

## The Philippines

### **【Risk Warning】**

Philippines published its new investment guidance in 2009, giving priority to investment in export-oriented business, agriculture, fishery and infrastructure construction on a regular basis. It also provides preferential terms on a temporary basis for investment in sectors that may attract investments and create jobs. Investments are restricted in such sectors as banking, financing, retailing, service and small-scale mining industries. Intended investors should have a knowledge of the new investment guidance before making plans.

Many National Standards were introduced in Philippines in 2009, covering tire, glass products, fireworks, sugar cane liquor, and sucrose. Related exporters should stay informed of those new standards and make sure their products are qualified for importation.

### **1 An Overview of Bilateral Trade and Investment**

According to the China Customs, the bilateral trade volume between China and Philippines in 2009 reached US\$ 20.53 billion, down by 28.3% over 2008, among which China's export to the Philippines was US\$ 8.58 billion, down by 6.0 %, while China's import from the Philippines amounted to US\$ 11.95 billion, down by 38.8 %. China ran a deficit of US\$ 3.37 billion. China mainly exported to the Philippines electronic equipments, machinery, fossil fuel, knitted and crocheted clothing and accessories, plastic and its products, iron and steel products, automobiles, toys, sport facilities, and footwear. China's imports from the Philippines include electrical equipments, mechanical equipments, ore, copper and its products, plastic and its products, optical and medical equipments, edible fruits and nuts, toys and sports, aluminum and its products, fossil fuels, etc.

According to the Ministry of the Commerce (hereinafter referred to as MOFCOM), by the end of 2009, the accumulated turnover of completed engineering contracts by Chinese companies in the Philippines reached US\$ 564 million and the volume of the completed labor service cooperation contracts had reached US\$ 1.26 million.

China's total non-financial foreign direct investment (FDI) in the Philippines, approved by or registered with MOFCOM, reached US\$ 42.68 million in 2009. Philippines invested in 39 projects in China with US\$ 110 million in actual utilization.

### **2 An Overview of Trade and Investment Regime**

### 2.1 Trade Administration Regime and its Development

#### 2.1.1 Tariff Regime

The legislation concerning import and export in Philippines is *the Tariff and Customs Code of the Philippines 1991*, amended in 2001. *The Code* regulates the practice of evaluation and collection of duties in import and export as well as Custom supervision. The Philippine Tariff Commission makes tariff policies including tariff concessions, modifications and rebates. The Commission also holds public hearings of anti-dumping and countervailing cases, and conducts investigations of safeguard measures. The Bureau of Customs, under the Philippine Department of Finance, is the sole agency to administer tariff laws, collect VAT and other additional taxes.

##### 2.1.1.1 Tariff Administration

The Philippines imposes ad valorem duties on most of the imports with the tax rates ranging from 0 to 65%, while imposing specific duties on a number of products, such as alcohols, fireworks and firecrackers, tobacco products, watches, mineral fuel, cartoons, saccharin, and playing cards, etc. The food and other products for industrial usage are duty-free. The import and export rate for the electrical products, timber, photographic equipments and supplies furniture, mobiles and parts are 20%, and the rate for cosmetics and perfume are 30%.

According to *The Agreement on China-ASEAN Free Trade Area* issued in 2005, the Philippines exercises preferential rate on Chinese products within the scope of the *Agreement on Trade in Goods*, and MFN rates on other Chinese products. The Philippines has performed zero tariff on 214 kinds of Chinese products such as vegetables and fruits within the scope of the “Early Harvest” program in 2006. In line with the relevant commitments of the *Agreement on Trade in Goods*, the Philippines will gradually cut the tariff rates on normal imports from China to zero before 2010-2012. As to the sensitive products imported from China, the Philippines will reduce the tariff rated to 20% before 2012 and to 0-5% by 2018. As to the highly sensitive products from China, the Philippines will reduce the tariff rate to 50% by 2015.

The Philippines issued *Executive Order No.814* in June 2009 to reduce the tax for normal products within the scope of the *Agreement on China-ASEAN Free Trade Area*. Currently, the original tariff rates of 20% and 5-20% on normal products have been reduced to 12% and 5% respectively, whereas the original tariff rates of 0-5% remained unchanged.

