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THE PHILIPPINES AND TPP: OPPORTUNITIES AND CHALLENGES

17 MARCH 2016 TPP CONFERENCE REPORT

Friday April 1, 2016

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THE PHILIPPINES AND TPP: OPPORTUNITIES AND CHALLENGES

17 March 2016 TPP Conference Report

USAID TRADE RELATED ASSISTANCE FOR
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DELOITTE CONSULTING LLP

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ABBREVIATIONS

ACIA	ASEAN Comprehensive Investments Agreement
AIFTA	ASEAN-India Free Trade Agreement
AFAS	ASEAN Framework Agreement on Services
AmCham	American Chamber of Commerce, Philippines
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
BFAD	Bureau of Food and Drugs
CBU	Completely Built Up
CO	Certificate of Origin
CTC	Change in Tariff Classification
EO	Executive Order
FDA	Food and Drug Administration
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTAA	Financial Technical Assistance Agreement
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GI	Geographic Indication
GPH	Government of the Philippines

HS	Harmonized System
IP	Intellectual Property
IPO	Intellectual Property Office
IRR	Implementing Rules and Regulations
ISDS	Investor-State Dispute Settlement
MAP	Management Association of the Philippines
MBC	Makati Business Club
MC	Memorandum Circular
MFN	Most Favored Nation
NAFTA	North American Free Trade Agreement
NL	Negative List
NTC	National Telecommunications Commission
OFW	Overseas Foreign Worker
PCCI	Philippine Chamber of Commerce and Industry
PJEPA	Philippine-Japan Economic Partnership Agreement
PSR	Product Specific Rules
PTE	Public Telecommunications Entity
RA	Republic Act
RE	Renewable Energy
RMI	Rights Management Information

ROO	Rules of Origin
RVC	Regional Value Content
SP	Specific Process
SPS	Sanitary and Phytosanitary
TPM	Technological Protection Measures
TPP	Trans-Pacific Partnership Agreement
TRADE	Trade-Related Assistance for Development Project
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UPOV	International Union for the Protection of New Varieties of Plants
USAID	United States Agency for International Development
USD	United States Dollar
VAS	Value Added Services
VOM	Value of Originating Materials
WTO	World Trade Organization

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EXECUTIVE SUMMARY

Held on 17 March 2016, the TPP Conference titled “The Philippines and the TPP: Opportunities and Challenges” sought to increase stakeholders’ understanding about the Trans-Pacific Partnership (TPP) Agreement and the Philippines’ readiness to take part in it. The Conference provided an overview of the TPP Agreement and zoomed in on six TPP Chapters, namely: (1) Rules of Origin; (2) Cross Border Trade in Services; (3) Investment; (4) Competition Policy; (5) Telecommunications, and (6) Intellectual Property. It highlighted results of studies assessing the gaps between the TPP obligations and the Philippines’ current policy regime.

Below are six (6) key take-aways based on the discussions in the TPP Conference:

1. The Philippines will benefit from TPP participation.

Resource persons have highlighted the benefits that the Philippines stands to gain by being a party to the TPP Agreement. The TPP offers opportunities for deepening the Philippines’ trade and investment relationships with some of the world’s largest economies. It would deter investors from shifting their investments from the Philippines to another TPP party such as Viet Nam. It shall compel the country to take on reforms that will make it more competitive and efficient. It will drive economic growth and create jobs that will make Filipinos stay in the country instead of working overseas.

The Conference recognizes that the TPP Agreement also poses some risks that may impact public welfare. These include the country’s overall readiness to comply with TPP obligations, threats to access to cheaper medicines given the TPP intellectual property provisions, and concerns about the adverse effect of TPP on small farmers and industry players. There is general sense of agreement however that the threats should be weighed vis-à-vis the potential losses that the Philippines might incur if it stayed outside the TPP. Should the Philippines be part of the TPP, measures have to be done to ensure that it is able to maximize TPP opportunities and address the threats that TPP may have on public welfare.

2. Regulatory reforms are needed to make the Philippines TPP-Ready.

Joining the TPP requires the Philippines to institute several reforms that shall make it compliant to TPP obligations. The speakers presented the results of their gaps assessments between these TPP obligations and the country’s regulatory environment.

The studies show the Philippines’ laws, policies, and experiences are aligned with the key provisions of the TPP on investor-state dispute settlement (ISDS) and competition law. However there remains a huge gap between TPP obligations on several key areas vis-à-vis the Philippines’ regulations.

The following table enumerates the key findings of these gap assessments.

Areas	Key Findings
Rules of Origin (ROO)	Gaps were noted between TPP and Philippines' procedures in determining origin status of goods through various regional value content (RVC) formula (i.e., build-up method, net cost method, and focused-value method), product-specific rules, and full accumulation scheme.
	Gaps were noted between TPP and Philippines' arrangements on ROO procedures particularly on issuance of certification of origin (CO), threshold for waiver of CO, record keeping, and refund provisions.
Scheduling Approach in Trade in Services	The Philippines has experience adopting the Negative List approach which is used by the TPP in scheduling its commitments. The Philippines uses the NL approach in the ASEAN Comprehensive Investment Agreement (ACIA) and in its own Foreign Investment Negative List.
	There is a need however to develop a compendium of Philippine policies related to trade in services to serve as guide in negotiating Philippines' TPP participation.
Investor-State Dispute Settlement (ISDS)	The Philippines is compliant specific to TPP provisions on ISDS. It has experiences in international state arbitration platforms. The concern however is on the willingness of the Philippines to open up its sectors to foreign direct investments.
Competition Law	The Philippines is seen as fully compliant with TPP obligations on competition primarily due to the recent passage of RA 10667 or the Philippine Competition Act.
Telecommunications	There is a need to amend RA 7925 or the Public Telecommunications Policy Act, particularly with respect to provisions on unbundling, interconnection, cross subsidization, number portability, and National Telecommunications (NTC) powers.
	Biggest impediment is constitutional restrictions on public utility sector, of which telecommunications is a part.
Intellectual Property (IP)	IP is protected by the Philippines' various IP laws and accession to IP treaties. Still, there is a need to amend the Intellectual Property Code of the Philippines to align it with TPP obligations on expanded IP protection.
	There is a need to amend the Plant Variety Protection Act in order for the Philippines to accede to UPOV (which is a TPP requirement).
	Endorsement and administrative procedures required under the TPP-IP chapter must be established

3. The Philippines' market access restrictions must be assessed.

The TPP requires member-parties to commit to sectoral liberalization. It is in this light that the issue of the Philippines' constitutional restriction on foreign ownership was repeatedly highlighted in the Conference. Such restriction is seen as a constraint in opening up sectors. It is also said to discourage foreign direct investments in certain sectors or industries.

Some speakers talked about amending the economic provision of the constitution to lift the restrictions. Others, on the other hand, said this constraint could be addressed without going through constitutional amendment. Recommendations included amending the Public Utility Law, defining the term "large scale exploration, development, and utilization of minerals" as provided for under Article 12 of the Philippine constitution, and minimizing and quantifying the definition of "practice of law" to allow foreign lawyers to practice in the Philippines.

While many seek for the opening up of more industries, a representative from an agricultural organization called for the protection of the agriculture sector, which is primarily comprised of poor farmers and small industry players.

4. Identify and strengthen the Philippines' competitive advantage.

To enable the Philippines to maximize its TPP participation, the speakers emphasized that the Philippines has to know its competitive edge over other existing and potential TPP parties. The Philippines must decide which sectors/industries it will prioritize and push for further development through global trade and investments. The government should carefully study the offensive and defensive interests of priority sectors in order to equip itself with negotiating positions at the TPP.

5. TPP-readiness is not just about regulatory reforms.

Beyond amending or enacting laws and agency policies and regulations, the Conference discussions also highlighted other imperatives (some may be in preparation for policy amendments) in order for the Philippines to be TPP-ready. The following is a summary of these suggestions:

a. Technical review and studies

- i. Conduct review, assessments, and evaluation with respect to ROO product profiling, product origin test, and self-certification scheme.
- ii. Develop a compendium of measures affecting trade in services and other relevant databases.
- iii. Partner with the private sector to improve industry knowledge and expertise.

b. Capacity building/ Human resource development

- i. Conduct capacity building among government agencies that will be impacted by the TPP obligations, such as the Bureau of Customs, Intellectual Property Office, Food and Drugs Authority, etc.
- ii. Ensure that the private sector understands ROO mechanisms in order for it to be able to self-certify/issue Certification of Origin (CO).

c. Ease of business and competitiveness

- i. Improve overall ease of doing business.

- ii. Help industries compete in the international scale.
 - iii. Promote more transparency in telecommunications.
 - iv. Learn from the experience of ASEAN neighbors in preparing for the country's strategic roadmap towards TPP, i.e., Viet Nam (opening up agriculture and review of existing regulations) and Singapore (telecommunications backbone).
- d. Communications and stakeholder outreach
- i. Send a clear signal to investors and the international community that the Philippines shall be part of the TPP.
 - ii. Encourage the private sector to be part of the discussions and to help push needed reforms.
 - iii. Continue the dialogue and consultations with the current TPP parties to secure their buy-in to the Philippines' TPP accession.
- e. Education
- i. Implement education and value formation campaigns that will increase Filipinos' awareness of and respect for intellectual property.
 - ii. Improve engineering schools' ability to develop Filipino engineers who are critical forces in the country's manufacturing sector.

