice from other TPP nations. This would likely be impracticable, given the existing deficit of the NFA. The priority that the NFA gives to the purchase of the paddy of local farmers would run afoul of the non-discrimination provisions as well. The sale of rice to Philippine citizens at subsidized prices, if lower than those offered to TPP owned enterprises within the Philippines, would violate Article 17.4.1(c)(i).

The NFA receives “noncommercial assistance” as defined under Article 17.1 from the Philippine government in the form of direct transfers of official development assistance and funding for national food programs.<sup>163</sup> The NFA also receives loans from the Philippine government to cover its deficit; any debt incurred by the NFA is automatically and unconditionally guaranteed by the Philippine government.<sup>164</sup> Given that the NFA is receiving this noncommercial assistance, under Article 17.6.1, the NFA would be obligated not to cause any “adverse effects” to the rice sales of other countries entering the Philippine market, including price undercutting. Since rice is being sold at a subsidized price, it would undercut the prices of rice from other TPP exporters, and thus violate this provision of the TPP. Adverse effects would likely result from the displacement of the sale of rice from exporters.

Given these issues, based on this analysis, the Philippines must seek to develop an exception if it intends to continue to operate the NFA in its existing state.

#### **d. Negotiating an Exception for the NFA**

It may be possible for the Philippines to negotiate a carve out for the NFA, as other nations have been permitted to do so under the TPP. For instance, Brunei negotiated an exclusion from Article 17.4 which allows Brunei’s SOEs and designated monopolies supplying natural gas

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<sup>163</sup> PHILIPPINE POLICY BRIEF, *supra* note 81, at 6.

<sup>164</sup> *Id.* at 7.

to accord preferential rates in the sale of their goods for purposes of power generation, promoting foreign investment, or promoting the development of economic activity in Brunei Darussalam.<sup>165</sup> Canada garnered an exception to Article 17.6.1 in order to continue to provide non-commercial assistance for the production and sale of dairy products in Canada.<sup>166</sup> Vietnam negotiated a particularly favorable exemption for its domestic SOEs, which is specifically relevant to a carve-out that would benefit the NFA.

i. Vietnamese Carve Out

The carve-outs negotiated by Vietnam are particularly relevant to the Philippines NFA, because they modify the obligations of Vietnam under Articles 17.4.1(a) and Article 17.4.2(a) involving commercial and nondiscriminatory requirements for SOEs. To provide economic stability or public goods, Vietnam negotiated the ability to require a SOE or a designated monopoly to sell or purchase goods at a regulated price, quantity or other condition, when slated for purchase or sale within its own territory.<sup>167</sup> The agreement also allows Vietnam to provide SOEs with non-commercial assistance to cover reasonable costs associated with implementing production measures.<sup>168</sup> Further, specified exceptions allow Vietnamese SOEs to take into account factors other than commercial considerations with respect to sales of goods and to accord preferential treatment in purchases of goods and services from Vietnamese oil and gas producers.<sup>169</sup> Additionally, Vietnam negotiated permission under Articles 17.6.1(a) and 17.6.2(a) to provide non-commercial assistance to SOEs producing and selling coffee in the territory of Vietnam.

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<sup>165</sup> TPP, Annex IV: State Owned Enterprise, Schedule of Brunei Darussalam.

<sup>166</sup> TPP, Annex IV: State Owned Enterprise, Schedule of Canada at 9.

<sup>167</sup> TPP, Annex IV, State Owned Enterprises, Schedule of Vietnam at 2.

<sup>168</sup> *Id.*

<sup>169</sup> TPP, Annex IV, State Owned Enterprises, Schedule of Vietnam at 5.

ii. Possible Carve Out for the Philippines

Assuming that the Philippines could negotiate an agreement as favorable as that negotiated by Vietnam, several of the key operating functions of the NFA might be preserved. It is doubtful that the NFA would be able to adopt and maintain a mandated price for imports and exports of rice, since the TPP incorporates Article XI of the GATT. However, the NFA might still be able to sell or purchase rice domestically at a regulated price and quantity, similar to a Vietnamese SOE exception under the Article 17.4 nondiscriminatory treatment provisions. Further, the Philippines government could negotiate the right to provide the NFA with reasonable noncommercial assistance to allow it to fulfill its mandate in providing access of the poor to food in an exemption to Article 17.6, like the Vietnam government supports the oil and gas industry. These outcomes are negotiation-dependent, and will result from multi-faceted accession discussions.

As leverage, the Philippines could cite national security reasons for the continued function of the NFA in providing food security. The recent 2013 WTO Bali Agreement recognizes the significance of food security in the developing world. The WTO declared that until a resolution regarding food stockpiling is found, countries should not challenge food security programs that do not distort trade or affect the food security of other countries under the WTO Agreement on Agriculture.<sup>170</sup> While the Philippines could argue the relevancy of food security to the NFA program, the activities of the NFA may be found to distort trade. However, the threat of this argument might create bargaining room. As an alternative, the Philippines may begin a staging process to slowly repeal the function of the NFA, with food security as a main argument for the extension of this time frame.

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<sup>170</sup> WTO Ministerial Conference, Ninth Session, *Public Stockholding for Food Security Purposes*, Ministerial Decision of Dec. 7, 2013, WT/MIN(13)/38, Dec. 11, 2013.

ii. Probability of Negotiated Carve Out

The probability of the Philippines negotiating a broad carve-out for the functions of the NFA is possible yet uncertain, given the price-setting and quota determination measures that the body typically employs. With the exception of concessions negotiated by Vietnam, the other parties to the TPP negotiated exceptions focused primarily on banking, mortgage, and financial services rendered by public enterprises that serve the public welfare. The provision of “social services” by mortgage and lending institutions is distinct from the purchase and sale of goods at artificially derived prices and quantities. While the NFA’s poverty abatement strategy might be acceptable and effective within the Philippine society, the measures themselves fall out of line with the trade policy strategies of the United States and its Western counterparts. Because of this ideology, negotiated exceptions to the NFA will be hard fought, and may be insufficient to preserve the core functions that the NFA currently executes in Philippine society.

iii. Adaptive Options

The Philippines could work on restructuring the NFA to take on the role of a service-provider within society, in order to fall more squarely within the “public service mandate” exception under Article 17.4.1(a). Any functions would have to be fulfilled without violating the non-discriminatory provisions of article 17.4.1(c). A public service mandate fulfilled independently of quotas or price-setting could still promote some of the NFA’s welfare goals. For instance, taxes on rice could be levied and the proceeds could be used to buy rice at market prices to transfer to the poor.

If the NFA could couch its support as a service rendered, it could maintain some of its broader service-oriented programs. For instance, the NFA would be well within its power to orchestrate the Agricultural Commodity Exchange System, for which the government provides

communications services, logistics and manpower support to provide farmers a wider market to match buyers and sellers.<sup>171</sup> Similarly, the NFA Grains Highway Program could continue providing conduits for the efficient movement of grains and cereals to final consumers.<sup>172</sup> The Post Harvest Facility Assistance Program would also be able to render its public service, providing priority access to the NFA's warehouses, mills, and mechanical dryers as part of the agency's public service mandate. However, the NFA could only provide this assistance if the noncommercial assistance did not cause adverse effects to other TPP SOEs participating in the economy. Since the Philippines is already examining the role that the NFA will play in society moving forward,<sup>173</sup> the TPP offers an opportunity for the Philippines to reevaluate the mission of the organization and tailor its function to a more efficient servicing of the poor.

Depending upon the outcome of negotiations for accession to the TPP, the role of the NFA in Philippine society may need to dramatically change. Creative alternatives to pricing requirements, quotas, and licensing will need to be put into place to protect the poorest in Philippine society if negotiators cannot foster workable exceptions to the agreement. In large part the TPP targets exactly the conduct in which the NFA engages. Policymakers should therefore begin to explore alternatives if the Philippines intends to accede.

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<sup>171</sup> NATIONAL FOOD AUTHORITY, OTHER PROGRAMS, <http://www.nfa.gov.ph/programs-projects/other-programs> (last visited Feb. 18, 2016)

<sup>172</sup> *Id.*

<sup>173</sup> PHILIPPINE POLICY BRIEF, *supra* note 81, at 1.

## **Cooperation and Capacity Building Analysis**

The TPP builds upon the trend of cooperation and capacity building initiatives within regional and multilateral trade agreements. While the TPP “does not establish an assistance program, [Chapter 21] creates a framework” for cooperation and capacity building.<sup>174</sup> The following section describes the cooperation and capacity building provisions under the TPP, compares the benefits of cooperation and capacity building provisions to existing agreements, and analyzes the efficacy of cooperation and capacity building, with a particular focus on the potential opportunities to ascertain financial assistance.

### **I. General Provisions**

No definition exists for cooperation and capacity building within the text of the TPP. However, cooperation and capacity building consists of activities that “assist in implementing” the TPP.<sup>175</sup> Moreover, cooperation and capacity building may be voluntarily undertaken between two or more Parties in a manner that complements and builds upon existing arrangements.<sup>176</sup> Finally, cooperation and capacity building provisions of the TPP recognize the importance of the involvement of the private sector, both as a provider and a recipient of cooperation and capacity building.<sup>177</sup>

### **II. Areas of Cooperation and Capacity Building**

While no definition exists for cooperation and capacity building, the TPP provides an illustrative list of areas of cooperation.<sup>178</sup> The areas include: “agricultural, industrial and services sectors; . . . promotion of education, culture and gender equality; and . . . disaster risk

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<sup>174</sup> USTR, SUMMARY OF THE TPP, COOPERATION AND CAPACITY BUILDING 2 (2015), <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Cooperation-and-Capacity-Building.pdf>.

<sup>175</sup> TPP art. 21.1.1.

<sup>176</sup> *Id.* at art. 21.1.2.

<sup>177</sup> *Id.* at art. 21.1.3.

<sup>178</sup> *Id.* at art. 21.2.2 (noting that “[c]ooperation and capacity building activities may include, but are not necessarily limited to” various economic, sociopolitical, and environmental sectors).

management.”<sup>179</sup> Moreover, the Parties may conduct cooperation and capacity building that assists in implementation of the TPP and trade facilitation.<sup>180</sup> The specifics of these initiatives are left to the discretion of the Parties, who volunteer to promote cooperation and capacity building.<sup>181</sup> Cooperation and capacity building may also include transfers of technology.<sup>182</sup> Finally, the TPP suggest modes in which cooperation and capacity building may occur, such as: “dialogue, workshops, seminars, conferences, collaborative [programs] and projects; technical assistance to promote and facilitate capacity building and training; the sharing of best practices on policies and procedures; and the exchange of experts, information and technology.”<sup>183</sup>

### **III. Contact Points for Cooperation and Capacity Building**

One required provision of this chapter is the designation and notification of Contact Points, or designated communications personnel, for matters relating to coordination of cooperation and capacity building activities.<sup>184</sup> Contact Points must be established no later than 60 days from the date of entry into force of the TPP for that Party.<sup>185</sup> Requests for cooperation and capacity building activities should be made through relevant Contact Points.<sup>186</sup>

### **IV. Committee on Cooperation and Capacity Building**

Another required provision on cooperation and capacity building is the establishment of a Committee on Cooperation and Capacity Building (the “Committee”).<sup>187</sup> The Committee will be composed of representatives of each TPP Party.<sup>188</sup> The Committee is required to “meet within

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<sup>179</sup> TPP art. 21.2.2.

<sup>180</sup> *Id.* at art. 21.2.1.

<sup>181</sup> *Id.* at art. 21.2.1 (implying discretion through the use of the word “may”).

<sup>182</sup> *Id.* at art. 21.2.3.

<sup>183</sup> *Id.* at art. 21.2.4.

<sup>184</sup> TPP art. 21.3.1.

<sup>185</sup> *Id.* at art. 21.3.1; *see also id.* at art. 27.5 (outlining the administrative and institutional provisions of contact points).

<sup>186</sup> *Id.* at art. 21.3.2.

<sup>187</sup> *Id.* at art. 21.4.1.

<sup>188</sup> TPP art. 21.4.1.



one year of the date of entry into force of the Agreement, and thereafter as necessary.”<sup>189</sup> No guidelines are outlined in determining what constitutes a necessary need to convene the Committee after its initial meeting.<sup>190</sup> However, if WTO practice is a guide, it is likely that the Committee will meet on a regular basis.<sup>191</sup> The Committee has an eight-prong illustrative mandate envisioning information exchange, proposal consideration, public-private and inter-organizational partnerships, intra-TPP committee coordination, ad hoc working groups, and implementation review.<sup>192</sup> Finally, the Committee is required to produce an agreed upon record, which includes decisions and next steps.<sup>193</sup> The Committee will report to the Commission as appropriate.<sup>194</sup>

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<sup>189</sup> *Id.* at art. 21.4.3.

<sup>190</sup> *Id.* at art. 21.4.3.

<sup>191</sup> The WTO’s Committee on Trade and Development, as well, was to be “reviewed as necessary each year” in the PC/IPL/4, dated 25 November 1994. The WTO’s Committee, in fact, met formally and informally 16 times in 2015. *See* DEVELOPMENT: COMMITTEES AND WORKING GROUPS, COMMITTEE ON TRADE AND DEVELOPMENT, (last visited February 24, 2016), available at [https://www.wto.org/english/tratop\\_e/devel\\_e/d3ctte\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/d3ctte_e.htm).