### 2.1.1.2 Average Tariff Rate and Its Adjustment

In 2009 fiscal year, the average tariff rate in the Philippines is 7.07%, among which the agriculture is 11.94%, mining 2.34%, manufacturing 6.24%. The adjustments on tariff rates in 2009 went as follows:

On December 28, 2009, the Philippine Tariff Commission issued *Executive Order No.850* to reduce the tariffs of most products, realizing the promise to reduce the tariff of most products imported from ASEAN to zero since January 1, 2010. The *Executive Order* covers 17% of all tariffs involving about 1500 kinds of products, including: autos and spare parts, parts of fruit, vegetables, coffee beans, tobaccos, alcohol, processed meat, chemicals, petrol, steel and plywood, etc. In line with the Order, 0.7% tariff charged the the tariff rate for sensitive products such as mates, cereals, sweet potatoes, portray and pork, which amounts to 0.7% of all tariffs, is reduced to 5%.

The Philippine government began to impose protective tariff on ceramic tile in 2002. And the protective tariff is reduced from P1.86/Kg to P1.80/Kg according to the Order signed by the Minister of the Philippine Department of Trade and Industry in December, 2009.

The Philippines issued *Executive Order No.765* in November 2008 to reduce the tariffs on wheat and feedstuff wheat from 3% and 7% to zero. In June, 2009, the *Executive Order No.818* extended the zero duty for wheat for 6 months and added 7% import duty on feedstuff wheat.

In November, 2008, the Philippines issued *Executive Order No.766*, deciding to cancel the 5% (to the most-favored trading nations) and 3% (to the ASEAN countries) import duty on cement. The *Executive Order No.819* issued in June 2009 extended this policy for 6 months. In November, 2009, however, the Minister of the Trade and Industry announced the end of zero tariff on cement import.

### 2.1.2 Import Administration

Imported products are divided into three categories in the Philippines: products free to import, products restricted from import and products banned from import. Most products in the Philippines are free to import. Import licenses must be obtained for products restricted from import from the Philippine government bodies such as the Department of Agriculture, the Bureau

of Food and Drugs.

The Products banned from import mainly include: products which may do harm to the public health, the national security, international promises and the local development, including ammunitions and weapons, written or printed materials which may contain content inciting violence or subverting the government; pornographic materials; illegal abortion drugs or their advertising; gambling supplies; lottery, except those approved by the government; gold, silver and other precious metals; fake food or medicine violating *The Food and Drug Act*; cannabis and opium and other narcotic drugs; opium pipes and parts; second-hand clothing; toy guns. In addition, second-hand autos are also forbidden by the Philippine government, except those imported from special economical area.

The products restricted from import mainly include: anhydrous ethylic acid; rice; Cymag; freon and other ozone layer depletion materials; Penicillin and its subseries; refined petroleum products; coal and products derived from coal; chemicals which can be used to make explosive; the onion, garlic, potatoes, cabbage for seeding use; pesticides including agricultural chemicals; motorcycles and their accessories; second-hand truck and car tires; second-hand motorcycle; products imported from socialist countries and other countries with planned economy; warships ; radioactive materials; over the amount of P5000 Philippine currency which is no longer issued; the agricultural products sufficient in the Philippines.

In addition, many agricultural products such as chickens and ducks are subject to tariff quota administration, with normal in-quota tariff rates ranging from 30%-50% and out-of-quota rates ranging from 35%-65%.

### **2.1.3 Export Administration**

Most products in the Philippines are free to export, but a few goods are restricted to export or prohibited from export from the Philippines. Goods prohibited from export mainly include ramie seeds and seedlings, some wild animals and live fish. Export licenses should be gained from the Philippine competent authorities such as the Department of Agriculture and the Ministry of Environment and Natural Resources for exporting products in the restricted category including cement, petroleum and petroleum products, ammunitions and some raw materials of plants origin.

In accordance with the *Omnibus Investment Code, the Export Development Act*, and other laws and regulations, the Philippine government provides preferential measures for export-oriented

enterprises and exported products, including simplification of export procedures and exemption of export tax, rebate of VAT for the imported raw materials used in the processing for re-export, foreign exchange assistance and the using of low cost facilities in the export processing zones, duty-free import of raw materials required by the production of export goods; exporters can retain 100% foreign exchanges from export; export financing and credit are granted, etc. Besides, incentive measures in terms of raw materials and tariffs are granted to the export enterprises in the export processing zones, bonded warehouses and various kinds of industrial parks.

### **2.1.4 Trade Remedies**

Trade remedies in the Philippines mainly include anti-dumping, countervailing and safeguard measures, and the involved investigation applications, procedures and implementations are governed by the *Anti-dumping Act*, the *Countervailing Act* and the *Safeguard Measures Act* respectively. The Bureau of Import Services is mainly responsible for the administration of regulations related to import of specific products as well as initiating and guiding the preliminary investigations with regard to anti-dumping, countervailing and safeguard measures. The Philippine Tariff Commission is responsible for the public hearing of anti-dumping and countervailing and the preliminary survey of consultations and safeguard measures.