6. National discourse on TPP has to be continued.

There is a need to continue the multi-sectoral conversations on the TPP and Philippines' participation in it. The TPP Conference has only kickstarted the discussions by featuring the six USAID-TRADE-supported assessment of selected TPP chapters. However, a lot of issues and topics remain to be discussed. These include TPP obligations pertaining to environment, labor, government procurement, SMEs, etc.

Participants and resource persons agree that communication is critical in the Philippines' roadmap towards TPP. The message of TPP must be made accessible to everyone. Information needs of different types of audience must be met. While the general public would only want an overview on the TPP and know its relevance to them, industry practitioners would need depth in discussing details of the TPP Agreement specific to their sectors.

The conversations have to continue. Two key questions must be answered: (1) Does the Philippines want to be part of the TPP? and (2) If the country decides to join the TPP, how ready is it and what should it do to be TPP-ready?

1. CONFERENCE SUMMARY

The Conference “The Philippines and the TPP: Opportunities and Challenges” was held on 17 March 2016 at the Dusit Thani Hotel, Makati City, Philippines. It was jointly organized by the USAID Trade Related Assistance for Development (TRADE) Project, the US Chamber of Commerce, and the American Chamber of Commerce of the Philippines. The Conference sought to increase stakeholders’ understanding of the Trans-Pacific Partnership (TPP) Agreement and the Philippines’ readiness to take part in it.

The TPP is comprised of 12 countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Viet Nam. It has a combined market of 800 million people and GDP of US\$28 trillion, which is about 40% of the world’s GDP total. TPP trade accounts for 30% of world trade.

The Conference provided an Overview of the TPP Agreement and included five (5) session topics on key chapters of the TPP Agreement, including (1) Rules of Origin; (2) Cross Border Trade in Services; (3) Investment; (4) Competition Policy; (5) Telecommunications, and (6) Intellectual Property. The sessions served as a platform for speakers to present their gap assessments on the TPP obligations vis-à-vis the current regulatory environment of the Philippines. Prior to closing the Conference, private sector leaders from three business organizations shared their reflections on the TPP and Philippines’ possible participation in it.

Conference speakers included experts in global trade and investment, intellectual property, telecommunications policies, and competition law. The moderators were key industry leaders and heads of business organizations and chambers.

A total of 157 participants from various industries in the Philippines joined the Conference. In addition to participants, media and sponsors, there were 10 persons present who were part of the organizing team, and 18 were speakers.



2. CONFERENCE PROGRAM

- 8:15 **Registration**
- 9:00 **Welcome Remarks**
Mr. Daniel Miller
- 9:10 **Opening Remarks**
Mr. John Goyer
- 9:20 **Overview of TPP and Introduction to the TRADE Project**
Dr. Cielito F. Habito
- 9:40 **Session 1: Rules of Origin**
Moderator: Mr. John Peterson
Presenter: Mr. Francis De Leon
- 10:30 **Coffee Break**
- 10:45 **Session 2: Approaches to Scheduling Trade in Services Commitments**
Moderator: Mr. Ruy Moreno
Presenter: Ms. Glenda Reyes
- 11:20 **Session 3: Investment Protection and Investor-State Dispute Settlement**
Moderator: Atty. Perry Pe
Presenter: Atty. Manuel Teehankee
- 12:00 **Session 4: Competition Policy and Telecommunications**
Moderator: Atty. Raphael Perpetuo Lotilla
Presenters: Atty. Kristal Uy and Ms. Isabella Villamil
- 12:40 **Luncheon**
- 2:00 **Session 5: Intellectual Property**
Moderator: Dr. Beaver Tamesis
Presenter: Atty. Gladys Vilchez
- 3:20 **Reflections from the Philippine Business Sector**
- Mr. Cirilio Noel
 - Atty. Perry Pe
 - Mr. George Barcelon
- 3:35 **Open Forum**
- 4:00 **Synthesis and Concluding Remarks**
Mr. John Forbes
- 4:15 **End of Program**

3. CONFERENCE DISCUSSIONS

a. Welcome Remarks

MR. DANIEL MILLER

Head, Office of Economic Development and Governance
U.S. Agency for International Development (USAID), Manila

Mr. Daniel Miller talked about USAID's initiatives to help the Philippines achieve broad and sustained inclusive growth. He zoomed in on TRADE Project's efforts to help the Philippines achieve higher levels of trade and investment through competitiveness, development of the Philippines' ASEAN economic community game plan, and possible participation in the TPP Agreement.

Miller shared that in pursuit of the United States' and the Philippines' shared goals of achieving economic prosperity and sustained inclusive growth, both countries launched "Partnership for Growth" in 2011. Said bilateral initiative takes on a 'whole of government' approach in areas such as trade and investment, public finance, science and technology, sectoral policies, institutional governance reforms, and local development.

Miller discussed USAID's Trade-Related Assistance for Development (TRADE) Project which seeks to elevate the Philippines' position in the global community through higher levels of trade and investment. TRADE has provided technical support towards enactment of the Philippine Competition Act and the Customs Modernization and Tariff Act – two laws that are critical to improving the country's competitiveness. TRADE has also supported the development of the country's ASEAN Economic Community (AEC) Game Plan. At present, it helps the Philippines weigh the advantages and disadvantages of joining the TPP and assess its readiness to be part of the agreement.

Miller thanked USAID-TRADE's partners in convening the TPP Conference in Makati City – the US Chamber of Commerce and the American Chamber of Commerce of the Philippines (AmCham), as he stressed the importance of partnerships in USAID's efforts. He also thanked the Conference participants whose presence, he said, is proof of companies' and organizations' interest in understanding TPP and its impact.

b. Opening Remarks

MR. JOHN GOYER
Senior Director, Southeast Asia
U.S. Chamber of Commerce

Mr. John Goyer affirmed the US Chamber of Commerce’s support for the TPP as he cited TPP’s substantial benefits to economies and businesses. He expressed optimism that the TPP Conference “The Philippines and the TPP: Opportunities and Challenges” shall mark the start of conversations about the Philippines and its prospects for joining the TPP.

Goyer opened his speech by thanking the TPP Conference’s organizers, sponsors, and partners. He was glad to have a platform to discuss TPP and the Philippines’ readiness to join it and said that he looks forward to continuing the conversations about the topic. He encouraged the use of the “Readiness Assessment Report” distributed at the TPP Conference as a tool for policy makers and stakeholders in studying the pros and cons in relation to the Philippines’ TPP participation.

“TPP is a top priority for the US Chamber,” Goyer said. Outside the United States, markets represent 80% of the world’s purchasing power, 92% of economic growth, and 95% of consumers.

Goyer briefly discussed TPP benefits. He cited data from Peterson Institute which show income gains from TPP could reach half a trillion US Dollars (US\$0.5 trillion). According to him, TPP, beyond tariff reduction, offers a lot of options to address barriers in trade and investment. It will, among others, provide legal protection to investors, facilitate trade, promote e-commerce, and protect intellectual property.

c. Overview of TPP and Introduction to the TRADE Project

DR. CIELITO F. HABITO

Chief of Party, USAID-TRADE Project

Professor of Economics, Ateneo De Manila University

Dr. Cielito F. Habito, citing related data and studies, said the Philippines stands to benefit from joining the TPP. He provided an overview of the TPP Agreement and emphasized the huge opportunity that it offers the Philippines in terms of deepening trade and investment relationships with some of the world’s largest economies. He also talked about the TPP members and their existing FTA agreements; TPP’s key features and chapters; TPP’s benefits to member countries; and the opportunities that await the Philippines should it become part of the trade deal.

TRADE aims to help improve the Philippines’ standing in the global economy through higher levels of trade and foreign direct investment. Habito described TRADE’s four components, namely: (1) Trade and Investment Policy, (2) Trade Facilitation, (3) Competition Policy, and (4) Public Outreach and Advocacy.

TPP is described as a “high standard, ambitious, comprehensive, and balanced” agreement. Composed of 30 chapters, it covers various areas of concerns. The TPP Agreement was signed on February 4, 2016.

Participated in by 12 member economies, the TPP boasts of a combined population of 800 million, US\$28 trillion worth of GDP, and US\$9 trillion in merchandise trade. The TPP parties are already part of existing bilateral and multilateral Free Trade Agreements (FTAs), including the ASEAN FTA, ASEAN-Australia-New Zealand FTA, ASEAN-Japan FTA, P-4 (composed of the first 4 TPP members Brunei, Singapore, Chile, and New Zealand), and North America FTA (NAFTA).

TPP Key Features

Habito explained TPP’s key features, as follows:

1. Promotes comprehensive market access;
2. Fosters cross border value chains, thus further promoting trade of intermediate goods;
3. Addresses new trade challenges such as digital economy;
4. Advances inclusive trade to allow more SMEs to participate and to bridge wider disparities and gaps among member economies.