<sup>192</sup> Specifically, the Committee shall: “(a) facilitate the exchange of information between the Parties in areas including, but not limited to, experiences and lessons learned through cooperation and capacity building activities undertaken between the Parties; (b) discuss and consider issues or proposals for future cooperation and capacity building activities; (c) initiate and undertake collaboration, as appropriate, to enhance donor coordination and facilitate public-private partnerships in cooperation and capacity building activities; (d) invite, as appropriate, international donor institutions, private sector entities, nongovernmental [organizations] or other relevant institutions, to assist in the development and implementation of cooperation and capacity building activities; (e) establish ad hoc working groups, as appropriate, which may include government representatives, non-government representatives or both; (f) coordinate with other committees, working groups and any other subsidiary body established under this Agreement as appropriate, in support of the development and implementation of cooperation and capacity building activities; (g) review the implementation or operation of this Chapter; and (h) engage in other activities as the Parties may decide.” *Id.* at art. 21.4.2.

<sup>193</sup> *Id.* at art. 21.4.4.

<sup>194</sup> TPP art. 21.4.4; *see also id.* at art. 27.1 (“The Parties hereby establish a Trans-Pacific Partnership Commission (Commission) which shall meet at the level of Ministers or senior officials, as mutually determined by the Parties. Each Party shall be responsible for the composition of its delegation.”); TPP Article 27.2.1 (“The Commission shall: (a) consider any matter relating to the implementation or operation of this Agreement; (b) review within 3 years of entry into force of this Agreement and at least every 5 years thereafter the economic relationship and partnership among the Parties; (c) consider any proposal to amend or modify this Agreement; (d) supervise the work of all committees and working groups established under this Agreement; (e) establish the Model Rules of Procedure for Arbitral Tribunals referred to in Article 28.11.2 and Article 28.12, and, where appropriate, amend such Model Rules of Procedure for Arbitral Tribunals; (f) consider ways to further enhance trade and investment between the Parties; (g) review the roster of panel chairs established under Article 28.10 every 3 years, and when appropriate, constitute a new roster; and (h) determine whether the Agreement may enter into force for an original signatory notifying pursuant to paragraph 4 of Article 30.5.1 (Entry into Force).”).

## **V. Resources**

As with most trade agreements, the TPP recognizes different levels of development among the Parties.<sup>195</sup> As such, the Parties will aim to provide “appropriate financial or in-kind resources” for the purposes of cooperation and capacity building.<sup>196</sup> Such resources are subject to the availabilities of the Parties.<sup>197</sup>

## **VI. Non-Application of Dispute Settlement**

Parties do not have recourse to the dispute settlement provisions of Chapter 28 for any matter arising under the cooperation and capacity building provisions of Chapter 21.<sup>198</sup>

## **VII. Comparing Cooperation and Capacity Building Provisions**

The USTR notes that the “TPP is the *first* U.S. agreement to create a formal and permanent framework of cooperation to build the capacity needed in developing countries to fully implement a high-standard agreement.”<sup>199</sup> The cooperation and capacity building provisions of the TPP can advance the interests of the Philippines through a variety of mechanism discussed in this section.<sup>200</sup> The Committee, when compared to similar facilities, is an opportunity to negotiate both financial and technical assistance.

Though the TPP provides an opportunity for the Philippines to develop trade-related cooperation and capacity building, it is necessary to compare and benchmark these opportunities against pre-existing avenues so as to understand the additional value the TPP provides and develop negotiation strategies that are grounded in current practice. Specifically, as outlined in

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<sup>195</sup> *Id.* at art. 21.5.

<sup>196</sup> *Id.* at art. 21.5.

<sup>197</sup> *Id.* at art. 21.5.

<sup>198</sup> *Id.* at art. 21.6.

<sup>199</sup> USTR, SUMMARY OF THE TPP, COOPERATION AND CAPACITY BUILDING 2 (2015), <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Cooperation-and-Capacity-Building.pdf>.

<sup>200</sup> For a less optimistic view, see Yash Tandon, *Evaluation Of WTO And Other Forms Of Technical Assistance To Developing Countries In The Context Of The Uruguay Round Of Agreements*, SOUTHERN AND EASTERN AFRICAN TRADE INFORMATION AND NEGOTIATIONS INSTITUTE, 1 (2002). (arguing that “capacity building is not a politically neutral process[, because it] is a tool to advance the interests of those who supply funds and technical experts).

Table 1, there are six main organizational avenues for the Philippines to receive trade-related cooperation and capacity building: WTO, United Nations Conference on Trade and Development (UNCTAD), International Trade Centre (ITC), World Bank/Multilateral Development Banks, United States Agency for International Development (USAID)/Bilateral Aid Agencies, and Regional Trade Agreements (RTAs).

Table 1: Current Cooperation and Capacity Building Frameworks <sup>201</sup>	
WTO	Emphasis on WTO Agreements. Neutral and factual information on WTO rights and obligations of developing countries and progress in trade negotiations. Training and consulting to assist developing country Members in applying the Agreements and using WTO mechanisms. Aid-for-trade programs.
UNCTAD	Advocacy of developing country interests. Analysis of trade policy options in the larger context of economic development. Training and support in trade negotiations (not only the WTO) and implementation of commitments.
ITC	Emphasis on enterprise-oriented aspects of trade policy such as business implications of the WTO and Regional Trade Agreements, private sector involvement in trade policy and management of regulation-related issues by businesses. Hands-on training, assistance in data collection, analysis and institutional matters to favor private sector capability in trade policy-making, managing of regulatory issues in trade, and compliance.
World Bank	WTO issues are considered in a broader economic and social context of development and investment-related policies. Creation and dissemination of a core knowledge base that integrates relevant conceptual frameworks, practical tools, and lessons of experience. Training and research, capacity-building, and networking to link think tanks and trade policy makers.
USAID/Bilateral Aid Agencies	Technical and financial assistance. Trade policy issues are considered in the larger context of alleviating extreme poverty. Assistance generally tied to specific projects.
RTAs	Technical and financial assistance for new disciplines (deep integration) not commonly found in current trade regimes. Example: Capacity building linked to the U.S. CAFTA-DR FTA.

<sup>201</sup> Michel Kostecki, *Technical Assistance Services in Trade-policy: A Contribution to the Discussion on Capacity-building in the WTO*, 2 SUSTAINABLE DEVELOPMENT AND TRADE ISSUES 1, 13 (2001) (partial reproduction).

First, the WTO maintains an extensive program of cooperation and capacity building.<sup>202</sup> In particular, WTO cooperation and capacity building focuses on three core functions: Trade-related Technical Assistance, the Institute for Training and Technical Cooperation (ITTC), and the Aid for Trade Initiative.

The WTO trade-related technical assistance provisions primarily relate to the training and assistance of Members.<sup>203</sup> In 2014, over “14,700 participants from developing countries benefited from WTO training courses and distance learning [programs].”<sup>204</sup> In 2015, no specific training was provided to the Philippines, while one program was directed to the Asia-Pacific region as a whole.<sup>205</sup> However, in response to the Trade Facilitation Agreement (TFA), in July 2014, the WTO announced the launch of the Trade Facilitation Agreement Facility, which aims to assist in the implementation of the TFA through technical assistance and capacity building.<sup>206</sup>

The ITTC coordinates WTO-related technical assistance and training.<sup>207</sup> The WTO-related technical assistance and training includes, but is not limited to, market access issues,

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<sup>202</sup> However, some scholars argue that the WTO cooperation and capacity building provisions face major challenges. See Gregory Shaffer, *Can WTO technical assistance and capacity-building serve developing countries*, 23 WIS. INT'L LJ 643, 667-68 (2005) (“WTO technical assistance and capacity-building programs face at least four major interrelated challenges. They are: (i) the difficulty of ensuring that WTO technical assistance is coherently integrated into larger development strategies, and consists of more than a fragmented hodgepodge of “one-off” events; (ii) the incentives of donors to frame capacity-building projects to advance donor constituency interests; (iii) the risk of dependency, which can undermine local capacity, unless technical assistance is absorbed institutionally and socially; and (iv) the threat of discontinuation of significant WTO and other trade-related technical assistance after the completion (or termination) of the Doha round, so that trade-related capacity-building does not remain a significant WTO function.”).

<sup>203</sup> WORLD TRADE ORGANIZATION, TRAINING AND TECHNICAL ASSISTANCE: IMPROVING UNDERSTANDING OF THE WTO TRADING SYSTEM (2014), available at [https://www.wto.org/english/tratop\\_e/devel\\_e/teccop\\_e/tct\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/teccop_e/tct_e.htm)

<sup>204</sup> *Id.*

<sup>205</sup> WTO, TRTA: TRADE-RELATED TECHNICAL ASSISTANCE, TECHNICAL ASSISTANCE AND TRAINING COURSES FOR 2016-2017, (last visited February 24, 2016), available at [https://www.wto.org/english/tratop\\_e/devel\\_e/train\\_e/course\\_details\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/train_e/course_details_e.htm).

<sup>206</sup> WTO, AZEVÉDO LAUNCHES NEW WTO TRADE FACILITATION AGREEMENT FACILITY TO DELIVER SUPPORT TO LDCs AND DEVELOPING COUNTRIES, (last visited February 24, 2016), available at [https://www.wto.org/english/news\\_e/news14\\_e/fac\\_22jul14\\_e.htm](https://www.wto.org/english/news_e/news14_e/fac_22jul14_e.htm).

<sup>207</sup> WTO, TRTA: TRADE-RELATED TECHNICAL ASSISTANCE, INSTITUTE FOR TRAINING AND TECHNICAL COOPERATION (ITTC), (last visited February 24, 2016), [https://www.wto.org/english/tratop\\_e/devel\\_e/teccop\\_e/itc\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/teccop_e/itc_e.htm) (noting its “main objectives are to assist beneficiary countries to: enhance institutional and human capacity in the field of trade; address trade policy issues;

trade in services, and SPS measures.<sup>208</sup> Regarding SPS measures the ITTC regularly provides training to the Philippines.<sup>209</sup>

Since the foundation of the Aid for Trade Initiative, which provides cooperation and capacity building to developing and least developed nations after trade liberalization, “donors have disbursed a total of USD 264.5 billion in official development assistance and an additional USD 190 billion in other official flows for financing trade-related [programs] in developing countries.”<sup>210</sup> However, the Philippines is currently not a recipient.<sup>211</sup>

Second, UNCTAD offers technical cooperation support to developing and least-developed economies on trade-related issues, including, but not limited to, WTO matters.<sup>212</sup> Because the UNCTAD technical cooperation mandate is not limited to WTO matters, technical cooperation for regional trade agreement matters is available.<sup>213</sup> Currently, there are 260 UNCTAD technical cooperation projects with annual expenditures of about \$39 million, 14% of which are directly allocated to Asia-Pacific initiatives.<sup>214</sup> Moreover, UNCTAD notes that governments are the “main direct beneficiaries” of UNCTAD’s technical cooperation activities

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integrate more fully into the multilateral trading system; exercise the rights of WTO membership; fully participate in multilateral trade negotiations)

<sup>208</sup> See Kostecki, *supra* note **Error! Bookmark not defined.**, at 28.

<sup>209</sup> See, e.g. ITTC Code: TC11/8, (last visited April 21, 2016), available at [http://gtad.wto.org/publish/1237/20110523112513\\_tc11-8\\_e.pdf](http://gtad.wto.org/publish/1237/20110523112513_tc11-8_e.pdf).

<sup>210</sup> WORLD TRADE ORGANIZATION, AID FOR TRADE AT A GLANCE 2015: REDUCING TRADE COSTS FOR INCLUSIVE, SUSTAINABLE GROWTH (2015), available at [https://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/aft\\_profiles\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/a4t_e/aft_profiles_e.htm).

<sup>211</sup> WTO STATISTICS DATABASE (last visited February 24, 2016), available at <http://stat.wto.org/Home/WSDBHome.aspx?Language=E>

<sup>212</sup> See UNCTAD, A GUIDE TO UNCTAD TECHNICAL COOPERATION, (2009) [http://unctad.org/en/PublicationsLibrary/dom20092rev1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/dom20092rev1_en.pdf).

<sup>213</sup> *Id.* at 18 (“The interface between the multilateral trading system and regional trade agreements is also a key area of focus.”).