### **2.1.5 Other Related Systems**

The Philippine Customs adopts a risk classification management system of imported goods, and all the importers must submit the customs declaration form through Automated Customs Operating System, which determines the risk level of imported goods. The low risk shipment goes through the “green lane” and is generally subject to “post-audit review” instead of a spot check; the moderate risk shipment goes through the “yellow lane” and is subject to documentary review only. A high-risk shipment channels through the “red lane” and is subject to both documentary review and physical inspection prior to its release. The Philippine Customs provided a “super green lane” for importers of extremely low risk goods to improve customs clearance efficiency.

## **2.2 Investment Administration Regime and Its Developments**

*Omnibus Investment Code* is the basic law for the investment in the Philippine, which stipulates the basic investment policy. *Foreign Investment Act* and its amendment further release the restrictions for the foreign investors. The law prescribes that foreign investors can invest in most of the economical activities except the areas prohibited and restricted by the law, it also stipulates the basic rights enjoyed by the foreign investors.

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Other laws and regulations which involve investment include *Regulation on Establishment of Retail Business*, *The Special Economic Zone Act*, *Investment and Leasing Act*, *Regulation on Advancing Foreign Investment in Retailing*, *Regulation on Relaxing the Restriction on Foreign Investment in Retailing in the Philippines*.

The Philippine Department of Trade and Industry is mainly responsible for implementing and coordinating trade and investment policies as well as promoting trade and investment facilitation. The Board of Investment under the Department of Trade and Industry is in charge of the implementation and administration of foreign investment policies.

To encourage foreign investment, the Philippine government gives preferential policies to eligible foreign investors. However, taking into account the overall national interests, the Philippine government limits the foreign investment participation in certain areas. The Philippine government classifies the areas in investment under three types, namely, priority areas in investment, limited areas in investment and banned areas in investment. Investment in priority areas can enjoy the 100% equity, and the projects in high priority can enjoy extensive preferential policies, including the financial concessions such as income tax relief, exemption of import tariffs for imported equipment and spare parts, exemption of import terminals duty, exemption of export taxes and fees, as well as the non-financial concessions such as unrestricted use of consigned equipment, employment of foreign workers, simplification of import and export customs clearance procedures, etc.

The Philippines issues investment plan each year and adjusts the priority areas and limited areas in investment according to the year's situation. The Philippines issued the *2009 Investment Priorities Plan* in March 30, 2009. According to this plan, the Regular List consists of export, agriculture, fishery, infrastructure building, engineering products, tourism, service outsourcing, creative sectors, strategic sectors, research and development specially approved, etc. The Contingency List mainly focuses on the sectors which can keep and increase the investment or those sectors which can create job positions. The limited areas mainly include banking and financial institutions; retailing, service (except those in the Regular List); small mining industry; activities limited out of reasons like safety, national defense, sanitation and moral risks; small and medium enterprises participated by the foreigners; non-agricultural basic consumption and health care products.

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According to the *Foreign Investment Act of 1991* and other related laws, foreigners can establish individual-owned enterprise, partnership enterprise, company, branch company and representative office. (1) An individual should invests 100% in an individual-owned enterprise and enjoys exclusive benefits and assumes full responsibility for the business. Individual-owned enterprise is approved by the Department of Trade and Industry. (2) A partnership enterprise is set up by two or more partners, and observes independent personality differing from the partners, either in the form of limited liability or unlimited liability. It is required that each partner should at least invest P3000 and the application for its establishment should be submitted to the Philippine Securities and Exchange Commission. (3) According to the *Company Code*, a company should be established by 5 to 15 persons and the application for registration should be submitted to the Philippine Securities and Exchange Commission. The actual capital should be P5000 or more. (4) Branch company is an extension of a foreign company, not an independent legal entity. It can make revenue in the Philippines. The applicant should remit US\$ 200000 to the Philippines before registration. (5) Representative office will engage in activities in the Philippines such as information dissemination, liaison, promotion, quality control. It does not obtain income in the territory of the Philippines. The applicant should remit US\$ 30000 to the Philippines before registration.

If the investment projects or business operations meet the requirements to enjoy the relevant preferential policies made by the Philippine government, they should be registered in the Board of Investment or relevant authorities. The foreign-invested enterprises within the scope set by the Philippine government can enjoy the following preferential treatments: four year corporate income tax holiday which can be extended to eight years at most; upon the expiration of the exemption period of corporate income tax, companies can choose to pay 5% gross income tax in lieu of state (central) and local taxes; imported capital goods (equipments), CKDs, components, raw materials, breeding stock or gene materials for breeding purposes are exempted from import duties and other taxes and fees; the purchase of the like products in the Philippines can be granted tax credit, that is to say, various taxes and fees should be paid at first, but will be refunded after the products are exported (including the imposition of and refund of import duties); exemption of dock dues and export duties and fees is available; foreign investors and their family members are granted permanent residents; procedures for import and hiring of foreign employees are simplified, etc. If the registered foreign enterprises invest in the less developed areas in the Philippines, whether the newly-built or enlarged enterprises can also enjoy the preferential treatment: as from the registered day, the enterprises can enjoy a six year corporate income tax holiday.