TPP and the Philippines

TPP CHAPTERS

1. Initial Provisions and General Chapters
 2. Nat’l Treatment & Market Access
 3. Rules of Origin
 4. Textiles & Apparel
 5. Customs Adm & Trade Facilitation
 6. Trade Remedies
 7. SPS Measures
 8. Technical Barriers to Trade
 9. Investment
 10. Cross-Border Trade in Services
 11. Financial Services
 12. Temporary Entry of Business Persons
 13. Telecommunications
 14. Electronic Commerce
 15. Government Procurement
 16. Competition Policy
 17. State-Owned Enterprises (SOEs)
 18. Intellectual Property
 19. Labour
 20. Environment
 21. Cooperating & Capacity Building
 22. Competition & Business Facilitation
 23. Development
 24. Small- & Medium-Sized Enterprises
 25. Regulatory Coherence
 26. Transparency & Anti-Corruption
 27. Administrative & Institutional Provisions
 28. Dispute Settlement
 29. Exceptions
 30. Final Provisions
- Plus Schedules and Annexes

The Philippines has existing FTAs with seven TPP parties, namely Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Viet Nam. However it has no existing FTAs with five TPP parties, most of which are large economies – Canada, Chile, Mexico, Peru, and the United States of America.

Habito sees great scope for increasing investment relations with the 12 TPP parties. He noted that while 50% of the Philippines' exports go to TPP member economies, only less than a quarter of its FDIs come from these economies. Of the 12 TPP parties, only the United States has significantly been pouring in FDIs (18.94% of total PH FDIs) to the Philippines.

Potential Gains from the TPP

Habito shared that a study done by Dr. Clarete in 2014 shows Philippines' participation in the TPP will lead to a 42% increase in exports and will increase GDP by up to 59%. Dr. Cororaton also released a study showing that TPP membership will increase the Philippines' exports by US\$3 billion by 2024. Non-membership, on the other hand, will divert substantial trade from the Philippines to TPP parties and will adversely impact textile and wearing apparels, petroleum, construction, and services.

d. Session 1: Rules of Origin

MR. FRANCIS S. DE LEON

International Trade Consultant and Lecturer

Mr. Francis S. De Leon presented the outcome of a gap analysis comparing Philippines' current ROO and certification regime vis-à-vis that of the TPP. His findings reveal that the Philippines' ROO structure has some similarities with the ROO provisions under the TPP Agreement. Gaps were noted however in the areas of origin determination and origin procedures particularly on Certification Origin (CO) issuance, threshold for waiver of CO, record keeping, and refund procedures.

De Leon stressed the importance of Rules of Origin (ROOs) in trading under FTAs since it determines which goods are considered 'originating' and qualified for preferential tariff. To illustrate how ROO works, De Leon presented several cases of trading goods and explained the three major conditions that goods must satisfy in order to qualify for FTA tariff rates. The criteria are as follows:

1. Origin criteria – What is the origin of the goods at the time of exportation?
2. Consignment criteria – Are the goods able to maintain the acquired origin status during its transportation?
3. Origin certification procedures criteria – Are the goods able to comply with the procedures for the verification of the declared origin of goods?

De Leon presented the important features of ROO under enforced Philippine FTAs and compared these with the features of ROO under TPP as shown in the following table.

Table 1. ROO Regimes under Philippine FTAs and TPP Agreement

ROO Criteria	Philippine FTAs	TPP Agreement
ORIGIN CRITERIA Regional Value Content	Residual origin rule of RVC 40% or Change of Tariff Heading (CTH)	<ul style="list-style-type: none"> • No residual origin rule • All PSR origin criteria structure
	RVC calculation based on: <ul style="list-style-type: none"> • build-up • build-down 	RVC calculation based on <ul style="list-style-type: none"> • build-up (VOM based) • build-down • net cost • focused value methods
		Higher RVC thresholds (30% to 55%)
Product Specific Rules	Adoption of Product Specific Rules that allow the application of alternative substantial transformation rules for most tariff lines	Adoption of Product Specific Rules that allow the application of substantial transformation rules for most tariff lines
	Chemical reaction rule for HS Chapters 28, 29, and 31	9 types of specific process rules (as applied) as alternative rules for chemical products of HS Chapters 27 to 38
	3 alternative origin rules for textiles and apparel, allowing importation of non-originating materials	Yarn forward rule for textiles and apparel products of natural fibers or man-made filaments, except for

ROO Criteria	Philippine FTAs	TPP Agreement
		textiles and apparel products from silk and vegetable fibers
		No assembly operations for footwear
	RVC 40% only rule for CBU and parts	RVC rule (net cost method) only for most CBU and its parts
Substantial Transformation	Bilateral, diagonal and partial accumulation scheme	Bilateral, diagonal, full accumulation
	De minimis rule based on value, weight or volume	De minimis rule for most tariff lines based on value
	Non-qualifying operations	No list of non-qualifying operations
CONSIGNMENT CRITERIA	Direct consignment	Direct consignment
ORIGIN PROCEDURES	Government or chamber of commerce issued Certificate of Origin (CO)	Private sector issued origin certifications (importer or exporter or manufacturer)
Certificate of Origin (CO)	Back-to-Back CO/ Movement Certificate	
Verification of Origin	Retroactive and on-sight verification visits	Retroactive and on-sight verification visits
	Bond posting for questionable shipments	Bond posting for questionable shipments
Waiver of CO	USD 200 maximum value for waiver of CO presentation	USD 1,000 maximum shipment value for waiver of CO presentation
Record Keeping	2 or 3 years record keeping requirements	5 years record keeping requirements
Refunds and Claims Post importation	No refund provisions for preference claims made after importations	Refund provisions for preference claims made after importations

Gaps between Philippine FTA experience and that of the ROO structure under TPP were highlighted. The table below summarizes De Leon's gap analysis.

Table 2. Summary of Gap Analysis: PH-FTAs ROO vis-à-vis TPP ROO

ROO Criteria	Similarities between PH FTAs and TPP Agreement	Gaps/ Differences between PH FTAs and TPP Agreement
ORIGIN CRITERIA	Implementation of the following: <ul style="list-style-type: none"> Origin status of goods that are considered preference conferring RVC calculation in relation to build-up and build-down methods Bilateral/diagonal accumulation arrangements De minimis rule based on value Substantial transformation rules relating to CTC, RVC and specific process rule (SP) Transit and transshipment 	Philippines has no experience in determining origin status of goods through: <ul style="list-style-type: none"> RVC formula adopted in the TPP: <ul style="list-style-type: none"> Build up method (VOM-based) Net cost method Focused value method Product specific rules relating to chemical reaction, distillation, direct blending, diluent, purification, mixing and blending, change in particle size, standards materials, isomer separation Full accumulation scheme

ROO Criteria	Similarities between PH FTAs and TPP Agreement	Gaps/ Differences between PH FTAs and TPP Agreement
	PSR structure and outcome on: <ul style="list-style-type: none"> • Unprocessed Agricultural Products • Processed Agricultural Products • Cement Products • Chemical Products • Plastic Products • Processed Agricultural Products • Leather and Wood Products • Textiles and Apparel Products • Footwear, Gaiters • Iron and Steel • Nuclear Reactor, Boilers, Machineries • Motorcycles (including mopeds) 	
ORIGIN PROCEDURES	Implementation of origin certification procedures on retroactive and onsite verification visits	Philippines and TPP have divergent principles and arrangements on: <ul style="list-style-type: none"> • Issuance of the certification of origin (government vs. trader issued) • Threshold for the waiver of the issuance of a certification of origin (USD 200 vs. USD 1,000) • Maximum period of keeping records of goods that made claims for tariff preference (3 years vs. 5 years) • Provision for refund after importation of originating goods (no provision vs. mandatory provision)

Recommendations:

De Leon recommended the following in order to bridge the gaps between the ROO Structure of enforced Philippine FTAs and the TPP ROO Chapter:

1. DTI to convene inter-agency technical working group to review and establish uniform understanding of the legal, technical, and procedural requirements set under TPP-ROO.
2. Conduct series of industry-specific consultations to discuss TPP ROO requirements and secure feedback.
3. Gather necessary information required for ROO Profiling of TPP-traded products.
4. Conduct actual product origin test and evaluation to assess the Philippines' offensive and defensive interest in relation to TPP's origin criteria.

5. Determine required local regulations to enable the Philippines to implement origin procedures as mandated by TPP.
6. Ensure readiness of the Bureau of Customs and other relevant agencies to effectively assess origin and consignment compliance of imported goods under TPP Agreement.
7. Conduct parallel evaluation and assessment of:
 - a. Requirement for Philippines to adopt self-certification scheme
 - b. Readiness of Bureau of Customs to:
 - i. Take on possible surge in verification requests from TPP parties
 - ii. Implement post-importation/exportation audits and controls
 - c. Technical capacity of Bureau of Customs
 - d. Availability of local testing centers and laboratories to validate preference claims based on specific manufacturing process (i.e., applicable to among others chemical products)

SESSION 1. OPEN FORUM

Moderator: Mr. John Peterson

Acting Manager Director, FedEx Express Indonesia, Philippines, and Brunei District

Mr. John Peterson shared his own point of view on the roles of ROO in moving goods across border. He stressed the importance of obtaining the right paperwork for any trader and said that a key step in easing trade is facilitating processes involved in obtaining required export/import documents. The TPP Agreement, Peterson said, offers three ROO-related provisions that would significantly help ease trade:

1. Self-certification procedure versus current Philippine FTA procedures that require CO to be issued by Philippine authority
2. Permission for importer/exporter to correct discrepancies; Customs cannot reject CO because of typo errors
3. Goods that are worth US\$1,000 and below need not secure CO compared to current Philippine FTA rules that waive CO requirement only for goods worth US\$200 and below

Questions from the Audience

1. ***The ROO structure is very complicated and technical. Would it help if we just trade through World Trade Organization (WTO) where all countries share the same rules?***

Mr. John Forbes

Senior Advisor, The Arangkada Philippines

De Leon explained that trading under WTO provides for tariffs that are usually higher than the preferential tariff rate under FTAs. As such, as long as the Most Favored Nation (MFN) or WTO tariff rates are higher than those given under the FTA, traders will still prefer to export/import under the free trade agreement. If the MFN rate however is lower than FTA tariff rates, as in the case of ASEAN-India Free Trade Agreement (AIFTA), traders could export/import through MFN and need not go through ROO procedures.