<sup>214</sup> *Id.* at 5, 13 (“A State member of UNCTAD or a regional institution wishing to obtain technical cooperation from the UNCTAD secretariat should submit a request in writing, with an indication of the nature and contents of the assistance required. The request should be addressed to: Technical Cooperation Service UNCTAD Palais des Nations CH-1211 Geneva 10 Switzerland Tel.: +41 22 917 5594 Fax: +41 22 917 0043 E-Mail: [tc@unctad.org](mailto:tc@unctad.org) Website: <http://www.unctad.org> Requests may also be addressed through the nearest United Nations Resident Coordinator office. The UNCTAD secretariat will, in consultation with the requesting beneficiary, consider sending a fact-finding mission in order to define all aspects of the proposed activities. Once the rationale of the activity has been determined, UNCTAD will, in cooperation with the beneficiary, seek to secure the financial resources necessary for implementing the project.”).

and outlines a procedure for written requests.<sup>215</sup> UNCTAD does not engage in direct financial transfer for the purposes of technical cooperation.<sup>216</sup> UNCTAD currently provides the Philippines technical cooperation in four projects focused on professional development in trade matters as well as international intellectual property as it relates to trade.<sup>217</sup>

Third, the ITC is a joint agency of the United Nations and the WTO and focuses on the private-sector aspects of cooperation and capacity building by interfacing with small- and medium-sized enterprises.<sup>218</sup> The ITC currently does not offer Philippines assistance for specific projects.<sup>219</sup> ITC cooperation and capacity building initiatives relate to six main areas: product and market development, trade support services, trade information, human resource development, international purchasing and supply management, and needs assessment and program design for trade promotion.<sup>220</sup>

Fourth, the World Bank provides cooperation and capacity training in all aspects of trade.<sup>221</sup> This work is primarily conducted by the World Bank Institute, the Bank's capacity

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<sup>215</sup> *Id.* at 6.

<sup>216</sup> *Id.* at 8 (“The main forms of delivery of technical cooperation are: . . . [p]olicy and technical advisory services; . . . [i]n-depth policy reviews of particular subjects (e.g. investment, trade, science, technology and innovation); . . . [t]raining courses, seminars, simulation exercises, workshops or symposia on specific issues; . . . [c]omputer-based technical cooperation packages involving the installation of management information systems and advice on how to use them; . . . and [s]upply of trade- and investment-related data.”).

<sup>217</sup> UNCTAD, INDICATIVE LIST OF REQUESTS FOR UNCTAD TECHNICAL COOPERATION ACTIVITIES RECEIVED IN 2013-2015, UNCTAD/DOM/MISC/2013/1 (2013), available at <http://unctad.org/en/Pages/TechnicalCooperation.aspx>.

<sup>218</sup> ITC, HOW ITC WORKS, (last visited February 25, 2016), available at <http://www.intracen.org/itc/about/how-itc-works/>.

<sup>219</sup> ITC, PROJECTS, (last visited February 25, 2016), available at <http://www.intracen.org/itc/projects/>; *See also* ITC, CONTACT US, (last visited February 25, 2016), available at <http://www.intracen.org/contactus/> (outlining electronic and postal ITC contact procedure)..

<sup>220</sup> ITC, MISSION, GOALS AND FOCUS AREAS, (last visited February 25, 2016), available at <http://www.intracen.org/itc/about/mission-and-objectives/>.

<sup>221</sup> THE WORLD BANK, THE WORLD BANK INSTITUTE, LEARNING FOR DEVELOPMENT 23, (last visited February 25, 2016) available at <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/0,,contentMDK:20097853~menuPK:204763~pagePK:209023~piPK:207535~theSitePK:213799,00.html>. (“The World Bank Institute (WBI) is one of the Bank’s main instruments for developing individual, organizational, and institutional capacity through the exchange of knowledge among those countries.”)

development branch, and through country-specific programs.<sup>222</sup> 20% of the World Bank Institute's clients are East Asian and Pacific.<sup>223</sup> The World Bank has 15 active Philippines projects, most of which are lending-related.<sup>224</sup>

Fifth, USAID primarily administers U.S. foreign aid and has provided nearly 200 million dollars in aid, representing some of the largest sources of bilateral aid to the Philippines.<sup>225</sup> The USAID economic growth and trade mandate focuses on seven areas: development credit authority, promoting sound economic policies for growth, infrastructure, microenterprise development, supporting private enterprise, trade and regulatory, and promoting affordable, efficient cookstoves.<sup>226</sup> USAID is empowered to directly provide financial assistance and in recent years has increased its emphasis on financial rather than technical assistance.<sup>227</sup> The primary example of USAID cooperation and capacity building assistance for the Philippines comes from the Trade-Related Assistance for Development (TRADE) Project. The TRADE Project is a five year, \$12.8 million, initiative aimed at improving the Philippine's level of trade

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<sup>222</sup> *Id.* at 6.

<sup>223</sup> WORLD BANK INSTITUTE ANNUAL REVIEW 2008, (last visited February 25, 2016), available at <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/0,,contentMDK:21927999~menuPK:204763~pagePK:209023~piPK:207535~theSitePK:213799,00.html>.

<sup>224</sup> THE WORLD BANK, PROJECTS & PROGRAMS, (last visited February 25, 2016), available at <http://www.worldbank.org/en/country/philippines/projects#2> (“As of August 2015, the Philippine portfolio comprises 15 active projects with a total net commitment of \$2.8 billion. Sectors benefiting from Bank-supported projects include infrastructure, social protection, health, basic education, rural development and environment.”)

<sup>225</sup> USAID, MISSION, VISION AND VALUES, (last visited February 25, 2016), available at <https://www.usaid.gov/who-we-are/mission-vision-values> (“We partner to end extreme poverty and promote resilient, democratic societies while advancing our security and prosperity.”). However, as of 2013, the largest aid donors are the United Kingdom, Japan, and Canada. GLOBAL HUMANITARIAN ASSISTANCE, TOP TEN GOVERNMENT DONORS OF HUMANITARIAN ASSISTANCE (US\$ MILLIONS), 2004-2013, (last visited May 15, 2016), available at <http://www.globalhumanitarianassistance.org/countryprofile/philippines#tab-donors>.

<sup>226</sup> USAID, ECONOMIC GROWTH AND TRADE, (last visited February 25, 2016), available at <https://www.usaid.gov/what-we-do/economic-growth-and-trade>.

<sup>227</sup> INSIDEGO, HOW MUCH MONEY DOES THE U.S. GIVE TO PHILIPPINES, (last visited February 25, 2016), available at <http://us-foreign-aid.insidegov.com/q/139/1590/How-much-money-does-the-U-S-give-to-Philippines> (“The U.S. Government gave a total of \$197,036,510 to Philippines in 2012”).

and foreign direct investment.<sup>228</sup> Among other activities, the TRADE Project’s technical assistance advances the Philippines’ eligibility in the TPP by outlining policy reforms and providing trade analysis.<sup>229</sup>

Similar to USAID, the Japanese International Cooperation Agency (JICA) provides technical assistance to the Philippines.<sup>230</sup> Financial assistance from JICA generally comes in the form of loans.<sup>231</sup> Additionally, though not in the form of direct financial transfers, the Association of Southeast Asian Nations’ (ASEAN) trade-related capacity building initiatives provide technical assistance.<sup>232</sup>

Finally, the Philippines can look to other RTAs as studies in cooperation and capacity building. RTAs such as the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) has led to subsequent agreements in the areas of labor and environment which aimed to provide financial assistance and bolster technical capacity building; in fact, the United States committed “\$142 million in funds from FY2005 - FY2010 for labor capacity building in the CAFTA-DR countries.”<sup>233</sup> A trade regime that goes beyond trade in goods and services are

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<sup>228</sup> USAID, TRADE-RELATED ASSISTANCE FOR DEVELOPMENT (TRADE) PROJECT, (last visited April 21, 2016), available at <https://www.usaid.gov/philippines/partnership-growth-pfg/trade>.

<sup>229</sup> See *id.*

<sup>230</sup> JICA, ACTIVITIES IN THE PHILIPPINES, (last visited March 3, 2016), available at <http://www.jica.go.jp/philippine/english/activities/activity02.html>.

<sup>231</sup> JICA, JAPANESE ODA IN THE PHILIPPINES, (last visited March 3, 2016), available at <http://www.jica.go.jp/philippine/english/activities/activity01.html>

<sup>232</sup> See Susan Prowse, *The role of international and national agencies in trade-related capacity building*, 25 THE WORLD ECONOMY 1235 (2002).

<sup>233</sup> USTR, U.S., CAFTA-DR COUNTRIES SIGN TWO SUPPLEMENTAL AGREEMENTS TO FACILITATE IMPLEMENTING THE FTA’S ENVIRONMENTAL PROVISIONS, (last visited March 3, 2016), available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/archives/2005/february/us-cafta-dr-countries-sign-two-supplemen> (“The seven governments signed an Understanding establishing a secretariat to administer a public submissions mechanism and an Environmental Cooperation Agreement (ECA) to guide long-term environmental cooperation in the region.”); USTR, CAFTA-DR Labor Capacity Building, (last visited March 3, 2016), available at <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2011/may/cafta-dr-labor-capacity-building#> (“In support of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), the US Government committed over \$142 million in funds from FY2005 - FY2010 for labor capacity building in the CAFTA-DR countries. Funds have been dedicated to labor capacity building programs focused on strengthening labor ministries and courts, promoting an overall culture of compliance, and removing or preventing children from exploitive child labor.”).



colloquially called “deep integration.”<sup>234</sup> The TPP’s deep integrative standards would constitute a new trade regime for the Philippines, so it is important to understand that similar regimes have been cognizant of the needs of members and have accordingly provided necessary cooperation and building programs, including direct financial transfers. New disciplines concerning SOEs or e-commerce would make strong bases for subsequent financial transfers.

### **VIII. Analyzing the Impact of Cooperation and Capacity Building**

The TPP’s most significant contribution to cooperation and capacity building is the establishment of a permanent Committee. The Committee offers the Philippines a platform to raise cooperation and capacity building concerns and negotiate further commitments. While there are no further affirmative commitments, particularly with regard to financial transfers, there are still significant non-financial cooperation and capacity building initiatives that would greatly serve the Philippines.<sup>235</sup>

For the Philippines to determine the effectiveness of the TPP’s cooperation and capacity building opportunities, it is necessary to be aware of pre-existing avenues and programs that provide for cooperation and capacity building. While USAID currently provides the most support for cooperation and capacity building and in particular direct financial transfer, the Philippines still has policy opportunities through other international development agencies absent TPP accession. Finally, despite lacking affirmative commitments, if TPP commitments follow

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<sup>234</sup> See Kenneth C. Shadlen, *Exchanging development for market access? Deep integration and industrial policy under multilateral and regional-bilateral trade agreements*, 12 REVIEW OF INTERNATIONAL POLITICAL ECONOMY 750 (2005).

<sup>235</sup> See generally Fernando T. Aldaba & Rafaelita M. Aldaba, *ASEAN Economic Community 2015 Capacity-building Imperatives for Services Liberalization*, PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES, Discussion Paper Series No. 2013-06, (2015), available at <http://dirp3.pids.gov.ph/ris/dps/pidsdps1306.pdf> (discussing non-financial issues that cooperation and capacity building should focus on including: lack of competitiveness and lack of activities and programs to reduce cost public-private sector dialogues to tackle institution building; private sector inefficiencies; institutional and regulatory weaknesses; inadequate Communication to/from the Public; and, human resource issues).

the trajectory of current cooperation and capacity building programs, the Committee will be positioned to develop several initiatives. In particular, the deep integration of contemporary RTAs suggests an opportunity to negotiate specific cooperation and capacity building programs. Being relatively more deserving of such initiatives when compared to other TPP parties, the Philippines might have the opportunity to tailor such initiatives to its needs and might fit well with some the regulatory reforms the Philippines has underway and plans to undertake.

## **Cross-Border Trade in Services Analysis**

The TPP meaningfully builds upon contemporary trade in services disciplines. In fact, some commentators have suggested that the disciplines on services represent “the most significant components” of the TPP.<sup>236</sup> This Section will review obligations under the TPP for cross-border trade in services, market access inscription procedures, and the impact on domestic regulation of cross-border trade in services.

### **I. Cross-Border Trade in Services Obligations**

The TPP defines cross-border trade in services or cross-border supply of services as the supply of a service: “(a) from the territory of a Party into the territory of another Party; (b) in the territory of a Party to a person of another Party; or (c) by a national of a Party in the territory of another Party . . . .”<sup>237</sup>

The TPP services regime’s scope includes, but is not limited to: “(a) the production, distribution, marketing, sale or delivery of a service; (b) the purchase or use of, or payment for, a service; (c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service; (d) the presence in the Party’s territory of a service supplier of another Party; and (e) the provision of a bond or other form condition for the supply of a service.”<sup>238</sup>

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<sup>236</sup> See Jane Drake-Brockman, Sherry Stephenson & Robert Scollay, *The TPP – Opportunity for a New Approach to Services Trade and Investment Liberalisation?*, PECC 7, <https://www.pecc.org/resources/trade-and-investment-1/1712-the-tpp-opportunity-for-a-new-approach-to-services-trade-and-investment-liberalisation/file> (last visited March 30, 2016) (“In the first place, the countries participating in the TPP represent a very significant market for services, and the services sector represents a very substantial part of their combined economies. Second, if the rhetoric of the TPP as a “high quality, twenty-first century agreement” is to be taken seriously, it should surely imply that the TPP should be seen as an opportunity to move beyond the established approaches to services trade and investment [liberalization] exhibited in the WTO and existing FTAs, which have for the most part disappointed in the extent to which they have driven forward meaningful services trade [liberalization] in ways that resonate with the needs of business.”)

<sup>237</sup> TPP art. 10.1.

<sup>238</sup> *Id.* at art. 10.2.