### **2.3 Trade and Investment Related Administration Regime and Its Development**

Philippines imposes consumption tax on imports of automobiles, tobacco, petroleum and alcohol, based on its *Tariff and Customs Code*. A 12% VAT is imposed on imports based on the amount of Custom valuation and excise tax.

In addition, Philippines imposes stamp duty on documents such as bill of lading, invoice, transaction bills, insurance policies, mortgage deeds and commission letters. A 250-peso service charge is mandatory for invoice of over 5000 peso.

### **2.4 Trade-related Technical Measures Adopted in 2009**

#### **2.4.1 Technical Regulations**

##### **2.4.1.1 National Standards on Tires**

On January 12, 2009, the Bureau of Product Standards of the Philippine DTI published an notification the *Draft of Philippine National Standards(DPNS) UN ECE 30:2008-Provisions on the Pneumatic Tires of Automotive Vehicles and Their Trailers*. This notification stipulates the national standards for the pneumatic tires of automotive vehicles and their trailers. It cancelled and replaced the *PNS 25- Provisions on Pneumatic Tires* issued in 2003. The Bureau of Product Standards of the Philippine DTI published on August 7, 2009 the *Draft of Philippine National Standards (DPNS) UN ECE 54:2009-Provisions on the Pneumatic Tires of Commercial Vehicles and Their Trailers*. The provisions cover the test sampling of tires of light trucks, trucks and buses; tires for low-speed freeways; the testing requirements of the tire strength and durability.

##### **2.4.1.2 The Certification and Performance Criteria on Protective Helmet and Visor**

The Bureau of Product Standards of the Philippine DTI published on February 10, 2009 the *Mandatory Certification and Performance Criteria on Protective Helmet and Visor under the PNS-UN-ECE Reg 22-2007*. This notification intends to protect the safety of all riders of the motorcycles and moped convertible bicycles and address the proliferation of substandard motorcycle and moped helmets and visors..

##### **2.4.1.3 Criteria on Glass on the Autos and Glass Products**

The Bureau of Product Standards of the Philippine DTI published on February 24, 2009 the *DPNS UN ECE 43:2009 –Provisions on the Certificated Safe Glass and Its Installation on the Autos*. The notification is applicable to the windshield or other windows, or safety glass of the

power-driven vehicles and their trailers, as well as that of their assemblies; excluding the glass of lighting equipment, optical signal devices, instrument panel and special bulletproof glass. Besides, the criteria canceled and replaced *PNS 130:2004- Safety Glass for Vehicles*.

#### **2.4.1.4 National Standards on Fireworks**

The Bureau of Product Standards of the DTI published *Mandatory Products Standards on Fireworks (PNS 1220-2:1994)* on March 31, 2009. The notification stipulates requirements for the structures, properties and labels of the fireworks and certain auxiliary equipments, applicable for fireworks selling to the common people used indoor and outside.

#### **2.4.1.5 National Standards on Coconut Chaff**

The Bureau of Agricultural and Fisheries Product Standards of Department of Agriculture published the *Draft of Philippine National Standards (DPNS) on Coconut Chaff Rank and Classification* on September 7, 2009. The notification covers coconut chaff (product extracted from the coconut shell fibers) used as cultivation medium of different ranks and product for gardening and agricultural purposes, establishes a coconut chaff grading and classification system. The notification is intended to provide a general understanding of the criteria scope for acceptance check of batch products, product descriptions, minimum requirements, grading, packing, sampling and labeling requirements.

### **2.4.2 Sanitary and Phytosanitary Measures**

#### **2.4.2.1 Standard on Basi**

The Bureau of Food and Drugs of the Philippines Department of Health published *Draft of Philippine National Standards on Basi* and *Draft of Operation Code of Processing and Handling of Basi* on July 20, 2009. The former draft stipulates standards on the sugar cane juice and liquor brewed from its products in accordance with the Standard Codex, while the latter one sets criteria on the raw materials, ingredients and the process of making basi as well as providing guidance for the former one to make the basi packaged in any containers meet national standards.