He said ROO mechanisms are important in FTAs because they determine if the goods to be traded qualify for FTA's preferential tariff rate. ROO under WTO, on the other hand, is used for application of trade remedies and not for determining applicable tariff rate.

2. What are the biggest trade challenges that the Philippines must consider when it accedes to the TPP? What should be done to overcome those challenges?

*Mr. Mathew de Wit
Deputy Head of Mission, New Zealand Embassy*

De Leon said that the Philippines has faced greater challenges and hurdles in relation to ROO under its earlier FTAs. Fortunately for the Philippines, TPP has more flexible terms and equitable rules. It also provides for transition period that will give TPP parties time to comply with the TPP's ROO provisions. He cited the case of Viet Nam which was given 10 years to shift from government-issued Certificate of Origin (CO) to trader-issued CO.

He said that the Philippines is undergoing self-certification procedures per the ASEAN Trade in Goods Agreement (ATIGA), a process that helps facilitate trade since this allows traders to self-certify the originating status of their goods.

De Leon opined that the biggest challenge for the Philippines in relation to aligning itself with TPP ROO provisions is enabling the private sector to understand the ROO rules and procedures in order for it to be able to self-certify and not rely on government-issued Certificates of Origin.

e. Session 2: Approaches to Scheduling Trade in Services Commitments

MS. GLENDA T. REYES

Former Component Lead on Trade and Investment Policy
USAID-TRADE Project

Ms. Glenda T. Reyes presented the pros and cons of two options in scheduling trade in services commitments – the Positive List approach and the Negative List (NL) approach. The TPP uses the NL approach which is not new to the Philippines. This approach, Reyes said, is adopted by the Philippines in the ASEAN Comprehensive Investment Agreement and its own Foreign Investment Negative List. She recommended the development of a compendium of measures affecting trade in services to help equip the Philippines when it negotiates for its TPP participation.

Reyes started her presentation by discussing the general structure of FTAs, which usually covers three key segments: (1) Principles; (2) Obligations/Disciplines agreed upon by the parties, and (3) Schedule of Commitments which is usually attached as Annex.

She emphasized the importance of Schedules in any FTA since these identify the sectors to which the obligations apply or the sectors exempted from it. The Schedules reflect the level of transparency and depth of commitments that FTA Parties are determined to offer. Compared to Schedules for Trade in Goods which show tariff rates over a period of time, Schedules in Trade in Services show regulatory regimes.

The Schedules in FTAs could be prepared using any of the three approaches: (1) Positive List, (2) Negative List, and (3) Hybrid Approach. The Positive List approach is used in the General Agreement on Trade in Services (GATS) while the Negative List approach is used in the TPP Agreement. In her presentation, Reyes compared the pros and cons in using either the Positive or the Negative List approach. The table below summarizes Reyes' explanations.

Table 3. Comparison of Positive and Negative List Approaches

	Positive List	Negative List
Description	<p>Lists sectors and subsectors to be scheduled and covered by the commitments made by the parties.</p> <p>Includes horizontal commitments which list restrictions that affect all sectors.</p>	<p>A list of non-conforming measures with respect to the following core obligations/disciplines:</p> <ul style="list-style-type: none"> • Most favored nation • National treatment • Performance requirements • Senior management and board of directors • Local presence <p>Sectors not in the list are considered free of restrictions.</p>

	Positive List	Negative List
Remarks	ASEAN adopted this approach in ASEAN Framework Agreement on Services (AFAS). To date, ASEAN has released the 9 th AFAS Package/ Schedule of Commitments.	Pioneered in NAFTA. An agreement among like-minded parties which have set higher level of ambitions.
Pros	<ol style="list-style-type: none"> 1. Philippines is familiar with the positive list approach. 2. Allows flexibility to gradually open up sector at the speed government is comfortable with. 3. Practical for government since it may be difficult to commit to or liberalize a sector with limited information. 4. Allows government to proceed with caution in allowing foreign entrants especially in under-developed services activities. 5. Gives the government “policy space”. 	<ol style="list-style-type: none"> 1. “Ratchet mechanism” which means that after the agreement’s entry into force, there is no need to renegotiate to extend future openness and liberalization to all partners. 2. Brings out more comprehensive coverage. 3. Conducive to facilitating business operations and trade. 4. Simple and transparent: <ol style="list-style-type: none"> a. Core disciplines/ obligations are applied across the board b. All very sensitive sectors that government wishes to exempt could be placed in Annex II (Future Measures).

	Positive List	Negative List
Cons	<ol style="list-style-type: none"> 1. Not suited for regional or bilateral agreements among like-minded parties who aim for more ambitious agreements. 2. Not helpful to businessmen as it doesn't provide the full picture of commitments. The government only selects which sectors to include in the Schedule. 3. No provisions for updating. Updates can be done only once a new round of (re)-negotiations is concluded. 4. Provides very partial list of schedules. 5. Not accompanied by strong disciplines – as such very little liberalization takes place. 	<ol style="list-style-type: none"> 1. Requires full liberalization. 2. Will interfere with the government's right to regulate. 3. Automatically extends the disciplines/obligations to "new services". 4. Prone to government missing out key measures in the schedule. 5. NL requires more resources from the government at the time of negotiation. <p>Reyes said that the arguments above are mostly unfounded and incorrect, explaining the following:</p> <ol style="list-style-type: none"> 1. NL doesn't require full liberalization since restrictions can be provided in the Schedules/Annex. 2. It doesn't interfere with the government's right to regulate as this right is fundamental in any FTA. 3. "New services" are not automatically covered by the obligations since government can exclude these services under Annex II (Future Measures). 4. Government would not miss out any key measure in the NL if it has made adequate preparations. 5. It is not accurate to say that NL approach would require more resources. Negotiating services whether under Positive List or Negative List require careful preparation and adequate resources and knowledge.

Conclusion and Recommendations

Reyes explained that the Positive List approach is not new to the Philippines since this has been used in several FTAs to which the Philippines is party: GATS, ASEAN and ASEAN Plus FTAs, and Philippine Bilateral FTA with Japan. The Negative List approach is also not an alien concept to the Philippines. It is used in the ASEAN Comprehensive Investment Agreement (ACIA), to which the Philippines is a party, and the country's own Foreign Investment Negative List as provided for in the Foreign Investment Act.

Reyes recommended the development of a compendium of measures affecting trade in services which could serve as key reference in reviewing relevant regulations and a guide for the government during trade negotiations.

SESSION 2. OPEN FORUM

Moderator: Ruy Moreno, Vice Chairman, Center for Global Best Practices and Director for Operations, Private Sector, National Competitiveness Council

Mr. Ruy Moreno, reacting on the use of Negative List, commented that Japan has used and included in its own NL a good phraseology – “Japan deserves the right to insert things that it may have forgotten at the time of the negotiation.” This provision gave Japan more policy space.

Moreno also shared his opinions on what must be considered by the Philippines as it plans to participate in TPP and other FTAs. He recommended the following:

1. Consider the alignment of national commitments vis-à-vis local government laws and regulations.
2. Partner with private sector to improve knowledge and expertise on industries that the NEDA, National Competitiveness Council, and Arangkada think should be prioritized.
3. Assess the following when negotiating trade agreements:
 - a. Constitutional provisions versus commitments
 - b. Possible impact of agreements on poverty
 - c. Human resources and institutional capacity
4. Conduct outreach communications
5. Develop relevant databases

He called on stakeholders to look at the case of Viet Nam in assessing the full effects of TPP participation or non-participation. Moreno believes that TPP, if effectively negotiated and well implemented, could trigger increased investments and competition that will redound to better products and services for the consumers and the public.

Questions from the Audience

1. ***Some members of the House of Representatives were commenting on the possibility of amending economic provisions of the constitution. Given the upcoming elections, would there be a possibility at this stage to discuss this aspect and the TPP?***

*Atty. Dulce Punzalan
Private Sector Representative, COP 21 Paris Conference
Member Climate Reality Leadership Core*

Moreno answered that TPP discussions would certainly continue at the business community. He opined though that discussions at the political and legislative level would likely be deferred until June 2016 given politicians' focus on the elections and campaign period.

Reyes added that whether or not the Philippines is considering participation in the TPP, it is time for the Philippines to assess and consider the regulatory reforms that it needs as a country. The Philippines has the time to implement needed reforms given the expected duration of TPP ratification process and negotiation for Philippine inclusion in the said Agreement.

2. Foreign equity restrictions impact, among others, private aircraft ownership and the energy sector. Does the government have a compendium of measures affecting trade in services? Is there a list? If none, what's the best way to develop such list?