The TPP governs cross-border trade in services with four core obligations that are generally found in the WTO General Agreement on Trade in Services (“GATS”)<sup>239</sup> and other trade agreements: national treatment,<sup>240</sup> most-favored national treatment,<sup>241</sup> market access,<sup>242</sup> and local presence.<sup>243</sup> Importantly, the national treatment requirement extends to regional governance of trade in services.<sup>244</sup> Finally, each Party must ensure that measures of general application that affect trade in services “are administered in a reasonable, objective and impartial manner.”<sup>245</sup>

## **II. Inscribing Market Access Commitments**

As with the WTO GATS commitments, TPP Parties accept the obligations of cross-border trade in services unless they have taken an exception.<sup>246</sup> Similar to WTO schedules, Parties negotiate Article 10.7 exceptions in their annexes.<sup>247</sup>

### **a. Inscribing Cross-Border Trade in Services Market Access Commitments**

Cross-border trade in service obligations are conducted on a negative list basis. TPP Party services markets are fully open to services suppliers from other Parties, except where there are exceptions in one of two country-specific annexes.<sup>248</sup> First, current measures on which a Party accepts an obligation not to make its measures more restrictive in the future must be outlined in

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<sup>239</sup> GATS: General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, The Legal Texts: The Results Of The Uruguay Round Of Multilateral Trade Negotiations 284 (1999), 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994) [hereinafter GATS].

<sup>240</sup> TPP art. 10.3.1 (“Each Party shall accord to services and service suppliers of another Party treatment no less [favorable] than that it accords, in like circumstances, to its own services and service suppliers.”)

<sup>241</sup> *Id.* at art. 10.4 (“Each Party shall accord to services and service suppliers of another Party treatment no less [favorable] than that it accords, in like circumstances, to services and service suppliers of any other Party or a non-Party.”).

<sup>242</sup> *Id.* at art. 10.5 (imposing quantitative and qualitative restrictions on measures affecting trade in services).

<sup>243</sup> *Id.* at art. 10.6 (“No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.”)

<sup>244</sup> *See id.* at art. 10.3.2.

<sup>245</sup> *See* TPP art. 10.8.

<sup>246</sup> *See id.* at art 10.2.

<sup>247</sup> *See id.* at art 10.8.

<sup>248</sup> *Id.* at art. 10.7.

its Schedule to Annex I.<sup>249</sup> Second, sectors and policies on which a country retains full discretion in the future must be outlined in its Schedule to Annex II.<sup>250</sup> Both Annex I and II allow for derogations from the four core obligations regarding national treatment, most-favored national treatment, market access, and local presence.<sup>251</sup> Annexes outline seven components: sector, sub-sector, industry classification, obligations concerned, level of government, measure, and a description.<sup>252</sup> Historically, however, the negative list approach has been time and politically intensive.

#### **b. Inscribing WTO-plus Market Access Commitments**

Two WTO-plus Chapters are adopted by inscribing commitments: investment and financial services. This means that a Party's markets are liberalized<sup>253</sup> to foreign investors and financial services unless they have taken an exception—a negative list approach similar to the process for inscribing trade in services market access commitments.<sup>254</sup>

### **III. Impact on Domestic Regulation of Cross-Border Trade in Services**

In addition to the regulation of cross-border trade in services, the TPP impacts domestic regulation in services broadly,<sup>255</sup> including commitments in technical barriers to trade,<sup>256</sup> investment,<sup>257</sup> telecommunications,<sup>258</sup> and electronic commerce.<sup>259</sup> Chapter 11 independently

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<sup>249</sup> TPP art. 10.7.1.

<sup>250</sup> *Id.* at arts. 10.7.2 (“Article 10.3 (National Treatment), Article 10.4 (Most-[Favored]-Nation Treatment), 10.5 (Market Access) and 10.6 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.”).

<sup>251</sup> *See generally id.* at art. 10.7.

<sup>252</sup> *See id.* at Annex I, Explanatory Notes.

<sup>253</sup> *C.f. id.* at art. 9.

<sup>254</sup> *See* TPP arts. 9.2, 11.2.

<sup>255</sup> The broad application to Chapter 10 is indicated by its scope: “This Chapter shall not apply to: (a) financial services as defined in Article 11.1 (Definitions), except that paragraph 2(a) shall apply if the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 11.1 (Definitions) in the Party’s territory; (b) government procurement; (c) services supplied in the exercise of governmental authority; or (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.” *Id.* at art. 10.2.

<sup>256</sup> *Id.* at art. 7.

<sup>257</sup> *Id.* at art. 9.

governs financial services.<sup>260</sup> Finally, The TPP outlines exceptions to its trade in services disciplines.<sup>261</sup>

**a. Technical Barriers to Trade**

Unlike the WTO which does not govern technical barriers to trade in services,<sup>262</sup> cross-border trade in services within the TPP are contemplated “with a view to ensur[ing] that measures relating to qualification requirements and procedures, *technical standards* and licensing requirements do not constitute unnecessary barriers,” which suggests a technical barriers to trade in services regime.<sup>263</sup> Conformity of such technical standards is to be based on the “international standards of relevant international [organizations] applied by that Party” and “each Party shall apply the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.12), as may be revised, issued by the WTO Committee on Technical Barriers to Trade” when interpreting standards.<sup>264</sup>

TPP parties must have transparent, non-discriminatory rules for technical regulations, standards, and conformity assessment procedures.<sup>265</sup> Technical standards must not create unnecessary barriers to trade.<sup>266</sup> Parties are required to allow for the public to comment on proposed technical regulations, standards, and conformity procedures.<sup>267</sup> Parties must also provide a reasonable interval between the creation of technical regulations and conformity

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<sup>258</sup> *Id.* at art. 13.

<sup>259</sup> TPP art. 14.

<sup>260</sup> *Id.* at art. 11; *see id.* at art. 10.2.3 (“This Chapter shall not apply to: financial services as defined in Article 11.1).

<sup>261</sup> *Id.* at art. 29.

<sup>262</sup> TRACEY EPPS & MICHAEL J. TREBILCOCK, RESEARCH HANDBOOK ON THE WTO AND TECHNICAL BARRIERS TO TRADE 48 (2013).

<sup>263</sup> *See* TPP art. 10.8.2 (emphasis added)

<sup>264</sup> *Id.* at arts. 8.5.2, 10.8.3.

<sup>265</sup> *See id.* at art. 8.2.

<sup>266</sup> *See id.*

<sup>267</sup> *See id.* at art. 8.7.

assessment procedures and their entry into force.<sup>268</sup> These technical standards present similar issues as related to Philippine SPS measures, namely procedural requirements.<sup>269</sup>

**b. Investment**

The TPP sets rules requiring non-discriminatory investment policies and protection, while allowing Parties to achieve legitimate public policy goals. Basic investment protections include: national treatment;<sup>270</sup> most-favored-national treatment<sup>271</sup> minimum standards of treatment for investment;<sup>272</sup> prohibition of expropriation unless for a public purpose, with due process, or with compensation;<sup>273</sup> prohibition on performance requirements such as local content or technology localization;<sup>274</sup> free transfer of funds related to investment<sup>275</sup> (notwithstanding exceptions related to the management of volatile capital flows);<sup>276</sup> and freedom to appoint senior management positions of any nationality.<sup>277</sup>

Investment and ownership in land has been a barrier to foreign investment.<sup>278</sup> The Philippine Constitution prohibits foreign land ownership, but allows for 50 year leases (with one 25 year renewal possible).<sup>279</sup> U.S. investors and the USTR report that these issues can be a barrier to investment in the mineral exploration and processing sectors.<sup>280</sup>

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<sup>268</sup> See TPP art. 8.8.

<sup>269</sup> See *supra* Section I.

<sup>270</sup> TPP art. 9.4.

<sup>271</sup> *Id.* at art. 9.5.

<sup>272</sup> *Id.* at art. 9.6 (“Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.”)

<sup>273</sup> *Id.* at art. 9.8.

<sup>274</sup> *Id.* at art. 9.10.

<sup>275</sup> TPP art. 9.9.

<sup>276</sup> See *infra* note **Error! Bookmark not defined.** and accompanying text.

<sup>277</sup> TPP art. 9.11.

<sup>278</sup> See USTR 2014 NTE Philippines Report, available at <https://ustr.gov/sites/default/files/2014%20NTE%20Report%20on%20FTB%20Philippines.pdf>.

<sup>279</sup> See *id.*

<sup>280</sup> See *id.*

**c. Telecommunications**

The TPP acknowledges “the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition or if a service is new to a market.”<sup>281</sup> However, each Party may determine how to implement its telecommunications obligations.”<sup>282</sup> The TPP outlines specific service disciplines to telecommunications, including interconnection, leased circuit services, co-location, access to poles and other facilities under reasonable terms, and non-discriminator regulation.<sup>283</sup>

The Philippines deregulated its telecommunications industry in 1995, making it largely compliant with most telecommunications service disciplines.<sup>284</sup> Certain reforms may need to be made to establish non-discriminatory treatment of foreign telecommunication investors as currently requested by the United States.<sup>285</sup> Current Philippine law limits foreign investment of telecommunication enterprises to 40 percent, because it is defined as a public utility.<sup>286</sup> Foreigners may also not serve as managers or executives of such companies, and the number of foreign directors allowed is tied to the proportion of foreign investment.<sup>287</sup> Moreover, 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 banned.<sup>288</sup> These investment limitations may be inconsistent with other investment obligations, namely those regarding

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<sup>281</sup> TPP art. 13.3.

<sup>282</sup> *Id.* at art. 13.3.

<sup>283</sup> *Id.* at art. 13.4.

<sup>284</sup> *See* An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services, Rep. Act. No. 7925 (Mar. 1, 1995) (Phil.), available at [http://www.lawphil.net/statutes/repacts/ra1995/ra\\_7925\\_1995.html](http://www.lawphil.net/statutes/repacts/ra1995/ra_7925_1995.html).

<sup>285</sup> USTR 2014 NTE Philippines Report, *supra* note 278.

<sup>286</sup> *See id.*

<sup>287</sup> *See id.*

<sup>288</sup> *See id.*



national treatment.<sup>289</sup> However, if aspects of the Philippines telecommunications disciplines are in violation, the Philippines, like Vietnam, has the opportunity to negotiate specialized disciplines.<sup>290</sup>

#### **d. Financial Services**

The TPP disciplines on financial services include obligations regarding national treatment, most-favored national treatment, and market access.<sup>291</sup> The TPP obliges parties to allow for the sale of cross-border financial services without first requiring suppliers to establish operations in the other country.<sup>292</sup> Specific obligations exist to expedite insurance service licenses<sup>293</sup> as well as commitments on portfolio management, electronic payment card services, and the transfer of information for data processing.<sup>294</sup> TPP parties may establish country-specific exception to some of these disciplines in their annexes.<sup>295</sup> Financial services disputes are resolved through investment arbitration.<sup>296</sup> Financial services disciplines are subject to limited exceptions to maintain financial stability and other prudential considerations.<sup>297</sup>

The Philippines has liberalized much of its financial services sector. In 1994, the Philippines government passed Republic Act (RA) 7721, which liberalized the entry and scope of operations of foreign banks by allowing establish offshore units subject to authorization. In 2014, the Philippine government passed RA 10641, which further liberalized the banking sector.

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<sup>289</sup> See TPP art. 9.3 (“In the event of any inconsistency between this [Investment] Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.”). The investment and telecommunications chapters can be read consistently to find that there cannot be discriminatory treatment of foreign telecommunications investment.

<sup>290</sup> See, e.g. TPP arts. 13.4.2(c) n.4., 13.5.5 n.7.

<sup>291</sup> *Id.* at art. 11.2.2.

<sup>292</sup> *Id.* at art. 11.5.

<sup>293</sup> *Id.* at art. 11.16.

<sup>294</sup> *Id.* at art. 11.1.

<sup>295</sup> TPP art. 11.10.

<sup>296</sup> *Id.* at art. 11.2.2

<sup>297</sup> *Id.* at art. 11.11; see also *infra* Section III.f.

Foreign banks may own up to 100 per cent of an existing bank's voting stock and are given equal treatment to domestic banks.<sup>298</sup>

**e. Electronic Commerce**

While the TPP explicitly chooses not to define digital products are goods or services<sup>299</sup>, the TPP commits Parties to ensure the free flow of global information and data in the manner in which investment, trade in services, and financial services are disciplined.<sup>300</sup> The TPP incorporates the UNCITRAL Model Law on Electronic Commerce 1996<sup>301</sup> or the United Nations Convention on the Use of Electronic Communications in International Contracts<sup>302</sup> as a framework governing electronic transactions.<sup>303</sup> The TPP disciplines on electronic commerce include three core obligations: customs duties,<sup>304</sup> national treatment,<sup>305</sup> and consumer protection.<sup>306</sup>

**f. Exceptions**

Notwithstanding exceptions inscribed in cross-border trade in services annexes,<sup>307</sup> Parties have recourse to the similar general exceptions provided for in Article XIV of the GATS.<sup>308</sup>

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<sup>298</sup> An Act Allowing the Full Entry of Foreign Banks in the Philippines, Amending for the Purpose of Act No. 7721 Rep. Act. No. 10641 (Jul 15, 2014) (Phil), available at <http://www.gov.ph/2014/07/15/republic-act-no-10641/> (noting that foreign banks “enjoy the same privileges, and be subject to the same limitations imposed upon a Philippine bank of the same category”).