#### **2.4.2.2 Standards on Sugar Cane**

The Bureau of Food and Drugs of the Philippine Department of Health notified the *Draft of National Standards (BAFPS PNS 81:2009) on Sugar Cane* on October 7, 2009. The notification stipulates national standards on sugar cane which will be consumed by human being, further processed or used as food ingredient.

### 2.4.2.3 Standards on Corn Chips Snack Food

The Bureau of Food and Drugs of the Philippines notified the *Draft of National Standards on Corn Chips Snack Food* and *Draft of the Recommended Operational Code of the Processing and Handling of the Corn Chips Snack Food*. The former stipulates the national standards on the fried corn snack food made of the whole corn kernels, while the latter involves the acceptance, handling and processing of the ingredients of the deep-fried corn snack food, as well as provides guidance to the standards of deep-fried corn snack food in any appropriate container.

## 3 Trade Barriers

### 3.1 Tariffs and Tariff Administrative Measures

#### 3.1.1 Tariff Peak

Products subject to tariff peaks include chemical waste, autos, motorcycles, some auto spare parts, oranges, cereals, pork and meat products, ,with the rate on raw sugar high at 65%, coffee and tea at 45%, rice at 50%, corn at 35%, wood and paper products at 30% and leather and footwear at 20%.

#### 3.1.2 Tariff Escalation

To encourage the development of its own auto manufacturing industry, the Philippines imposes low tariff on imported auto parts, while imposes high tariff on the autos and motorcycles. The tariff rate for cars is 30%, , trucks 20~30% according to their tonnage, passenger carriages 15%~20% according to their tonnage, completely knocked down kit 1%, alternative fuel vehicles zero. In addition, the Philippines imposes 12% value added tax on imported autos and excise tax in accordance with the prices of the autos, the higher the price is , the higher the tax rate will be.

#### 2.1.3. Tariff Quotas

Imports subject to tariff quotas mainly include agricultural products such as rice, livestock and meat product thereof, potatoes, coffee and sugar. According to the *Agreement on China-ASEAN Free Trade Area*, the Philippines still exercises tariff quota administration on fresh and frozen pork as well as corns originated from China. The in-quota rate for fresh and frozen pork is 30% while the out-quota rate is 40%, and the in-quota rate for turkey is 30% while out-quota rate ranges from 35% to 40%.

#### 2.1.4 Re-calibration

The Philippine government often issues executive orders to “re-calibrate” tariff rates, and selectively raises tariff rates on any imported products. *Executive Order No.241* and *Executive Order No.264* issued in October 2003 raised import tariff rates on over 1000 products including fertilizer, cement, and footwear from 3%-10% to 5%-20%. The Philippines issued *Executive Order No. 419* in April 2005 to impose 25% tariff on the vehicles with carrying capacity of ten people or over ten people (driver included), which is 5 percentage points higher than the previous MFN tariff rate of 20%.

### **2.2 Barriers to Customs Clearance**

To be in line with the relevant stipulations of the *WTO Agreement on Customs Evaluation*, the Philippines’ *Customs Act* prescribes that the Philippines adopts the actual trading prices as the bases for customs evaluation. But in the actual operation, the Philippines always tends to take the reference price and non-record commission account as the actual trading price and the private agencies take part in the process of customs evaluation. The Philippine customs always prolongs the evaluation time limit, all these phenomenon lead to the extra load on the enterprises.

In addition, the Philippines often makes most imports channel through the “red lane” for reasons of anti-smuggling, strengthening the Customs inspection, etc. Shipments through the “red lane” are subject to both strict documentary review and physical inspection. Cumbersome documentary review and physical inspection have prolonged the customs clearance time, causing negative impact on the imports.

### **2.3 Import Restrictions**

The Philippines has a system of import licensing. The licenses will only be issued when the products must be imported to ensure the domestic supply and they will cause no material injury or threat of injury to domestic industry. Such practice increases the uncertainty of issuance. In 2006, for reasons of protecting domestic farmers’ interests, BPI suspended issuing import license for onions. In 2007, the Philippine Department of Agriculture withdrew its plan to import 270,000 tons of corn. In 2008, the Department of Agriculture once again prolonged the issuing of the import license for pork and other agricultural products.

In addition, the license is valid for only 60 days after its issuing, which is far from enough for food importers to prepare for shipping.