*Mr. John Forbes
Senior Adviser, Arangkada Philippines Project*

Reyes clarified that since she is not from the government, she cannot categorically say whether there is such list or not. She however mentioned two possible references:

- Foreign Investment Negative List which is issued every two years by NEDA. Such list however is focused only on foreign ownership restrictions.
- Philippine Japan Economic Partnership Agreement (PJEPA) which has a comprehensive sectoral coverage, showing Philippine commitments based on regulatory practice.

She mentioned ASEAN's efforts to launch the ASEAN Trade Repository which contains all information and measures pertinent to trade in goods. Reyes said it is high time for ASEAN to also develop such a repository on trade in services.

Moreno said that the National Competitiveness Council has a project that involves a review of all laws and executive measures with an end goal of repealing those that may already be outdated or irrelevant. He said that the Philippines may wish to learn from the guillotine approach that was applied by Viet Nam when it reviewed regulations that affect the country's global trade and investment.

f. Session 3: Investment Protection and Investor-State Dispute Settlements

ATTY. MANUEL A.J. TEEHANKEE

International Counsel and Professor of International Law, Ateneo Law School
Executive Director, Center for the Rule of Law

Atty. Manuel A.J. Teehankee presented the possible applications of the provisions of the TPP with regard to Investor-State Dispute Settlements (ISDS). He said that the Philippines is TPP-ready in terms of its compliance with and experience on the TPP ISDS obligations. He called for a full review of the country’s foreign investment negative list and stressed the need to identify which sectors should be prioritized and opened. He recommended an assessment of the country’s investment-related policies, adding that reforms must be investor-friendly, pro-Philippines, and pro-development.

Teehankee explained that ISDS provisions on FTAs traditionally seek to promote FDIs into a host country and assure investors of full protection of their investments under international law. This provision further assures investors that they do not have to resort to local judicial fora to remedy investment disputes.

He outlined the key mandates under the TPP Chapter on Investments, as follows:

1. National treatment
2. Most-favored nation
3. Minimum standard of treatment
4. Minimum standard of treatment under armed conflict or civil strife
5. Expropriation and compensation
6. Free flow of financial transfer
7. Prohibition against performance requirements
8. Senior management and board of director’s nationality

Teehankee assessed the readiness of the Philippines to join the TPP vis-à-vis the TPP ISDS Obligations. He gave examples of the Philippines’ experiences on ISDS.

Table 4. TPP ISDS Obligations vis-à-vis Philippines Policies and Experience

	TPP Agreement Provisions	Philippine Policies and Experience
Investor state arbitration	Provides for institution-based investor state arbitration; Investors provide advance treaty consent.	Compliant with this mandate based on Philippines’ bilateral investment treaties and ASEAN Comprehensive Investment Agreement (ACIA). Philippine experiences include cases filed by Fraport AG, Baggerwerken DEZNV, and SGS of Switzerland.

	TPP Agreement Provisions	Philippine Policies and Experience
Labor standards	<p>Has “non-derogation” clause mandating compliance with ILO/ Labor Standards, thus refuting claims that TPP only favor investors.</p> <p>Example: Egyptian Government raised its minimum wage. Investor whose financial projections were affected by such move could sue for money damages (contractual controversy) but the government’s right to adjust its minimum wage will not be questioned.</p>	<p>Case involving Maynilad and Manila Water which are claiming money damages for government’s revised calculations on their tax deductions because their projected cash flow has been affected.</p>
Environment	<p>TPP is not anti-environment and provides that nothing in the TPP limits the government’s right to regulate measures that would protect the environment.</p> <p>Example: Canada promotes investments in mining but a certain mining firm was denied its license midway due to host community’s concerns. Government’s right to enforce regulations to protect the environment was recognized but the investor sued for money damages for the resources and time it has already put in the business.</p>	<p>No current case but potential case may be filed by mining investors against government because of its flip-flopping policies on mining.</p>
Negative list	<p>TPP spirit is not to discriminate against any foreign investor, although, on an exceptional basis, parties may make some restrictions/reservations under its negative list.</p>	<p>Philippines has non-conforming measures. Constitution mandates 40% maximum foreign ownership on exploitation of natural resources and in public utilities.</p> <ul style="list-style-type: none"> Philippines has EO 184 (2015) – Philippine Investment Negative List <p>There is also preference for Filipino labor, domestic materials, and locally produced goods.</p>
90-Day express decision clause	<p>In cases where there is legal debate on the inclusions of certain sector/s in the Annex/ Schedule, investor or respondent may ask the TPP Commission to interpret it. The Commission should decide in 90 days, otherwise the tribunal shall decide on the issue.</p>	<p>Nothing mentioned</p>
Senior management and board nationality	<p>Nationality is not a requirement to be part of the senior management or board of directors.</p> <p>Majority of the board may be required to be residents, but not necessarily citizens or nationals of the host country.</p>	<p>Compliant with this TPP mandate.</p> <p>Sec. 23 of Philippine Corporation Code provides that majority of the board must be residents of the Philippines.</p>

Conclusion and Recommendations

Teehankee stressed the need for the government and stakeholders to take TPP seriously and to treat the TPP readiness assessment period as an opportunity to push needed reforms. He recommended the following:

1. Review the current Foreign Investment Negative List
2. Review Philippine investment-related policies
3. Decide which sectors should be prioritized and opened to more FDIs
4. Increase participation of private sector in pushing for reforms

Specific to foreign equity ownership issues, Teehankee suggested that the government remove constitutional handcuffs by amending the Constitution and leaving particular economic or foreign equity policies to Congress and NEDA.

SESSION 3. OPEN FORUM

Moderator: Atty. Perry Pe

President, Management Association of the Philippines

Questions from the Audience

1. ***The Philippines expresses its desire to join the TPP. However, it is under a situation where it's faced with constitutional restrictions, negative investment list, and current regulatory mindset where any violations of 60-40 rule will be sanctioned. Are we ready to join the TPP?***

Atty. Perry Pe
Moderator

Teehankee said that the Philippines is ready to join the TPP particularly in relation to TPP's ISDS provisions. He emphasized though that beyond having ISDS experiences, the Philippines, should it decide to be part of the TPP, must be transparent to investors and provide clear signals as to which sectors are open and which ones are protected. He recommended a thorough review of which sectors will be prioritized and opened, and discouraged taking the easy option of just using the current Philippine Foreign Investment Negative List as Annex to the TPP.

2. ***While most Philippine industries may be ready to join the TPP, the agriculture sector and Filipino farmers are not ready. The Philippines is an agricultural country with small players in rural areas. We need to protect agriculture and educate rural people.***

Mr. Vic Mercado
National Federation of Hog Farmers

Reacting to Mr. Mercado's call to protect the agriculture sector, Mr. Ruy Moreno, one of the Conference participants, remarked that the Philippines has had a protectionist mindset in the past 60 years but seems to have never grown up. He said that the Philippines should look at the case of Viet Nam, which despite being an agricultural country has joined the TPP. He suggested a careful study of the Philippines' options in the TPP. "We cannot just take the position 'we must protect'. We should be open about it," he said.

Mercado agreed with Moreno but expressed concern that the Philippines' politicians are not sincere in helping small people like the farmers. He is not confident that, with the current government, Filipinos would be able compete or be at par with Viet Nam.

Presenter's Response: Teehankee encouraged discussions within and among sectors. According to him, conversations are signals that there is a commitment to strengthen industries. The Philippines, he said, could prepare sectors that it wishes to open up in the future by putting in more resources for its development before it is liberalized.

- 3. In his presentation, Atty. Teehankee mentioned four points that pertain to labor, environment, governance, and rights. He also talked about possible investments in renewable energy instead of non-RE energy i.e., coal. How do we achieve transition to environment-friendly and economically viable businesses without compromising the civil, political, social, and cultural rights of those who will be affected by the transition?***

Atty. Dulce Punzalan

Member of Philippine Chamber of Commerce and Industry (PCCI), Management Association of the Philippines (MAP), Women's Business Council of the Philippines (WomenBiz), and Philippine Marketing Association (PMA)

Teehankee emphasized the importance of clarity of government's position and directions in any trade agreements. To affectively transition to RE and encourage FDIs on it, government must give a clear signal to investors that RE is a priority and resources are allocated for the sector. For example, the government must develop energy/power infrastructure to ensure connectivity to the grid. In parallel, to protect its rights, the government could also reserve certain level of requirements on its NL pertaining to transfer of technology and local knowledge build-up.

Teehankee said that FTAs and legal cases could act as initiators of reforms. Some countries sign FTAs despite difficult benchmarks as these drive them to push needed reforms.

g. Session 4: Competition Policy and Telecommunications

ATTY. KRISTAL T. UY and MS. ISABELA G. VILLAMIL
 Technical Assistants for Philippine Competition Law
 USAID-TRADE Project Component 3

Atty. Kristal T. Uy presented the key provisions under the TPP Chapter on Competition and Telecommunications and assessed the Philippines' compliance with these provisions based on current laws and regulations. She concluded that the TPP provisions on competition are aligned with existing Philippine Competition Act but cited a number of gaps between the TPP telecommunications obligations vis-à-vis the current Philippine regulatory environment and experience.