<sup>299</sup> See TPP art. 14.1 n.3 (“The definition of digital product should not be understood to reflect a Party’s view on whether trade in digital products through electronic transmission should be [categorized] as trade in services or trade in goods.”).

<sup>300</sup> See *id.* at art. 14.2.4 (“measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services), including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.”).

<sup>301</sup> *Id.* at art. 14.5.1.

<sup>302</sup> *Id.* at art. 14.5.1.

<sup>303</sup> *Id.* at art. 14.5.1.

<sup>304</sup> TPP art. 14.3.1 (“No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.”).

<sup>305</sup> *Id.* at art. 14.4 (“No Party shall accord less [favorable] treatment to digital products . . .”).

<sup>306</sup> *Id.* at art. 14.7.2 (“Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.”).

<sup>307</sup> See *supra*, notes **Error! Bookmark not defined.–Error! Bookmark not defined.** and accompanying text.

Moreover, a Party may take any measure it considers necessary for its essential security interest—stylized as a self-judging exception—that applies to all TPP provisions.<sup>309</sup> TPP Chapter 29 also describes circumstances under which a Party may impose temporary safeguard measures restricting transfers to manage volatile capital flows.<sup>310</sup> Finally, no Party is required to disclose information it deems it contrary to its law or public interest or would prejudice the legitimate commercial interests of particular enterprises.<sup>311</sup>

#### **IV. Objective and Transparent Criteria in Cross-Border Trade in Services**

Under WTO disciplines, a necessity test permits Members to adopt measures that restrict trade only to the extent necessary to achieve the Member’s policy objectives. There are three elements to a necessity test: (1) the measure is subject to the test, (2) the measure is meant to achieve a policy objective, and (3) there is a necessary link between the measure and the policy objective.

Under Article VI:4 of the GATS Agreement, Members may regulate domestic licensing requirements, qualification requirements, and procedures and technical standards only to the extent necessary to further their legitimate policy objectives.<sup>312</sup> Article VI:4 therefore adopts a necessity test as a requirement for such measures.<sup>313</sup>

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<sup>308</sup> See TPP art. 10.7.

<sup>309</sup> See GATS, *supra* note 239, at art. XIV.

<sup>310</sup> TPP art. 29.3.

<sup>311</sup> *Id.* at art. 29.7.

<sup>312</sup> GATS, *supra* note 239, at art. VI:4. Article VI:4 only applies to non-discriminatory measures not included in the scope of Article XVI. *Id.* For discussion of the definition of “legitimate” policy objectives, see Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, ¶ 291 (adopted Apr. 20, 2005).

<sup>313</sup> GATS, *supra* note 239, at art. VI:4.

However, the wording of Article VI:4 was vague, and GATS mandated the Council for Trade in Services (CTS) to adopt further disciplines to describe these obligations in detail.<sup>314</sup> Due to political resistance at the Working Party on Professional Services, CTS has approved only one such discipline, which applies to the accounting sector.<sup>315</sup> The status of the necessity test as applied to other sectors remains in question.<sup>316</sup>

The TPP, however, does not explicitly adopt a necessity test for licensing requirements, qualification requirements or technical standards.<sup>317</sup> The TPP rather requires Parties to adopt such measures based on “objective and transparent criteria”, and requires measures on licensing requirements to not restrict the supply of cross-border trade in services.<sup>318</sup>

## **V. Licensing and Qualification Fees in Cross-Border Trade in Services**

In Annex 10-A, the TPP imposes additional soft obligations on Parties who establish licensing requirements, qualification requirements, or technical standards.<sup>319</sup> These soft obligations include the obligation to establish dialogues with other Parties and encourage its regulatory bodies to take other agreements into account.<sup>320</sup> Because the TPP does not adopt a necessity test, the TPP working group will likely not approve of further disciplines related to licensing requirements, qualification requirements, or technical standards.

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<sup>314</sup> Gilles Muller, *Necessity Test and Trade in Services: Unfinished Business?*, 49 JOURNAL OF WORLD TRADE 951, 954 (2015).

<sup>315</sup> *Id.* at 954.

<sup>316</sup> *Id.* at 954.

<sup>317</sup> TPP art. 10.8.2.

<sup>318</sup> *Id.* at art. 10.8.2.

<sup>319</sup> *Id.* at annex 10-A.

<sup>320</sup> *Id.* at annex 10-A.

## VI. Prior Comment Obligations in Cross-Border Trade in Services

The TPP does not generally impose extensive prior comment obligations for cross-border trade in services. In Article 10.11, the TPP requires Parties to provide maintain a mechanism for responding to inquires on services regulations.<sup>321</sup> However, the TPP does not require Parties to provide advance notice or the opportunity to comment as described in Article 26.2.2.<sup>322</sup> Rather, if the Parties decline to provide such notice and opportunity, the Party merely must provide a written explanation of its reasons for declining to do so.<sup>323</sup> However, if the service regulation relates to technical regulations and standards, Parties are required to allow for the public to comment on the proposed measure.<sup>324</sup>

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<sup>321</sup> *Id.* at art. 10.11.1.

<sup>322</sup> TPP art. 10.11.2.

<sup>323</sup> *Id.* at art. 10.11.2.

<sup>324</sup> See *supra* note **Error! Bookmark not defined.** and accompanying text.

## **Trade in Goods Data Analysis**<sup>325</sup>

The U.S. International Trade Commission has provided several trade flow data sets reflecting the most significant imports and exports between the Philippines and the United States, Japan, Canada, countries within the TPP, and globally. These trade flow analytics will be useful in providing concrete gain and loss analysis for TPP accession. When cross-referenced with the existing tariff schedules of these nations and the current Philippine trade schedules, the trade flow data illuminates some of the potential concessions that may be asked of the Philippines as well as opportunity centers for the Philippine economy through accession to the TPP. As a potential guide, the following analysis proposes some concessions likely to be requested from the United States, Japan, and Canada on the Philippines' main imports. Concessions offered by Vietnam under the agreement are then used to predict amounts of tariff cuts as a guide for what might be expected of the Philippines should it choose to accede. This analysis also recommends products for which the Philippines should request tariff concessions, and flags concessions made by other TPP members that the Philippines could expect to enjoy under the agreement.

### **IX. Potential Philippine Market Access Targets for the United States**

As illustrated in the table below, the primary imports of the Philippines from the United States include agricultural products and machinery. This chart is particularly important in entering bilateral discussions with the United States, because the duties charged on these products will be of particular interest to the United States. Logically, these are the products upon which the United States would expect the Philippines to make tariff reductions.

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<sup>325</sup> The team would like to specifically thank Jonathan Coleman and the International Trade Commission for supplying this data.

Many of the main imports of the Philippines are already subject to minimal or no tariffs.<sup>326</sup> Electronic integrated circuits have zero duty already under MFN treatment, as do wheat and meslin. Soybean oilcake was previously subject to a duty of one percent, but if a party obtains a certification of eligibility from the Department of Agriculture-Registry, the Agriculture and Fisheries Modernization Act exempts oilcake from the duty. Tariff rates on aircraft are fixed at one percent, which is marginal given the profit derived from the sale of an aircraft. Milk and cream concentrate also has a tariff of one percent, although exporters may receive the zero duty treatment under the Agriculture and Fisheries Act.

Machines and mechanical appliances, parts of balloons, and relevant food preparations are subject to three percent tariffs, which present some limited room for bargaining. Kraft paper and paperboard, with variants ranging from three to seven percent tariff rates, could also prompt the United States to ask for negotiations. The tariff rates on machine headlong parts and sugar should not raise issues, as their tariffs are negligible already.

The United States will likely be focused on reducing the forty percent tariff on meat and edible offal, both in-quota and out-quota. That tariff, along with the ten percent tariff that applies to undenatured ethyl alcohol, would feature prominently in the tariff negotiation process. Tariff rates on motor cars run from ten to thirty percent, which the United States would also likely be interested in discussing.

To illustrate the potential cuts that would be required of the Philippines, the tariff cuts offered by Vietnam in its accession to the TPP are informative.<sup>327</sup> Vietnam committed to cut its tariff on meat and edible offal from forty percent to zero percent, staged over twelve years.

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<sup>326</sup> Tariff rates were drawn from the Philippines Tariff Commission's information page, where individual tariffs can be search via reference to the Harmonized Tariff Schedule tag. *See* <http://finder.tariffcommission.gov.ph/index.php?page=tariff-finder3>.

<sup>327</sup> *See* TPP, *Vietnam Tariff Elimination Schedule*, Chapter 2, available at <https://ustr.gov/sites/default/files/TPP-Final-Text-Viet-Nam-Tariff-Elimination-Schedule.pdf>.

Vietnam further agreed to cut its tariffs on undenatured ethyl alcohol from forty percent to zero percent over twelve years. Vietnam's tariffs on motor cars range from ten to fifty percent, but all are scheduled to reduce to zero in twelve years. It appears then the Philippines would likely be expected to make several tariffs cuts in these areas to accede to the agreement.

### Largest Philippine Imports from the United States (by Value)

hs4	description	2012	2013	2014	Average
		Million USD			
9802	EXPORTS OF ARTICLES DONATED FOR RELIEF OR CHARITY, NESOI; IMPORTS OF ARTICLES EXPORTED AND RETURNED, ADVANCED OR IMPROVED ABROAD, EXCEPT UNDER WARRANTY	1,582.31	1,840.19	1,571.95	1,664.82
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	1,672.13	1,322.62	669.43	1,221.39
1001	WHEAT AND MESLIN	476.47	497.42	534.36	502.75
2304	SOYBEAN OILCAKE AND OTHER SOLID RESIDUES RESULTING FROM THE EXTRACTION OF SOY BEAN OIL, WHETHER OR NOT GROUND OR IN THE FORM OF PELLETS	442.85	349.51	439.58	410.65
8802	AIRCRAFT, POWERED (FOR EXAMPLE, HELICOPTERS, AIRPLANES); SPACECRAFT (INCLUDING SATELLITES) AND SPACECRAFT LAUNCH VEHICLES	614.24	333.68	30.23	326.05
0402	MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SWEETENING	164.49	217.05	174.50	185.35
8479	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI; PARTS THEREOF	122.20	62.20	35.75	73.38
8803	PARTS OF BALLOONS, DIRIGIBLES, GLIDERS, AIRPLANES, OTHER AIRCRAFT, SPACECRAFT AND SPACECRAFT LAUNCH VEHICLES	46.37	79.25	77.27	67.63
2106	FOOD PREPARATIONS NESOI	54.09	58.63	87.01	66.58
2207	ETHYL ALCOHOL, UNDENATURED, OF AN ALCOHOLIC STRENGTH BY VOLUME OF 80% VOL. OR HIGHER; ETHYL ALCOHOL AND OTHER SPIRITS, DENATURED, OF ANY STRENGTH	6.16	60.00	112.63	59.60
0207	MEAT AND EDIBLE OFFAL OF POULTRY (CHICKENS, DUCKS, GEESE, TURKEYS AND GUINEAS), FRESH, CHILLED OR FROZEN	53.44	43.56	72.05	56.35
4804	KRAFT PAPER AND PAPERBOARD, UNCOATED, NESOI, IN ROLLS OR SHEETS	59.27	50.23	53.32	54.27
8473	PARTS AND ACCESSORIES NESOI SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH THE MACHINES OF HEADINGS 8469 TO 8472	62.45	52.25	31.84	48.85
8703	MOTOR CARS AND OTHER MOTOR VEHICLES DESIGNED TO TRANSPORT PEOPLE (OTHER THAN PUBLIC-TRANSPORT TYPE), INCLUDING STATION WAGONS AND RACING CARS	50.87	51.26	37.53	46.55
1702	SUGARS NESOI, INCLUDING CHEMICALLY PURE LACTOSE, MALTOSE, GLUCOSE AND FRUCTOSE IN SOLID FORM; SUGAR SYRUPS (PLAIN); ARTIFICIAL HONEY; CARAMEL	38.77	43.55	49.84	44.05
	All other	1,713.74	1,670.82	1,707.59	1,697.38
	Total	7,121.09	6,688.68	5,635.02	6,481.60



## **X. Potential United States Market Access Targets for the Philippines**

While the Philippines benefits from the U.S. Generalized System of Preferences, it is not one of the least developed countries identified by the United States for the most preferential tariff treatment available. Consequently, some benefit could be gleaned by the Philippines in negotiations over tariff rates. The Philippines exports many electronic machinery products and agricultural goods to the United States, so tariff reductions on these goods could be transformative for the Philippine economy. However, some exports already receive favorable treatment. Electronic integrated circuits, the main export of the Philippines, are currently subject to zero duties.<sup>328</sup> Automatic data processing machines and units are currently subject to zero duties as well. Some electrical transformers are subject to three percent duties currently, which the Philippines might want to negotiate downwards. Similarly, electrical apparatuses for switching or protecting electrical circuits are subject to duties around 2.7 percent. Diodes and coconut oil are not subject to any tariffs.