### **2.4 Discriminatory Taxes and Fees on Imported Goods**

The Philippine government specifies different excise taxes on imported liquor and domestically produced liquor. For the liquor distilled by using local raw materials the Philippines imposes excise tax P12.58 per liter while the similar liquor made from imported raw materials is subject to varying excise taxes according to different alcoholicity. For liquor using imported raw materials, the excise taxes vary from P136.08 per liter to P544.32 per liter; for low alcohol-contained wine such as 14% or below basically using imported materials, the excise tax rises to P17.47 per liter; for drinks with alcohol content ranging from 14% to 25%, the excise tax rises to P34.94 per liter. If the alcohol content is higher than 25%, the excise tax of the products is levied as liquor. This practice by the Philippines has evidently constituted discrimination against the imports and is in violation of the national treatment principle of WTO, and imposed negative impact on Chinese exported alcoholic products.

### **2.5 Technical Barriers to Trade**

The level of standards on electricity industry, electrical products, household electrical appliances, provision, rubber products and mechanicals is comparatively high. Among the PNS, 98% of standards is recommended standard and 2% is mandatory standards. In 2009, the Philippines issued numbers of national standards on tires, protective helmet, and fireworks, etc., but these standards are very brief in the notification to WTO, the Chinese side hopes that the Philippines will improve the transparency of the standard notification.

Mandatory labeling requirements are set for textiles and clothing. If labeling of the imports is found to be inconsistent with the requirements, not only the default products, but also the whole lot of the products will be disdained and destroyed. It is likely to bring unreasonable losses to qualified goods in practice. The Chinese side keeps a close watch on it.

The Philippines usually refers to the standards of developed countries when making its national standards. For example, it adopted the ASTM in handling imports of ceramic tiles. ASTM is different from ISO in making some of the voluntary standards into mandatory ones. China holds that Philippines should have referred to the existing international standards to facilitate trade. On August 7, 2009, Philippines notified the *Draft Philippine National Standard (DPNS) for Grading and Classification of Coconut Peat* to announce its adoption of New Zealand standard for importation of coco peat and coir fiber products. Chinese side hopes Philippines could refer to international standards as it works out national standard, and provide the grounds of selecting others when an international standard is not available for a particular product.

In addition, Philippines will authorize one sole agent for certification. Philippine Department of

Trade and Industry regulates that starting from January 2006, all the imported white-and-black TV sets or colore TV sets of 14-29 inches must be certified by the Testing Center of the Bureau of Product Standards (BPS) and the SOLID Company before entering the Philippine market. Such practice has brought huge inconvenience to importers and unnecessarily increased their importing cost, China hope Philippine could adopt more flexible policy on this point. In the aforementioned case of ceramic tiles, Philippines designated one of its local tile manufacturer as the ASTM certification agent, which has adversely effected the import of ceramic tiles since such practice violated the trade secret of many Chinese producers, as reported by some Chinese importers.

### 2.6 Sanitary and Phytosanitary Measures

The Philippines maintains Veterinary Quarantine Clearance (VQC) on the import of meat and poultry products. The No.26 Ministerial Decree requires the obtaining of VQC for meat and poultry products before importing. The validity of VQC in the Philippines is 60 days and is not extendable. In addition, VQC in the Philippines can only be used once. When the amount of actual import exceeds the amount permitted by the VQC, the importer must apply for another VQC and the importer will be fined. Similar VQC were also required for all the imports of fresh vegetables and fruits.

The Chinese side hopes that the applying for VQC can be more flexible and transparent, thus making the process consistent with *TBT/SPS Agreement*.

### 2.7 Trade Remedy Measures

#### 2.7.1 Trade Remedy Cases against China

Philippines initiated one remedy measure investigation against China in 2009. By the end of 2009, the Philippines had initiated 10 cases of trade remedies against China. The outstanding trade remedy cases at present include the safeguard measures in the case of pattern glass, float glass and glass, ceramic tiles and of angle irons which was initiated in 2008.

**Table 1 Philippines' Trade Remedy Measures against China in 2009**

No.	Date of Initiation	Products covered	HS number	Progress of the case
1	November 16	Laminated cardboard	72162100, 72165010,	In process

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### 2.7.2 Questionable Practice of Philippine Trade Remedy Measures

According to the *Safeguard Law* of the Philippines, the involved enterprises will be assumed having received the questionnaires within five days from the date of filing the case, and they must send back filled questionnaires to the DTI within another five days on receipt. It is required that the involved enterprises should collect and sort out production and exports data of the recent six years. Time is rather pressing, and far from enough. At present, few WTO members give only five days for the involved enterprises to fill questionnaires. Apart from that, the Philippines also requires that the involved enterprises should obtain notarization from local Notary Office, be extended by the Foreign Affairs Office and verified by the Philippine Embassy in China, otherwise the DTI will deny the eligibility of the submitted questionnaires. However, Chinese side believes that to finish such complicated procedures within five days was obviously rather unreasonable. These restrictions will bring about many difficulties for Chinese enterprises. The Philippines has prepared to change the time limit to 30 days, yet it has not been performed up to now.