Competition Section

Uy presented the specific topics or provisions covered under TPP's Chapter on Competition. These include the following:

1. Adoption of national competition laws
2. Having a national competition authority
3. Publication of rules for administrative hearings for violations
4. Protection of the rights of the accused
5. Private rights of action
6. Cooperation
7. Consumer protection

Uy discussed the existing Philippine regulations and laws, including the newly-enacted Philippine Competition Act, in relation to the competition provisions of the TPP Agreement.

Teehankee assessed the readiness of the Philippines to join the TPP vis-à-vis the TPP ISDS Obligations. He gave examples of the Philippines' experiences on ISDS.

Table 5. TPP Obligations on Competition vis-à-vis Philippines Policies

	TPP Agreement Provisions	Philippine Policies
Competition laws	Provides for adoption of national competition laws that prohibit anti-competitive business conduct to promote economic efficiency and consumer welfare	Compliant with this provision based on the following: <ul style="list-style-type: none"> • Constitutional provision prohibiting or regulating monopolies • Revised Penal Code • Civil Code • RA 10667, Philippine Competition Act
National competition authority	Mandates having a national competition authority to enforce competition laws/ policies	Compliant with this provision. RA 10667 mandated the creation of the Philippine Competition Commission and provided it broad powers to enforce law.

	TPP Agreement Provisions	Philippine Policies
Administrative hearings for violations	A TPP Party must have and must publish rules for administrative hearings for violations, including introduction of evidence	Compliant with this provision. <ul style="list-style-type: none"> • Rules will be provided in the PCA-IRR • Criminal actions - outlined in the Revised Criminal Procedures • Civil actions – outlined under the Rules on Civil Procedures.
Protection of rights of the accused	Due process must be accorded to the accused	Compliant with this provision. <ul style="list-style-type: none"> • Provision to be added in the PCA-IRR • Philippine constitution guarantees due process • Quasi-judicial agencies' comply with due process requirements.
Private right of action	Provides the right of a person to seek redress from a court or other independent tribunal for injury to that person's business or property, which is caused by a violation of competition laws.	Compliant with this provision per RA 10667 or Philippine Competition Act.
Cooperation	Mandates cooperation of TPP countries in their enforcement of competition laws, mutual assistance, notification, consultation and exchange of information.	Compliant with this provision as per policy on Cross-Border Exchange of Information.
Consumer protection	There should be consumer protection laws or other laws or regulations that prescribe fraudulent and deceptive commercial activities.	Compliant with this provision per Consumer Protection Act of the Philippines.

Uy concluded the presentation on Competition saying that the Philippines is fully compliant with the TPP provisions in relation to competition and that there exists no gaps between Philippine regulations vis-à-vis those required under the TPP Agreement.

Telecommunications Section

Uy's second part of the presentation focused on the TPP Chapter on telecommunications which features the following five (5) key topics.

1. Access and use of public telecommunications services
2. Obligations of suppliers of public telecoms
3. Additional obligations of major suppliers of public telecoms
4. Independent regulatory authority
5. Allocation of scarce resources and universal service obligation

Similar to her presentation on competition, Uy discussed the provisions of TPP with regard telecommunications and compared it with the current telecommunications measures/ policies of the Philippines.

Table 6. TPP Obligations on Telecommunications vis-à-vis Philippine Policies

	TPP Agreement Provisions	Philippine Policies
Access and use of public telco services	<p>TPP requires the following:</p> <ul style="list-style-type: none"> • Enterprises should have access to and use of public telecommunications services at reasonable and non-discriminatory terms and conditions • Enterprises may use public telecommunications services for movement of information • No condition is imposed on access to and use of public telecommunication networks and services, other than to safeguard the public service responsibilities of suppliers 	<p>Compliant based on:</p> <ul style="list-style-type: none"> • RA 7925 (NTC shall establish rates and tariffs at reasonable prices) • Commonwealth Act (unlawful for public utilities to withhold or refuse service) • RA 10667, Philippine Competition Act
Obligations of suppliers	<p>Mandates suppliers to provide Interconnection and Number Portability.</p> <p><u>Interconnection</u> Refers to linking with other telco suppliers to allow its users to communicate with users of another supplier.</p>	<ul style="list-style-type: none"> • NTC MC No. 14-7-2000 provides interconnection guidelines aligned with TPP but the reasonableness of charges are undisclosed in the Philippines. • NTC MC No. 10-7-2007 mandates the development of reference access offers (template developed) but no telco company has ever submitted these offers to NTC for approval (telco said terms and conditions in contracts are confidential) • Telecoms industry is subject to at least 60% Filipino ownership rule.
	<p><u>Number Portability</u> With this, end-users are able to retain their telephone numbers when switching from one network to another within same category</p>	<p>Philippines has no number portability as this is said to be costly to implement.</p>
Additional obligations of major suppliers	<p>Major suppliers are those with dominant positions in the market or their control over key facilities.</p> <p><u>Equal Treatment</u> Major suppliers are obligated to provide equal treatment to other PTEs.</p>	<ul style="list-style-type: none"> • NTC obligates major providers to accord equal treatment with respect to interconnection. • RA 7926 provides that access charges should be based on equity and reciprocity but public cannot validate if these obligations are complied with.
	<p><u>Resale</u> Major suppliers are obligated to resale to another party at reasonable rates.</p>	<p>NTC does not regulate this. Leaves it to contracting parties.</p>

	TPP Agreement Provisions	Philippine Policies
	<u>Unbundling of Network Elements</u> Regulatory body must be able to access network elements on unbundled basis. Why? Unbundling allows new players to use existing infrastructure built by incumbent players.	No regulation. NTC's implementation of unbundling not enforced.
	<u>Leased Circuit Services</u> Major suppliers are obligated to provide other PTEs leased circuit services on reasonable rates and terms.	NTC requires PTEs to offer leased line services to VAS at the same quality it offers to the public but negotiation is left by NTC to contracting parties.
	<u>Co-location</u> PTEs will provide space for those inter-connecting with its facility.	NTC has regulations on this but access to certain elements (poles, ducts, submarine, etc.) is not regulated.
	<u>International Mobile Roaming</u> TPP countries are obligated to cooperate to promote international mobile roaming services.	No regulation.
	<u>Competitive Safeguards</u> Prevents suppliers from anti-competitive practices.	Compliant per the Philippine Competition Act.
Independent regulatory authority / Licensing and enforcement	Requires TPP members to have an independent telecoms regulatory body and transparency in rules/ guidelines.	Compliant. NTC has powers as mandated by: <ul style="list-style-type: none"> • RA 7925 • NTC Rules of Practice and Procedure • Commonwealth Act 146 (provides fine imposable by NTC for violators)
Allocation and use of scarce resources and universal service obligation	Requires TPP members to administer procedures for allocation and use of scarce telecommunication resources (spectrum assignment)	Not compliant. NTC currently applies first come first serve rules.
	Requires transparency in universal service obligation	Compliant per RA 7925

Uy concluded the segment on Telecommunications citing key findings on the gap assessment between the TPP provisions on Telecommunications and the current Philippine policies. According to her, there is a need for the Philippines to:

- Amend RA 7925 (Public Telecommunications Policy Act) particularly with respect to provisions on interconnection, unbundling, cross subsidization, number portability, and NTC powers.
- Need to implement provisions in relation to unbundling and number portability.
- Be transparent in relation to interconnection and spectrum assignment.
- Address biggest impediment to TPP telecommunications compliance which is the constitutional restriction on foreign ownership in public utilities.

SESSION 4. OPEN FORUM

Moderator: Atty. Raphael Perpetuo Lotilla

Chairman, Center for the Advancement of Trade Integration and Facilitation and Chairman, Asia Pacific Pathways to Progress Foundation

Reacting on foreign equity ownership as a major impediment to TPP compliance, Atty. Raphael Perpetuo Lotilla suggested two possible remedies that the next administration could take on within the first 2 years:

1. Constitutional Amendment. Amend constitution and state the following: “notwithstanding any provision under the constitution or existing laws, no foreign nationality ownership requirements for any economic activity shall be enforced, unless Congress hereafter provides.” Lotilla said Congress could be authorized to alter or amend any foreign nationality requirements under the Constitution.
2. Legislative Work. He suggested amending the Public Utility Law defining what public utility is. He said laws defining mass media could also be amended, given possible unbundling initiatives.

Questions from the Audience

1. ***Under the TPP, competition law should be applicable to all sectors. In the case of ASEAN, however, competition law contains exemptions. Example, in Thailand, competition law doesn't apply to government controlled-corporations; in Viet Nam, provisions apply to all sectors although power sector is largely under the government's control. Up to what extent can these sectoral approaches on competition provisions be leveled in the TPP? Can we continue with this sectoral approach?***

Atty. Raphael Perpetuo Lotilla
Moderator

Ms. Isabela G. Villamil clarified that the TPP Agreement allows parties to provide exemptions, provided they are transparent as to which sectors are exempted from competition obligations. The Philippines must determine which sectors it is exempting from the competition law.

Uy added that the Philippine Competition Act applies broadly to all entities engaged in commerce and trade. In the formulation of the IRRs, the Philippine Competition Commission needs to work with sectoral champions to identify sector-specific provisions.