Duties on insulated wires run between two and five percent, so the Philippines might want concessions with respect to those products. Parts for tractors and other motor vehicles are also subject to a two to five percent duty, which may be worth discussing in bilateral talks.

Certain non-crocheted womens' and girls' clothing is subject to a seventeen percent tariff, so this could be a potential area for negotiators to create value. Knitted or crocheted women's suits and jackets are also subject to up to a fourteen percent tariff, which could be adjusted downward. Some fruits and nuts are subject to high tariffs in the United States because only least developed countries are given preference, so the Philippines faces rates up to 131

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<sup>328</sup> U.S. Harmonized Tariff Schedule, *available at* <https://hts.usitc.gov/?query=8542>.

percent. Tariffs on prepared fish are high at up to thirty-five percent, particularly for sardines and tuna. Women's blouses and shirts are also subject to tariffs as high as thirty-five percent. Trunks, suitcases, vanity cases, etc. face a duty of twenty percent.

Under the TPP, the United States would cut its rates on women's or girls' suits, ensembles, etc. to zero, starting immediately.<sup>329</sup> Most rates on fruit and nut products would be cut to zero within ten years. Additionally, most rates on women's and girl's knitted or crocheted clothing drop to zero immediately. The tariff rates on prepared fish under the TPP immediately fall below base rate and drop to zero over the course of ten years. Womens' knitted or crochet shirts are immediately subject to a ten percent tariff decrease and fall to zero after ten years. Most duties on travel goods would be reduced to zero immediately under accession to the TPP. This evidence demonstrates that the Philippines could realize some gains in its principal exports by acceding to the TPP.

#### **Largest Philippine Exports to the United States**

hs4	Description	2012	2013	2014	Average
		Million USD			
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	570.49	634.78	692.93	632.73
8471	AUTOMATIC DATA PROCESSING MACHINES AND UNITS THEREOF; MAGNETIC OR OPTICAL READERS, MACHINES FOR TRANSCRIBING AND PROCESSING CODED DATA, NESOI	392.57	471.88	831.13	565.19
8504	ELECTRICAL TRANSFORMERS, STATIC CONVERTERS OR INDUCTORS; POWER SUPPLIES FOR ADP MACHINES OR UNITS; PARTS THEREOF	553.21	506.06	578.24	545.84
1513	COCONUT (COPRA), PALM KERNEL OR BABASSU OIL AND THEIR FRACTIONS, WHETHER OR NOT REFINED, BUT NOT CHEMICALLY MODIFIED	437.30	410.59	609.50	485.79
8544	INSULATED WIRE, CABLE AND OTHER INSULATED ELECTRICAL CONDUCTORS; OPTICAL FIBER CABLES, OF INDIVIDUALLY SHEATHED FIBERS, WITH CONDUCTORS ETC. OR NOT	407.29	436.19	530.69	458.06
9803	EXPORTS OF MILITARY WEARING APPAREL; EXPORTS OF MILITARY EQUIPMENT NOT IDENTIFIED BY KIND	750.89	323.10	38.67	370.88
8541	DIODES, TRANSISTORS AND SIMILAR DEVICES; PHOTSENSITIVE SEMICONDUCTOR DEVICES; LIGHT-EMITTING DIODES; MOUNTED PIEZOELECTRIC CRYSTALS; PARTS THEREOF	372.22	375.65	353.93	367.27

<sup>329</sup> TPP, U.S. Tariff Elimination Schedule, *available at* <https://hts.usitc.gov/?query=8542>.

6204	WOMEN'S OR GIRLS' SUITS, ENSEMBLES, SUIT-TYPE JACKETS, DRESSES, SKIRTS, DIVIDED SKIRTS, TROUSERS, ETC. (NO SWIMWEAR), NOT KNITTED OR CROCHETED	235.71	186.77	256.33	226.27
2008	FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SWEETENING OR SPIRIT, NESOI	159.07	166.92	145.23	157.07
6104	WOMEN'S OR GIRLS' SUITS, ENSEMBLES, SUIT-TYPE JACKETS, BLAZERS, DRESSES, SKIRTS, DIVIDED SKIRTS, TROUSERS, ETC. (NO SWIMWEAR), KNITTED OR CROCHETED	139.98	124.07	158.71	140.92
8708	PARTS AND ACCESSORIES FOR TRACTORS, PUBLIC-TRANSPORT PASSENGER VEHICLES, MOTOR CARS, GOODS TRANSPORT MOTOR VEHICLES AND SPECIAL PURPOSE MOTOR VEHICLES	116.51	153.27	120.70	130.16
8536	ELECTRICAL APPARATUS FOR SWITCHING OR PROTECTING ELECTRICAL CIRCUITS, OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS, VOLTAGE NOT OV	70.91	77.83	173.06	107.27
1604	PREPARED OR PRESERVED FISH; CAVIAR AND CAVIAR SUBSTITUTES PREPARED FROM FISH EGGS	90.04	135.17	85.21	103.47
6106	WOMEN'S OR GIRLS' BLOUSES AND SHIRTS, KNITTED OR CROCHETED	115.56	84.72	98.11	99.47
4202	TRAVEL GOODS, VANITY CASES, BINOCULAR AND CAMERA CASES, HANDBAGS, WALLETS, CUTLERY CASES AND SIMILAR CONTAINERS, OF VARIOUS SPECIFIED MATERIALS	39.89	81.82	166.09	95.93
	All other	2,994.68	3,745.29	4,060.41	3,600.13
	Total	7,406.42	7,832.29	8,732.85	7,990.52

## **XI. Potential Philippine Market Access Targets for Japan**

The Philippine-Japanese Economic Partnership Agreement (PJEPA) agreement affords Japan preferential tariff treatment for trade with the Philippines already, so bargaining between the Philippines and the Japan with respect to tariff rates may be limited. Most of the tariffs on electronic integrated circuits are set at one percent or less under PJEPA.<sup>330</sup> Similarly, Japan receives preferential treatment with respect to parts and accessories nesoi suitable for machine headings under PJEPA, with most rates at zero percent. For most months of the year under PJEPA, tariffs on tractor components are set at zero percent, lower than the ten percent MFN rate other nations enjoy. Most motor vehicles for the transport of ten or more persons are already subject to a zero percent tariff under PJEPA. Both electrically operated and non-electrically

<sup>330</sup> See TPP, Philippine Harmonized Tariff Schedule.

operated machines and mechanical appliances are already traded under zero percent tariff rates. The Philippines already offers zero percent tariff rates on electrical switching devices, electromagnetic couplings, and insulated wire under PJEPA. Tariff rates on flat rolled iron are also low, ranging between zero and two percent. Motor vehicles for the transport of goods and self propelled bulldozers similarly are subject to zero percent tariff rates under PJEPA.

While most tariff rates on motor cars designed to transport people have been reduced to zero under PJEPA, certain vehicles have rates as high as twenty percent, which Japan would likely seek to negotiate downward. Additionally, since the tariff on sulfuric acid remains at twenty percent even under PJEPA, Japan will likely seek cuts on that product.

Using Vietnam as a guidepost under the TPP, the Philippines might be expected to cut all of its tariffs on motor cars to zero percent in twelve years, though some tariff rate quotas could be negotiated across years as well.<sup>331</sup> With respect to sulfuric acid, Vietnam immediately cut its ten percent rate to zero, which the Philippines might be expected to match were it to accede to the agreement.

#### Largest Philippine Imports from Japan

hs4	Description	2012	2013	2014	Average
		Million USD			
9802	EXPORTS OF ARTICLES DONATED FOR RELIEF OR CHARITY, NESOI; IMPORTS OF ARTICLES EXPORTED AND RETURNED, ADVANCED OR IMPROVED ABROAD, EXCEPT UNDER WARRANTY	735.85	614.16	1,004.08	784.70
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	665.96	455.39	175.73	432.36
8473	PARTS AND ACCESSORIES NESOI SUITABLE FOR USE SOLEY OR PRINCIPALLY WITH THE MACHINES OF HEADINGS 8469 TO 8472	607.08	371.40	270.82	416.44
8703	MOTOR CARS AND OTHER MOTOR VEHICLES DESIGNED TO TRANSPORT PEOPLE (OTHER THAN PUBLIC-TRANSPORT TYPE), INCLUDING STATION WAGONS AND RACING CARS	330.02	272.80	265.42	289.42
8708	PARTS AND ACCESSORIES FOR TRACTORS, PUBLIC-TRANSPORT PASSENGER VEHICLES, MOTOR CARS, GOODS TRANSPORT MOTOR VEHICLES AND SPECIAL PURPOSE MOTOR VEHICLES	235.04	203.47	196.88	211.80

<sup>331</sup> See TPP, Viet-Nam Tariff Elimination Schedule.

8702	MOTOR VEHICLES FOR THE TRANSPORT OF TEN OR MORE PERSONS, INCLUDING THE DRIVER	203.65	154.82	262.48	206.98
8479	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI; PARTS THEREOF	259.96	169.32	150.61	193.30
2807	SULFURIC ACID; OLEUM	172.68	152.52	141.36	155.52
8536	ELECTRICAL APPARATUS FOR SWITCHING OR PROTECTING ELECTRICAL CIRCUITS, OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS, VOLTAGE NOT OV	138.61	138.60	132.12	136.44
7210	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM (23.6 IN.) OR MORE WIDE, CLAD, PLATED OR COATED	118.58	107.46	139.39	121.81
7208	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM (23.6 IN.) OR MORE WIDE, HOT-ROLLED, NOT CLAD, PLATED OR COATED	125.01	106.13	100.15	110.43
8704	MOTOR VEHICLES FOR THE TRANSPORT OF GOODS	109.29	83.05	126.00	106.11
8429	SELF-PROPELLED BULLDOZERS, ANGLEDZERS, GRADERS, LEVELERS, SCRAPERS, MECHANICAL SHOVELS, EXCAVATORS, SHOVEL LOADERS, TAMPING MACHINES AND ROAD ROLLERS	99.66	91.28	70.62	87.19
8505	ELECTROMAGNETS; PERMANENT MAGNETS AND ARTICLES TO BE PERMANENT AFTER MAGNETIZATION; ELECTROMAGNETIC OR PERMANENT MAGNET CHUCKS, BRAKES ETC.; PARTS	69.31	71.21	39.74	60.09
8544	INSULATED WIRE, CABLE AND OTHER INSULATED ELECTRICAL CONDUCTORS; OPTICAL FIBER CABLES, OF INDIVIDUALLY SHEATHED FIBERS, WITH CONDUCTORS ETC. OR NOT	59.86	60.62	48.35	56.28
	All other	2,575.36	2,192.14	2,117.09	2,294.86
	Total	6,446.07	5,183.75	5,192.50	5,607.44

## **XII. Potential Japanese Market Access Targets for the Philippines**

Because of JPEPA, the Philippines already enjoys favorable treatment for its primary exports to Japan. The Philippines has achieved zero percent tariff rates on builders' joinery and carpentry, diodes/transistors, insulated wires, electronic integrated circuits, articles of plastics, copper ores, parts and accessories for tractors, automatic data processing machines, sulfides, relevant machine parts, vessels for transporting people and goods, acyclic alcohols, and electromagnets.

Bananas are subject to a tariff of up to 18.5 percent, depending upon the season and whether or not they are certified products of the Philippines. If bananas are a certified product of the Philippines, they are subject to only a 1.8 percent tariff. Other nations are charged ten percent rates on bananas. The Philippines is the 7th largest exporter of bananas; Ecuador, Belgium, and

Costa Rica export the most.<sup>332</sup> The Philippine government should focus on reducing the tariff on bananas that are not products of the Philippines in negotiations with Japan. Under the TPP, Japan has agreed to significant reduction in tariffs on bananas, with decreases to zero percent in ten years. This product could be an important bargaining focus for the Philippines in accession talks.