On November 16, 2009, DTI initiated safeguard measures investigation against imported tough liner. The investigating period is from 2004 to 2008. Chinese side has not exported the involved products to the Philippines in the period from 2004 to 2007. In 2008, China exported 736.32 tons of the involved products, covering 3.95% of the total amount of this type of products imported by the Philippines. This case is also the first trade remedy investigation initiated by the Philippines against China in 2009.

### 2.8 Government Procurement

The Philippines is not a signatory to the *Agreement on Government procurement of the WTO*. The *2003 Government Procurement Act* of the Philippines is the fundamental basis for governments when procurement is concerned. The law sets the principles, procedures and patterns of government procurement and defines the qualifications of suppliers.

The Philippines stipulates that the government observes countertrade obligation. The government bodies, the government-owned or government holding enterprises should use 50% of the imported value to counter trade in purchasing, that is to purchase the products of the Philippines. The Philippines will punish the enterprises that violate the counter trade.

### **2.9 Subsidies**

The Philippine government carries out Investment Priorities Plan, under which the participating enterprises can register in the Board of Investment to enjoy financial subsidies, including personal income tax holiday, tax deduction the amount of which is equal to 50% of the directly employed workers' wages, tax free for the imported breeding stock and genetic materials. In addition, if the enterprises registering in the Bureau of Investment are located in the less developed area, the enterprises can enjoy tax deduction or exemption the amount of which is at most equal to 100% of the cost of infrastructure projects or incremental labor expenses.

To gain the above mentioned financial subsidies, the enterprises should satisfy certain condition, that is, 60% shares should be owned by the Philippine citizens and more than 50% of its products should be exported. In condition that 60% of its shares are not owned by the Philippine citizens but the project the enterprise engages in is among the pioneer list of priorities investment projects or the export covers more than 70% of its production, it can also enjoy the financial subsidies. The enterprises located in the export processing zones, free trade zones and other special industrial zones registered in the Philippine Economic Zone Authority can enjoy the same financial subsidies, and enjoy preferential treatments of the import tariff exemption of the fixed equipment and raw materials, and simplified importing procedures as well

The Philippines carries out the auto exporting plan to promote the export of its own autos and spare parts. According to this plan, the registered auto manufacturers can enjoy preferential duties. The preferential rate will be determined by the foreign exchange level obtained by exporting finished autos.

### **2.10 Barriers to Trade in Service**

#### **2.10.1 Banking**

The Philippine Central Bank stipulates that the certification issued to the newly-started banks can be extended to encourage the merge of banking systems. This action in practice turns out to restrict the foreign banks' investment to the current banks. The foreign banks' branches set up in the Philippines are limited to six and the branches cannot provide full service, but the foreign banks that had been established in the Philippines before 1948 are not restricted to the limit.

The Philippines law stipulates that the financial institutions must provide certain proportions of its total loans for designated sectors. According to the *Agr-Agra Law*, the banks in the Philippines must guarantee more than 25% of its total loans to be extended to agricultural areas. *The Magna Carta for Micro, Small and Medium Enterprises* requires that banks should guarantee more than 10% of its total loans to be extended to small and medium-sized enterprises. This kind of compulsory obligations increases the load for foreign-invested banks.

### **2.10.2 Insurance**

According to the Philippine current law, foreign insurance companies can set up wholly-owned foreign insurance institutions. But only the state-holding Government Service Insurance System is allowed to be engaged in insurance business of government-funded projects in the Philippines. And the projects adopting the build-operate-transfer mode and privatized government enterprises need to gain insurance from the Government Service Insurance System within the scope of state interests.

In addition, the prevailing Philippine insurance regulatory law provides that all insurance and reinsurance companies operating in the Philippines should pay at least 10% of the premium to the National Reinsurance Corporation of the Philippines.

### **2.10.3 Securities and Other Financial Services**

The securities and insurance companies, which did not set up in accordance with the Philippine laws, could provide insurance to the abroad market but not to the Philippine market. Although the Philippines has no limit on foreign capital to gain mutual funds, membership on a board of directors of foreign-invested mutual funds is limited to Philippines citizens

According to the Philippines current laws, foreign equity in securities underwriting is limited to 60 percent, yet the *Lending Company Regulation Act* issued by the Philippines in May 2007 set a regular system for the finance company, which doesn't require the majority share should be hold by the Philippines.

### **2.10.4 Basic Telecommunications**

In accordance with the Philippine *Constitution of 1987*, foreign enterprises are restricted to engage in the basic telecommunications. It requires that only those foreign enterprises with more than 60% shares owned by the Philippine citizens can manage basic telecommunication business and it is hard for foreign enterprises to invest in broadband services in the Philippines. The Philippines also restricts foreigners to be executives and managers of the basic telecommunications businesses, and the proportion of foreign executives and managers should not exceed that of foreign equity.