2. ***Aside from NTC's authority with regard to regulating telecommunications companies, NTC also has power in terms of issuing permits in relation to importing equipment using radio frequency. As technology develops, there is an increasing importation of equipment that uses Wi-Fi but in parallel, we see bottlenecks on permits processes. Foreign-owned companies are not allowed to directly import equipment-using Wi-Fi. What is the authority or coverage of NTC on this matter?***

Mr. Martin Crisostomo
GE

Lotilla remarked that this is a problematic area because there is no specific law governing that importation could only be done by Filipino nationals or by Filipino companies. He expressed concern that because of the lack of regulations on this, an

administrative government agency can expand its own mandate to cover areas that are not aligned with the law.

Uy remarked that the huge capital investment required in the telecommunications sector is the reason why some groups push for opening up of industries selling wholesale elements (e.g., cable landing station).

- 3. Under the Competition Law, all transactions above P1 Billion will have to go to the Philippine Competition Commission (PCC) for review within 30 days. Wouldn't that be a challenge to our compliance with the TPP? P1 Billion is small. Can this threshold refer to P1 billion per product instead? Hope the IRR can expound on this provision.***

*Atty. Perry Pe
President, Management Association of the Philippines*

Uy believes the P 1 Billion threshold would not necessarily prevent the Philippines from joining the TPP since this threshold applies only for compulsory notification. She said the PCC would likely review the threshold when they issue the IRRs, taking into account Philippine circumstances, including transactions involving mergers and acquisitions. Lotilla added that the Congress set the P1 Billion threshold but the PCC could set it at more realistic levels.

On notification procedures, Villamil said that other countries apply many layers for notification procedures, including first, the size of transaction and then second, the size of the party involved. Efforts are undertaken to identify possible exemptions.

- 4. Capital investment in telecommunications is indeed high primarily because every player has to put up investments for their own key facilities (i.e., cell sites). Aside from the capital expenses, investors also worry about protection money because certain sites are sometimes threatened. The sad fact is, despite these huge investments, telecommunications service remains bad. In Singapore, companies get consolidated and only one puts up the cell sites. Can we follow this model? It not only lessens investment costs but also addresses protection issues. This could entice more players in the industry and eventually result in cheaper service charges.***

*Mr. George Barcelon
Philippine Chamber of Commerce and Industry (PCCI)*

Uy said that NTC agrees to this set-up. In Singapore, the government owns the backbone of the network and thus could sell it to private players at low rates. In the Philippines, however, the network backbone is dominated by a few players which offer not just wholesale services but also retail services. As such, competitors cannot negotiate access charges that will allow them to compete in retail market. Unfortunately, Philippine regulations provide that these access fees should be negotiated between parties and NTC doesn't have jurisdiction to regulate these charges.

In a pending case involving NTC and private players, NTC demanded that telecommunications companies lower their interconnection charges to PhP0.50 cents. The companies however continue to charge PhP1 per text to other networks. NTC asked the companies to refund the difference to consumers but the companies were able to secure a TRO and injunction on this issue.

h. Session 5: Intellectual Property

ATTY. MARIA GLADYS C. VILCHEZ

Partner

Hechanova Bugay Vilchez & Andaya-Racadio Law Offices

Atty. Maria Gladys C. Vilchez presented the Philippine Intellectual Property regime and the reforms that the country has to make to join the TPP. She discussed in detail the TPP obligations on copyright, trademark, patents, and enforcements and how these compare vis-à-vis the Philippines' Intellectual Property Code and other IP laws. She remarked that while IP protection in the Philippines is covered by various IP laws and treaties, the country still needs to amend its existing IP Code to comply with the expanded IP obligations under the TPP Agreement.

To provide a greater understanding on the topic, Vilchez provided a background on the state of Intellectual Property (IP) law regime in the Philippines. IP protection and enforcement is enshrined in the Philippine Constitution and the primary law governing IP is RA 8293 otherwise known as the Intellectual Property Code. Other IP and IP-related laws are:

- RA 9150 – Protection of Layout-Designs (Topographies) of Integrated Circuits
- RA 9168 – Philippine Plant Variety Protection Act
- RA 9502 – Cheaper Medicines Act
- RA 10372 – Amendments on certain provisions of the IP Code
- RA 8792 – Electronic Commerce Act
- RA 9239 – Optical Media Act
- RA 10088 – Anti-Camcording Act
- RA 10515 – Anti-Cable Television and Cable Internet Tapping Act

Vilchez also discussed several IP treaties and conventions where the Philippines is a signatory. The TPP requires that TPP members accede to said treaties and conventions. She proceeded with her presentation and compared TPP IP obligations and the current IP laws and regulations of the Philippines.

The TPP Obligations on IP covers the following key topics: (1) Trademarks; (2) Copyright; (3) Patents, and (4) Enforcement.

Table 7. TPP IP Obligations vis-à-vis Philippines Policies

	TPP Agreement Provisions	Philippine Policies
Trademarks	<u>Registrable Marks</u> Provides that trademarks need not be limited to visual signs but could also apply to sound or scent marks.	Not compliant/Gaps noted. IP Code only applies to registration of visual signs. Need to amend the law to accommodate registration of sound marks and scent marks.
	<u>Well-known Marks</u> Protects well-known marks of dissimilar goods whether these are registered or unregistered.	Not compliant/Gaps noted. IP Code protects well-known marks with regard to similar and dissimilar goods if these are registered in the Philippines.

	TPP Agreement Provisions	Philippine Policies
	<u>Domain Names and Cyber Squatting</u> TPP Members should have non-judicial procedures for the resolution of domain name disputes.	Not compliant/Gaps noted. Philippines does not have its own dispute resolution mechanisms involving domain names and cyber-squatting.
	<u>Geographic Indications</u> (symbols or signs of a country, ex. Cebu mangoes or Mexican tequila) Geographic indications (GI) should be protected as a trademark.	Not compliant/Gaps noted. IP Code Sec. 4 has no specific provisions for geographic indications (GI) protection. This needs to be amended
Copyright	<u>Term of Protection</u> Longer copyright term as follows: <ul style="list-style-type: none"> • Life of author plus 70 years after author’s death; or • Life of author plus 70 years after publication of the work. 	Not compliant/Gaps noted. Copyright of work is during life of author plus 50 years after his death (less than +70 years provisions in TPP) The Philippines is more of an exporter of copyright so an extension of copyright term might be good for the country in the long term.
	<u>Technological Protection Measures (TPM)</u> Imposes civil and criminal sanctions for violation of effective TPM even without copyright infringement. TPM are technologies used by authors to prevent access to copyrighted works.	Not compliant/Gaps noted. Under the IP Code, TPM is not a separate/an independent civil or criminal offense; assessed in relation to copyright infringement cases.
	<u>Rights Management Information (RMI)</u> RMI removal/infringement is an independent offense subject to civil and criminal liabilities. RMI are information about the authors as seen on his/her works.	Not compliant/Gaps noted. Under the IP Code, RMI is not a separate/an independent civil or criminal offense from copyright infringement. Electronic Commerce Act however provides penalty for piracy or infringement of RMI.
Patents	<u>Patent Subject Matter</u> TPP members should patent or provide for protection for at least one of the following. <ul style="list-style-type: none"> • New uses of a known product • New methods of using a known product • New processes of using a known product It has no reference to NOT patenting a “mere discovery”.	Not compliant/Gaps noted. IP Code Sec. 22.1 provides that new uses for a known substance can be patented but not those resulting from “mere discovery”. Ex. Viagra was formulated initially for heart-related illness, not for muscular erectile dysfunction, which is just a “mere discovery”. Thus the discovery of Viagra’s 2nd use (addressing muscular erectile) cannot be patented. TPP provision about patenting medicines due to “mere discovery” needs to be clarified since this may have an impact on access to medicines.

	TPP Agreement Provisions	Philippine Policies
	<p><u>Inventions Derived from Plants</u> Requires TPP parties to grant both patent and sui generis protection to protect plant varieties.</p> <p>There is a concern that complying with the TPP provision on this may impact food security.</p>	<p>Not compliant/Gaps noted. Philippines protects plant varieties under Plant Variety Protection Act. However, the Council of the International Convention for the Protection of New Varieties of Plants (UPOV) requested the Philippines to make amendments to the said Act in order for it to accede to the UPOV/Convention. Philippines has yet to amend its own law.</p> <p>UPOV allows Parties the option to protect plant varieties EITHER by patents OR by sui generis system.</p>
	<p><u>Patent Term Adjustment for Patent Office Delays</u> Provides that for unreasonable delays in the issuance of patents, patent owner could request for extension of patent term.</p> <p>There is concern that the extension of patent terms would increase monopoly of patent owner due to lengthy patent agreement. There are also no standards yet on patent term adjustments.</p>	<p>Not compliant. Philippines has no law/regulation on this.</p> <p>This obligation also has no equivalent in the TRIPS Agreement (by WTO).</p>
	<p><u>Agricultural Chemical Products</u> Provides 10 years data exclusivity protection for undisclosed data submitted to a regulatory agency for marketing approval of a new agricultural chemical product.</p> <p>Objections raised against this because despite lack of patent, the original applicant/company will enjoy marketing monopoly by mere submission of data about the product to a regulatory agency.</p>	<p>Not compliant. Philippines has no law/regulation on this.</p>
	<p><u>Pharma–Patent Term Adjustment</u> Provides that for unreasonable delays in the issuance of patents, patent owner of pharmaceutical products could be granted patent term extension.</p> <p>Objections raised as this will extend patent term beyond 20-year standard and could lead to monopoly. “Why should people suffer for mistake of the government agency?”</p>	<p>Not compliant. Philippines has no law/regulation on this.</p> <p>This obligation also has no equivalent in the TRIPS Agreement (by WTO).</p>