### Largest Philippine Exports to Japan

hs4	Description	2012	2013	2014	Average
		Million USD			
4418	BUILDERS' JOINERY AND CARPENTRY OF WOOD, INCLUDING CELLULAR WOOD PANELS, ASSEMBLED PARQUET PANELS, SHINGLES AND SHAKES	2,124.47	2,987.74	2,916.55	2,676.25
8541	DIODES, TRANSISTORS AND SIMILAR DEVICES; PHOTSENSITIVE SEMICONDUCTOR DEVICES; LIGHT-EMITTING DIODES; MOUNTED PIEZOELECTRIC CRYSTALS; PARTS THEREOF	602.03	906.00	1,236.66	914.90
8544	INSULATED WIRE, CABLE AND OTHER INSULATED ELECTRICAL CONDUCTORS; OPTICAL FIBER CABLES, OF INDIVIDUALLY SHEATHED FIBERS, WITH CONDUCTORS ETC. OR NOT	603.43	740.62	952.72	765.59
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	466.41	645.92	652.33	588.22
9803	EXPORTS OF MILITARY WEARING APPAREL; EXPORTS OF MILITARY EQUIPMENT NOT IDENTIFIED BY KIND	824.40	264.21	130.54	406.38
3926	ARTICLES OF PLASTICS AND ARTICLES OF POLYMERS AND RESINS OF HEADINGS 3901 TO 3914, NESOI	1,062.81	49.55	45.68	386.01
2603	COPPER ORES AND CONCENTRATES	81.16	456.69	596.24	378.03
0803	BANANAS AND PLANTAINS, FRESH OR DRIED	307.38	328.30	400.28	345.32
8708	PARTS AND ACCESSORIES FOR TRACTORS, PUBLIC-TRANSPORT PASSENGER VEHICLES, MOTOR CARS, GOODS TRANSPORT MOTOR VEHICLES AND SPECIAL PURPOSE MOTOR VEHICLES	292.01	286.81	365.14	314.65
8471	AUTOMATIC DATA PROCESSING MACHINES AND UNITS THEREOF; MAGNETIC OR OPTICAL READERS, MACHINES FOR TRANSCRIBING AND PROCESSING CODED DATA, NESOI	234.89	281.46	351.05	289.13
2830	SULFIDES; POLYSULFIDES	194.78	292.18	272.48	253.15
8473	PARTS AND ACCESSORIES NESOI SUITABLE FOR USE SOLEY OR PRINCIPALLY WITH THE MACHINES OF HEADINGS 8469 TO 8472	221.65	131.47	238.48	197.20
8901	VESSELS FOR THE TRANSPORT OF PERSONS OR GOODS, INCLUDING CRUISE SHIPS, EXCURSION BOATS, FERRY BOATS, CARGO SHIPS AND BARGES	-	179.88	367.27	182.38
2905	ACYCLIC ALCOHOLS AND THEIR HALOGENATED, SULFONATED, NITRATED OR	29.95	40.32	464.94	178.40

<sup>332</sup> See “Bananas Exports by Country,” World’s Top Exports, available at <http://www.worldstopexports.com/bananas-exports-country/> (last updated Apr. 30, 2016).

	NITROSATED DERIVATIVES				
8505	ELECTROMAGNETS; PERMANENT MAGNETS AND ARTICLES TO BE PERMANENT AFTER MAGNETIZATION; ELECTROMAGNETIC OR PERMANENT MAGNET CHUCKS, BRAKES ETC.; PARTS	123.10	166.46	236.84	175.46
	All other	2,835.27	3,831.73	4,928.12	3,865.04
	Total	9,880.66	11,422.88	13,918.48	11,740.67

### **XIII. Potential Philippine Market Access Targets for Canada**

Should the Philippines seek to accede to the TPP, bilateral negotiations with Canada would involve requests for tariff cuts across certain primary imports. However, Canada will likely not be concerned with the one percent tariff on mineral or chemical fertilizers. A zero percent rate applies to milk and cream as well.

The Philippines currently has a duty of seven percent placed on wood sawn or chipped, which Canada would likely seek to eliminate. Canada may also seek to reduce the three percent rate currently in place on copper ores. The three to seven percent duty for wheat and meslin would likely also be a target. The Philippines also has tariffs of thirty to forty percent on meat of swine, poultry, and edible offal meat, which Canada exports in bulk. Some vegetables are subject to duty of ten percent, which Canada may seek to reduce. Food preparations nesoi are subject to tariffs of three to seven percent, as are leguminous vegetables. Non-legal tender is subject to a tariff of ten percent, which Canada might be interested in negotiating downwards. Pig fat and poultry also face rates of ten percent. Preparations of a kind used in animal feeding are subject to tariffs between five and thirty-five percent. Polymer imports face duties of three to ten percent.

Since many products imported to the Philippines from Canada have higher tariff rates, it is useful to consider what tariff concessions Vietnam made with respect to similar products in its TPP accession.<sup>333</sup> Vietnam already had a tariff of zero percent on wood products and copper ores

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<sup>333</sup> *See id.*

prior to accession, so its rates are not instructive for the Philippines. With respect to wheat products, Vietnam dropped its tariffs from five percent to zero immediately upon accession. Vietnam also committed to reduce its twenty-seven percent tariff on meat of swine to zero percent staged over ten years. Similarly, for meat of poultry, Vietnam agreed to cut its forty percent tariff rates to zero percent staged over ten years. For edible offal of bovine, Vietnam agreed to cut its rates from ten percent to zero over ten years. Prior to TPP negotiation, Vietnam applied a duty of fifteen to twenty percent on various forms of food preparations nesoi, but committed to cut these rates to zero percent within five years. Most of Vietnam's leguminous vegetable rates were at zero percent already, so its behavior is not informative. Coin was previously subject to a duty of twenty-seven to thirty percent, and Vietnam agreed to cut those rates to zero over three years. Pig fat previously was subject to a ten percent tariff, which Vietnam agreed to cut to zero over seven years. Feed preparations were subject to seven percent tariffs, but Vietnam agreed to make these rates zero immediately after accession. Polymers of ethylene were not subject to any tariffs prior to negotiation of the TPP. Given the behavior of Vietnam, the Philippines would likely be expected to make similar concessions were it to reach an accession agreement with Canada.

#### **Largest Philippine Imports from Canada**

hs4	description	2012	2013	2014	Average
		Million USD			
4407	WOOD SAWN OR CHIPPED LENGTHWISE, SLICED OR PEELED, MORE THAN 6 MM (.236 IN.) THICK	47.96	61.45	64.16	57.86
2603	COPPER ORES AND CONCENTRATES	27.28	59.45	33.40	40.04
1001	WHEAT AND MESLIN	15.02	95.98	0.00	37.00
3104	MINERAL OR CHEMICAL FERTILIZERS, POTASSIC	32.58	22.67	17.41	24.22
0203	MEAT OF SWINE (PORK), FRESH, CHILLED OR FROZEN	13.90	31.26	17.40	20.85
0207	MEAT AND EDIBLE OFFAL OF POULTRY (CHICKENS, DUCKS, GEESE, TURKEYS AND GUINEAS), FRESH, CHILLED OR FROZEN	16.98	20.16	16.39	17.84
0206	EDIBLE OFFAL OF BOVINE ANIMALS, SWINE, SHEEP, GOATS, HORSES ETC., FRESH, CHILLED	12.38	21.22	19.00	17.53



	OR FROZEN				
0402	MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SWEETENING	3.42	7.41	20.26	10.36
2004	VEGETABLES, OTHER THAN TOMATOES, MUSHROOMS AND TRUFFLES, PREPARED OR PRESERVED OTHERWISE THAN BY VINEGAR OR ACETIC ACID, FROZEN, EXC PRODUCTS OF 2006	11.18	12.25	2.57	8.67
2106	FOOD PREPARATIONS NESOI	5.21	7.51	10.65	7.79
0713	LEGUMINOUS VEGETABLES, DRIED SHELLLED	6.23	6.04	8.23	6.83
7118	COIN	5.87	1.32	11.04	6.08
0209	PIG FAT FREE OF LEAN MEAT AND POULTRY FAT (NOT RENDERED OR OTHERWISE EXTRACTED), FRESH, CHILLED, FROZEN, SALTED, IN BRINE, DRIED OR SMOKED	6.13	8.42	3.10	5.88
2309	PREPARATIONS OF A KIND USED IN ANIMAL FEEDING	8.05	6.54	2.59	5.73
3901	POLYMERS OF ETHYLENE, IN PRIMARY FORMS	4.57	4.06	7.22	5.28
	All other	95.23	95.02	92.49	94.25
	Total	307.40	456.69	318.69	360.93

#### **XIV. Potential Canadian Market Access Targets for the Philippines**

Currently the Philippines enjoys preferential tariff rates under the Canadian Generalized Preferential Tariff Treatment (GPT) program. Canada recently removed seventy-two countries from its GPT list, so the Philippine preferential tariff rates may not be permanent.<sup>334</sup> Even under preferential treatment, many of the top products exported by the Philippines are subject to moderate tariff rates that could potentially be negotiated downwards during accession talks. The potential economic value of bilateral negotiations with Canada is particularly strong, given that most of the main Philippine exports are subject to consequential tariffs.

Tariffs on coconut oil that is not genetically modified range from six to eleven percent, so the Philippines should address those rates in bilateral negotiations. Many fruit and nut products are subject to six percent rates, posing another opportunity for the two nations to create value. Canada also charges a duty of eighteen percent on most men's, boy's, women's, and girl's suiting. Watches are subject to a three percent duty. Some padlocks are subject to a tariff of five

<sup>334</sup> "Canada set to implement changes to General Preferential Tariff Treatment." FRONTIER, *available at* <http://www.frontierscs.com/?q=business-news-apr-3-14> (last updated Sept. 19, 2014).

percent. Most prepared fish are subject to three percent tariffs, but some range as high as seven percent. Tractor components are generally subject to tariffs at six percent.

Canada does not charge tariffs on insulated wires, electronic integrated circuits, tube products, or diodes. Agricultural products including coconuts, brazil nuts, fruit juices, and dates are not subject to tariffs either.

Under the TPP, Canada has agreed to make substantial cuts to many of the products that the Philippines exports.<sup>335</sup> Canada has agreed under the TPP to immediately cut all of its tariff rates on coconut oil to zero. Similarly, most rates on food products from plants would be cut to zero immediately. Duties on watches would also be cut to zero immediately, and tariffs on suiting at sixteen or eighteen percent would be cut to zero percent in three years. The 6.5 percent rate on padlocks under the TPP would be cut to zero immediately. Tariff rates up to eleven percent on various forms of prepared fish and six percent on parts and accessories for tractors would be cut to zero immediately. A great deal of value could be recognized from these changes for the Philippines.

#### Largest Philippine Exports to Canada

hs4	description	2012	2013	2014	Average
		Million USD			
8544	INSULATED WIRE, CABLE AND OTHER INSULATED ELECTRICAL CONDUCTORS; OPTICAL FIBER CABLES, OF INDIVIDUALLY SHEATHED FIBERS, WITH CONDUCTORS ETC. OR NOT	260.24	290.35	294.18	281.59
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	16.30	19.57	11.99	15.95
1513	COCONUT (COPRA), PALM KERNEL OR BABASSU OIL AND THEIR FRACTIONS, WHETHER OR NOT REFINED, BUT NOT CHEMICALLY MODIFIED	8.83	11.17	26.62	15.54
2008	FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SWEETENING OR SPIRIT, NESOI	13.41	13.81	15.50	14.24
0801	COCONUTS, BRAZIL NUTS AND CASHEW NUTS, FRESH OR DRIED	9.81	6.20	16.60	10.87
7304	TUBES, PIPES AND HOLLOW PROFILES, SEAMLESS, OF IRON (OTHER THAN CAST) OR	18.46	12.15	0.00	10.20

<sup>335</sup> See TPP, Canadian Tariff Elimination Schedule.

	STEEL				
6203	MEN'S OR BOY'S SUITS, ENSEMBLES, SUIT-TYPE JACKETS, BLAZERS, TROUSERS, BIB AND BRACE OVERALLS, BREECHES, ETC. (NO SWIMWEAR), NOT KNITTED OR CROCHETED	4.12	9.02	17.34	10.16
6204	WOMEN'S OR GIRLS' SUITS, ENSEMBLES, SUIT-TYPE JACKETS, DRESSES, SKIRTS, DIVIDED SKIRTS, TROUSERS, ETC. (NO SWIMWEAR), NOT KNITTED OR CROCHETED	9.56	7.89	10.42	9.29
9102	WATCHES, WRIST, POCKET AND OTHER, INCLUDING STOP WATCHES, WITH CASE NEITHER OF PRECIOUS METAL NOR OF METAL CLAD WITH PRECIOUS METAL	7.36	9.27	7.73	8.12
8301	PADLOCKS AND LOCKS, INCLUDING CLASPS AND FRAMES WITH CLASPS, INCORPORATING LOCKS, OF BASE METAL; KEYS AND PARTS OF THE FOREGOING, OF BASE METAL	5.75	3.93	12.62	7.43
2009	FRUIT JUICES NT FORTIFIED W VIT OR MINLS (INCL GRAPE MUST) & VEGETABLE JUICES, UNFERMENTD & NT CONTAING ADD SPIRIT, WHET OR NT CONTAING ADDED SWEETENG	6.57	8.11	7.53	7.40
1604	PREPARED OR PRESERVED FISH; CAVIAR AND CAVIAR SUBSTITUTES PREPARED FROM FISH EGGS	6.90	8.20	4.40	6.50
8708	PARTS AND ACCESSORIES FOR TRACTORS, PUBLIC-TRANSPORT PASSENGER VEHICLES, MOTOR CARS, GOODS TRANSPORT MOTOR VEHICLES AND SPECIAL PURPOSE MOTOR VEHICLES	1.92	9.39	7.97	6.43
0804	DATES, FIGS, PINEAPPLES, AVOCADOS, GUAVAS, MANGOES AND MANGOSTEENS, FRESH OR DRIED	3.97	3.63	11.36	6.32
8541	DIODES, TRANSISTORS AND SIMILAR DEVICES; PHOTSENSITIVE SEMICONDUCTOR DEVICES; LIGHT-EMITTING DIODES; MOUNTED PIEZOELECTRIC CRYSTALS; PARTS THEREOF	6.28	9.30	2.48	6.02
	All other	128.70	122.85	150.82	134.12
	Total	508.184921	544.838072	597.567342	550.1967783

## **XV. Holistic Assessment of TPP Accession: Global and TPP Trade Flows**

The following trade flow charts, depicting the largest imports and exports of TPP nations with the Philippines and the Philippines' largest global imports and exports, are useful in accessing the trade in goods aspects of TPP accession. If the Philippines could achieve rate cuts on many of its main exports to TPP countries while making non-significant reductions in its own tariff rates, accession to the TPP could create a great deal of value. Global trade flows are useful in determining the extent of the role that products imported and exported with TPP nations play in the Philippine economy. This information will allow the Philippines to judge potential benefits that could be achieved under the agreement.