In addition, the foreign investment in the private broadcasting company should not exceed 20% and the wired television and other types of broadcasting and media can only be managed by the Philippine citizens.

### **2.10.5 Advertising**

According to the laws of the Philippines, foreign ownership in the Philippine advertising companies cannot exceed 30%. In addition, eligibility of managers of advertising agencies is limited to Philippine citizens.

### **2.10.6 Public Utilities**

Relevant laws of the Philippines restrict the foreign ownership of the companies of the public utilities such as water, electricity, communications, and transportation system. The domestic ownership in these companies should exceed 60% and the investors and managers of these

enterprises should be Philippine citizens.

### **2.10.7 Professional Services**

The Philippine authorities reserve the practice of licensed professionals of law, medicine, nursing, accountancy, engineering, building design and customs agencies to Philippine citizens.

### **2.10.8 Shipping**

The Philippines prohibits foreign-flagged vessels from engaging in the provision of domestic transport services. Besides, the foreign ownership of the companies engaging in international shipping business cannot exceed 40%. The country's *Bareboat Chartering Law* stipulates that Philippine-flagged vessels should be manned by a Filipino crew and disallows foreign crew or officers, except as supernumeraries.

### **2.10.9 Courier Service**

According to the Philippine laws, the foreign courier service companies cannot engage in the Philippine domestic courier services unless they satisfy specific conditions. They can choose to sign contract with 100% Philippine-owned companies or establish joint ventures with Philippine ownerships exceeding 60% to engage in the Philippine domestic courier services.

### **2.10.10 Retailing**

According to the 2000 *Retailing Act* of the Philippine, foreign investors with registered capital less than 2.5 million U.S. dollars cannot engage in retail business, but if the registered capital is over 2.5 million and the assets of each retailing store is no less than 830 thousand U.S. dollars, it is allowed to invest in the retail business in the Philippines. In addition, at least 30% invested value should be held by the Philippine investors until 2010. The foreign parent company investing the retail stores should at least own US\$ 2 billion net asset. If the foreign retailer intends to set outlet moor in the Philippines, it should at least own five other retailing stores or the asset of the outlet moor should not be less than 25 million U.S. dollars.

The foreign investment in high-end products and luxuries retailing trade should not be less than US\$ 250 thousand and 10% of its investment value should be held by the Philippine side until 2010. The net asset of the foreign parent company of the high-end and luxury products should not be less than US\$ 500 million.

The foreign retailing trader should not engage in trade out of its authorized store. The retail

enterprises in which the foreign investors hold more than 80% shares should provide at least 30% shares in the first 8 years to the local investors. In addition, there is mutually beneficial request for the foreign enterprises investing in retail enterprises, that is, only when the native countries of the foreign enterprises allow the Philippines to invest in retail trade in its country, can the foreign enterprises invest in the Philippines.

#### **4 Barriers to Investment**

The current Philippine laws allow foreign investors to set up joint ventures, branches and representative offices in the Philippines. The law stipulates that Filipino shareholders should not be fewer than five and most shareholders should be permanent residents of the Philippines. The secretary of a joint venture should be Philippine citizen. The Philippine Securities and Exchange Commission also requires that the financial personnel of joint ventures should be permanent residents of the Philippines.

To establish companies of joint-stock or partnership, foreign enterprises are required to submit application forms to the Security and Exchange Commission, register name confirmed by SEC, articles of association, foreign shareholders' permanent identification (ACR/ICR, SIRV and foreign equity subscriber's visa) issued by the Philippine Immigration Office, certification for the (total) capital of the applicant issued by Philippine Banks, and certification for the capital (inward remittance) of the foreign investors issued by Philippine Banks. Submitting the resolutions of the Philippine board of directors is also required for the establishment of joint ventures.

To set up branch offices in the Philippines, besides application forms, register name confirmed by SEC and copies of articles of association, foreign enterprises are required to submit the following documents: copies of authorization to establish branches in the Philippines by the board of directors of the parent company, certification for foreign capital (inward remittance) in place issued by Philippine Banks (If the documents are provided outside the Philippines, notarization by Philippine embassies and consulates abroad is also required), the latest annual financial reports of the parent company issued by independent certified public accountants in the home country of the applicant, and assignation of a local agent awaiting the subpoena of SEC.

The stipulations for the foreign investors in the Philippines are too cumbersome and the procedures too complicated, constituting a substantial obstacle to foreign investment.