### Largest Philippine Imports from TPP Countries

hs4	Description	2012	2013	2014	Average
		Million USD			
9802	EXPORTS OF ARTICLES DONATED FOR RELIEF OR CHARITY, NESOI; IMPORTS OF ARTICLES EXPORTED AND RETURNED, ADVANCED OR IMPROVED ABROAD, EXCEPT UNDER WARRANTY	1,856.13	1,793.50	2,625.86	2,091.83
2710	PETROLEUM OILS AND OILS FROM BITUMINOUS MINERALS (OTHER THAN CRUDE) AND PRODUCTS THEREFROM, NESOI, CONTAINING 70% (BY WEIGHT) OR MORE OF THESE OILS	902.88	1,112.64	1,023.37	1,012.96
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	1,205.54	798.64	468.44	824.21
8473	PARTS AND ACCESSORIES NESOI SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH THE MACHINES OF HEADINGS 8469 TO 8472	1,038.77	654.17	487.35	726.76
2709	PETROLEUM OILS AND OILS FROM BITUMINOUS MINERALS, CRUDE	373.85	367.06	521.56	420.82
2603	COPPER ORES AND CONCENTRATES	283.21	521.78	144.39	316.46
8703	MOTOR CARS AND OTHER MOTOR VEHICLES DESIGNED TO TRANSPORT PEOPLE (OTHER THAN PUBLIC-TRANSPORT TYPE), INCLUDING STATION WAGONS AND RACING CARS	350.12	279.36	280.43	303.30
8479	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI; PARTS THEREOF	371.78	275.40	228.61	291.93
1006	RICE	319.09	94.06	324.05	245.73
0402	MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SWEETENING	236.74	242.39	238.95	239.36
1001	WHEAT AND MESLIN	383.24	166.10	151.07	233.47
8708	PARTS AND ACCESSORIES FOR TRACTORS, PUBLIC-TRANSPORT PASSENGER VEHICLES, MOTOR CARS, GOODS TRANSPORT MOTOR VEHICLES AND SPECIAL PURPOSE MOTOR VEHICLES	248.90	216.93	213.96	226.60
8702	MOTOR VEHICLES FOR THE TRANSPORT OF TEN OR MORE PERSONS, INCLUDING THE DRIVER	203.80	154.99	262.61	207.14
2106	FOOD PREPARATIONS NESOI	145.58	212.92	245.74	201.41
8536	ELECTRICAL APPARATUS FOR SWITCHING OR PROTECTING ELECTRICAL CIRCUITS, OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS, VOLTAGE NOT OV	201.12	198.59	193.52	197.74
	All other	8,663.60	7,760.48	8,593.57	8,339.22
	Total	16,583.22	14,650.42	15,809.96	15,681.20

### Largest Philippine Exports to TPP Countries

hs4	Description	2012	2013	2014	Average
		Million USD			
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	2,965.74	3,241.87	3,711.12	3,306.25
4418	BUILDERS' JOINERY AND CARPENTRY OF WOOD, INCLUDING CELLULAR WOOD PANELS, ASSEMBLED PARQUET PANELS, SHINGLES AND SHAKES	2,126.22	2,990.50	2,918.11	2,678.28
8541	DIODES, TRANSISTORS AND SIMILAR DEVICES; PHOTSENSITIVE SEMICONDUCTOR DEVICES; LIGHT-EMITTING DIODES; MOUNTED PIEZOELECTRIC CRYSTALS; PARTS THEREOF	920.01	1,282.30	1,460.35	1,220.89
8544	INSULATED WIRE, CABLE AND OTHER	966.73	1,119.31	1,442.88	1,176.31

	INSULATED ELECTRICAL CONDUCTORS; OPTICAL FIBER CABLES, OF INDIVIDUALLY SHEATHED FIBERS, WITH CONDUCTORS ETC. OR NOT				
9803	EXPORTS OF MILITARY WEARING APPAREL; EXPORTS OF MILITARY EQUIPMENT NOT IDENTIFIED BY KIND	1,360.99	415.23	155.04	643.75
2710	PETROLEUM OILS AND OILS FROM BITUMINOUS MINERALS (OTHER THAN CRUDE) AND PRODUCTS THEREFROM, NESOI, CONTAINING 70% (BY WEIGHT) OR MORE OF THESE OILS	281.39	596.94	441.02	439.78
8471	AUTOMATIC DATA PROCESSING MACHINES AND UNITS THEREOF; MAGNETIC OR OPTICAL READERS, MACHINES FOR TRANSCRIBING AND PROCESSING CODED DATA, NESOI	325.42	448.02	538.41	437.28
0803	BANANAS AND PLANTAINS, FRESH OR DRIED	356.70	408.95	521.60	429.08
3926	ARTICLES OF PLASTICS AND ARTICLES OF POLYMERS AND RESINS OF HEADINGS 3901 TO 3914, NESOI	1,068.90	56.61	54.18	393.23
8708	PARTS AND ACCESSORIES FOR TRACTORS, PUBLIC-TRANSPORT PASSENGER VEHICLES, MOTOR CARS, GOODS TRANSPORT MOTOR VEHICLES AND SPECIAL PURPOSE MOTOR VEHICLES	378.47	343.65	456.66	392.93
2603	COPPER ORES AND CONCENTRATES	81.26	470.29	596.57	382.71
8479	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI; PARTS THEREOF	680.04	222.30	105.23	335.85
8901	VESSELS FOR THE TRANSPORT OF PERSONS OR GOODS, INCLUDING CRUISE SHIPS, EXCURSION BOATS, FERRY BOATS, CARGO SHIPS AND BARGES	191.07	271.88	544.08	335.67
8473	PARTS AND ACCESSORIES NESOI SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH THE MACHINES OF HEADINGS 8469 TO 8472	399.63	227.63	344.96	324.07
8504	ELECTRICAL TRANSFORMERS, STATIC CONVERTERS OR INDUCTORS; POWER SUPPLIES FOR ADP MACHINES OR UNITS; PARTS THEREOF	320.06	298.83	171.45	263.45
	All other	5,473.96	6,862.04	8,653.90	6,996.63
	Total	17,576.52	18,957.52	21,944.11	19,492.72

### Largest Philippine Imports Worldwide

hs4	Description	2012	2013	2014	Average
		Million USD			
9802	EXPORTS OF ARTICLES DONATED FOR RELIEF OR CHARITY, NESOI; IMPORTS OF ARTICLES EXPORTED AND RETURNED, ADVANCED OR IMPROVED ABROAD, EXCEPT UNDER WARRANTY	6,872.94	7,886.74	8,967.39	7,909.02
2709	PETROLEUM OILS AND OILS FROM BITUMINOUS MINERALS, CRUDE	7,519.46	6,540.05	6,269.77	6,776.43
2710	PETROLEUM OILS AND OILS FROM BITUMINOUS MINERALS (OTHER THAN CRUDE) AND PRODUCTS THEREFROM, NESOI, CONTAINING 70% (BY WEIGHT) OR MORE OF THESE OILS	4,806.97	5,125.77	5,706.93	5,213.23
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	4,778.74	3,438.42	1,901.24	3,372.80
8802	AIRCRAFT, POWERED (FOR EXAMPLE, HELICOPTERS, AIRPLANES); SPACECRAFT (INCLUDING SATELLITES) AND SPACECRAFT LAUNCH VEHICLES	1,087.10	1,971.98	2,078.31	1,712.46

8703	MOTOR CARS AND OTHER MOTOR VEHICLES DESIGNED TO TRANSPORT PEOPLE (OTHER THAN PUBLIC-TRANSPORT TYPE), INCLUDING STATION WAGONS AND RACING CARS	1,596.42	1,623.70	1,653.53	1,624.55
8473	PARTS AND ACCESSORIES NESOI SUITABLE FOR USE SOLEY OR PRINCIPALLY WITH THE MACHINES OF HEADINGS 8469 TO 8472	1,649.64	1,151.02	954.21	1,251.62
1001	WHEAT AND MESLIN	882.28	785.79	834.25	834.11
3004	MEDICAMENTS (EXCEPT VACCINES ETC., BANDAGES OR PHARMACEUTICALS), OF PRODUCTS (MIXED OR NOT) FOR THERAPEUTIC ETC. USES, IN DOSAGE OR RETAIL SALE FORM	734.21	780.29	746.35	753.62
2304	SOYBEAN OILCAKE AND OTHER SOLID RESIDUES RESULTING FROM THE EXTRACTION OF SOY BEAN OIL, WHETHER OR NOT GROUND OR IN THE FORM OF PELLETS	629.06	690.79	877.24	732.36
2701	COAL; BRIQUETTES, OVOIDS AND SIMILAR SOLID FUELS MANUFACTURED FROM COAL	694.40	727.50	671.94	697.94
8479	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI; PARTS THEREOF	781.36	604.88	530.33	638.86
2711	PETROLEUM GASES AND OTHER GASEOUS HYDROCARBONS	608.32	697.19	520.68	608.73
2603	COPPER ORES AND CONCENTRATES	758.31	849.62	197.75	601.89
8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception	667.60	502.48	492.27	554.12
	All other	27,647.63	28,454.92	32,121.48	29,408.01
	Total	61,714.45	61,831.13	64,523.67	62,689.75

### Largest Philippine Exports Worldwide

hs4	description	2012	2013	2014	Average
		Million USD			
8542	ELECTRONIC INTEGRATED CIRCUITS; PARTS THEREOF	7,820.98	8,871.79	12,136.59	9,609.79
8471	AUTOMATIC DATA PROCESSING MACHINES AND UNITS THEREOF; MAGNETIC OR OPTICAL READERS, MACHINES FOR TRANSCRIBING AND PROCESSING CODED DATA, NESOI	2,321.53	3,151.95	4,755.27	3,409.59
8541	DIODES, TRANSISTORS AND SIMILAR DEVICES; PHOTOSENSITIVE SEMICONDUCTOR DEVICES; LIGHT-EMITTING DIODES; MOUNTED PIEZOELECTRIC CRYSTALS; PARTS THEREOF	2,674.35	3,425.26	2,954.63	3,018.08
4418	BUILDERS' JOINERY AND CARPENTRY OF WOOD, INCLUDING CELLULAR WOOD PANELS, ASSEMBLED PARQUET PANELS, SHINGLES AND SHAKES	2,134.61	2,996.24	2,925.32	2,685.39
9803	EXPORTS OF MILITARY WEARING APPAREL; EXPORTS OF MILITARY EQUIPMENT NOT IDENTIFIED BY KIND	5,387.00	1,740.03	242.41	2,456.48
8544	INSULATED WIRE, CABLE AND OTHER INSULATED ELECTRICAL CONDUCTORS; OPTICAL FIBER CABLES, OF INDIVIDUALLY SHEATHED FIBERS, WITH CONDUCTORS ETC. OR NOT	1,534.55	1,747.32	2,174.52	1,818.79
8504	ELECTRICAL TRANSFORMERS, STATIC CONVERTERS OR INDUCTORS; POWER SUPPLIES FOR ADP MACHINES OR UNITS; PARTS THEREOF	1,858.05	1,749.04	1,557.36	1,721.48
8708	PARTS AND ACCESSORIES FOR TRACTORS, PUBLIC-TRANSPORT PASSENGER VEHICLES, MOTOR CARS, GOODS TRANSPORT MOTOR VEHICLES AND SPECIAL PURPOSE MOTOR VEHICLES	1,413.90	1,343.62	1,472.26	1,409.93

8473	PARTS AND ACCESSORIES NESOI SUITABLE FOR USE SOLEY OR PRINCIPALLY WITH THE MACHINES OF HEADINGS 8469 TO 8472	1,246.47	1,003.99	1,933.70	1,394.72
2604	NICKEL ORES AND CONCENTRATES	661.13	988.95	1,717.38	1,122.49
1513	COCONUT (COPRA), PALM KERNEL OR BABASSU OIL AND THEIR FRACTIONS, WHETHER OR NOT REFINED, BUT NOT CHEMICALLY MODIFIED	1,025.99	951.02	1,345.88	1,107.63
8901	VESSELS FOR THE TRANSPORT OF PERSONS OR GOODS, INCLUDING CRUISE SHIPS, EXCURSION BOATS, FERRY BOATS, CARGO SHIPS AND BARGES	1,063.05	560.43	1,217.00	946.83
0803	BANANAS AND PLANTAINS, FRESH OR DRIED	647.88	912.70	1,137.32	899.30
2709	PETROLEUM OILS AND OILS FROM BITUMINOUS MINERALS, CRUDE	597.76	975.51	1,014.98	862.75
8479	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI; PARTS THEREOF	1,128.47	702.53	268.80	699.93
	All other	20,476.14	22,857.87	24,944.99	22,759.67
	Total	51,991.86	53,978.27	61,798.41	55,922.85