	TPP Agreement Provisions	Philippine Policies
	<p><u>Pharma - Undisclosed Test or Data</u> Obligation is similar to data exclusivity provided to agricultural chemical product.</p> <ul style="list-style-type: none"> • 5 years data exclusivity for new substances • 3 years data exclusivity for clinical information 	Not compliant. Philippines has no law/regulation on this.
	<p><u>Pharma - Marketing</u> Requires patent linkage. Regulatory agency will review if a product submitted by a company for marketing approval purposes is patented. If yes, the agency should notify the originator company (patent owners) so the latter could file a patent infringement case. The agency will not issue the marketing approval unless originator company gives its consent.</p> <p>Generic companies object to this obligation saying it will delay entry of generic products into the market. They also expressed concern that the FDA/ regulatory agency has no expertise to identify if there is indeed a patent infringement.</p>	Not compliant. No law/regulation on this. BFAD used to have a mandate to apply patent linkage but this was removed in 2005.
	<p><u>Pharma – Biologics Data Exclusivity</u> TPP requires data exclusivity for biologics. Biologics are products produced from living organisms ex. vaccines; more expensive to produce.</p> <p>Companies object to this saying it will prevent entry of new players of biologics into markets.</p>	Not compliant. No law/regulation on this.
Enforcement	<p><u>Criminal and Administrative Procedures</u> TPP provides for damages and procedures in enforcing IP-related obligations.</p> <p>Controversial Provision: Courts are allowed to forfeit assets connected to infringing activity.</p>	Not compliant/Gaps noted. Under Philippine laws, courts could only forfeit goods infringing and equipment used in infringing activity.
	<p><u>Encrypted Program Protection</u> Provision of criminal/ civil remedies for parties who hold interest in encrypted program-carrying satellite and cable signals.</p>	Compliant; Philippines has law on this.

	TPP Agreement Provisions	Philippine Policies
	<u>Internet Service Providers</u> Requires TPP members to provide safe harbors for internet service providers.	Compliant under Philippines E-Commerce Law but needs specific provisions on the requirements to avail oneself of safe harbor provisions.

Vilchez recommended the following actions to help the Philippines be TPP-ready:

1. Establish and implement short term and long term strategies to enable accession to the TPP, or any similar agreements.
2. Carefully consider whether the expected benefits of joining the TPP will outweigh the possible negative impacts of such new obligations (example: alleged delay of entry of generic medicines which could impact public's access to medicines).
3. Address the gaps between TPP IP obligations and existing Philippine laws and regulations. These will require the following:
 - a. Amend the Plan Variety Protection Act to allow the Philippines to accede to UPOV (required under the TPP);
 - b. Amend IP laws and regulations to accommodate expanded IP protection and enforcement rights under TPP;
 - c. Establish enforcement procedures and systems required under the TPP;
 - d. Establish administrative procedures and systems required under the TPP.

SESSION 5. OPEN FORUM

Moderator: Dr. Beaver Tamesis

President and Managing Director, Merck Sharp & Dohme (MSD) Philippines

Questions from the Audience

Dr. Beaver Tamesis said IP rights would continue to be a burning issue in TPP discussions. He said that while TPP's benefits cannot be overemphasized, the Philippines needs to weigh the risk-benefits of joining the Agreement, and to assess TPP's requirements and impact.

1. ***On patent linkage. An innovator company spends so much and goes through a lot to defend their patents. Would it be possible for the FDA to connect with patent owners and work closely with the IP Office to weigh in on validity of patents?***

Dr. Beaver Tamesis
Moderator

Vilchez said that this is possible and it's just a matter of political will. In fact, there used to be a patent linkage mechanism in FDA but it was only stopped due to FDA's lack of capacity/expertise in determining whether a product is infringing on a patent or not.

She cited the case of Felodipine Drug whose license was stopped by FDA because it was said to be infringing on a patent of another drug. It turned out that the patent given to the originator company was on molecule and not on procedure. Thus, Felodipine, which was produced using a different method, shouldn't have been considered infringing. This situation could be avoided if there are coordination mechanisms between FDA and IP Office regarding possible patent infringement.

Another option is to follow the FDA's practice in the United States. Vilchez described FDA's Orange Book Method where companies applying for FDA approval/license are required to state patents involved in their products. The Orange Book serves as reference for FDA to check possible patent infringement.

Vilchez said that under the US practice, the FDA is only required to notify the originator company of possible patent infringement. The decision to file a case within 45 days is up to the company. The burden of proof is not with the FDA. It is the Court that determines if there is indeed patent infringement. This gives originator company a chance to defend its patent and brand and, in parallel, makes other pharmaceutical companies more careful about patent infringement when producing drugs and applying for FDA approval.

2. *It does take a lot of effort and resources to produce biologics. What could be the period for data exclusivity for these compounds?*

Dr. Beaver Tamesis
Moderator

Vilchez explained that the TPP Agreement requires longer data exclusivity for biologics compared to chemical compound drugs. For biologics, data exclusivity period could be 8 years from the time of FDA approval, OR, 5 years upon FDA approval plus additional protection measures.

Stakeholders agree that biologics should certainly be protected considering the costs incurred by companies in R&D. The debate though is on the duration of data exclusivity.

At present, data exclusivity/protection for biologics in the US is 12 years. Obama is lobbying to reduce it to 7 years, saying 7 years is sufficient for companies to recover. In Australia, data exclusivity term is only 5 years. It appears therefore that the 8 years data exclusivity term provided under the TPP Agreement is a compromise between the existing and proposed term.

3. *Amid all IP laws and regulations, there is still notable concern on music piracy. What more can be done for us to be more effective in reducing piracy? If the Philippines joins the TPP, what additional security measure should we do to curb piracy?*

Atty. Dulce Punzalan
Member, Filipino Society for Composers, Authors, and Publishers (FILSCAP)

Vilchez emphasized the role of Values Education in enforcing laws against piracy and promoting IP rights. She gave as an example the case of Japan where elementary students are taught about IP, its value, and IP protection process.

Vilchez is pleased to say that the Philippines has taken efforts to educate people about anti-piracy matters through various initiatives i.e., showing of anti-camcording campaigns in movie houses. She commended the government for its efforts and cited proof points of how advanced the country has become in terms of IP protection. To date, the Philippines has passed various laws on IP and has been removed from the 301 Special Watch List. The country has been compliant with its IP commitments under TRIPS.

If the Philippines joins the TPP, it has to further strengthen its IP education efforts. Vilchez is confident that Philippine laws are quite advanced in some aspects of IP protection, i.e., Cybercrime Prevention Act which provides for penalties for IP infringement in the Internet.

- 4. Recently there has been a noted reduction in the number of IP cases filed at the IPO. Can this be attributed to improved enforcement and implementation or are people not just pursuing IP cases?**

Dr. Beaver Tamesis, Moderator

Vilchez explained that the IPO has created a new office called the Arbitration and Mediation Center, whose task is to settle cases at an early stage instead of bringing it to higher levels. This Center has recorded the highest level of settlement of cases worldwide and serves as the model center for alternative dispute resolution efforts at global stage.

- 5. On data exclusivity. Multinational companies want to protect their data. We've seen cases of leakage of information filed with regulatory agency. The infringer was able to come out in the market earlier with a copy of the data/molecule. How real is the threat that this TPP obligation will prevent entry of generics and that it will affect access to medicines?**

Dr. Beaver Tamesis, Moderator

Vilchez clarified that regulatory agencies are required to treat data submitted by originating company as confidential even without TPP. Leaking it out is not just a violation against data exclusivity but also an act against fair competition.

She explained that under the TPP, data exclusivity is more of "marketing exclusivity". The rule is once Company A applies for license of its drug, the data that it submitted shall be protected. However, if for some reason Company B has used the same data provided by Company A, it will still be allowed to sell the drug but only after the data exclusivity term given to Company A has expired.

This provision is said to threaten entry of generic medicines. Vilchez said even if originating company's drug has no patent or its patent expired, the generic company cannot enter and market its drug because of data exclusivity granted to the originating company, which could last to 5 years for chemical products or 8 years for biologics.

Moderator's Reaction: Tamesis commented that what parties should aim for is a balance between protecting investors' right (which has spent considerable amount in generating the data) and allowing entries of generics without benefiting "data copiers".

- 6. TPP provides for patent extension for delays caused by patent office and marketing authorization agencies. In other markets, process can last up to 5 years. Couldn't this be considered "unreasonable" delay?**

Dr. Beaver Tamesis, Moderator

Vilchez said that in the Philippines, the process for issuance of patent certificates and marketing approval takes less than 5 years. Objections against patent term extension due to unreasonable delay on the part of the agencies will not be applicable in the Philippines. If the government continues doing things this way, there should be no concern about preventing entry of generic medicines due to extended patent term for multinational companies.

7. If we copyright a book in the Philippines is the copyright valid in other countries or should it be copyrighted in the other countries as well?

Mr. Bjorn Martinoff, F1C International

Under the TRIPS Agreement and IP Code of the Philippines, works are covered by copyright protection from the time of creation. Vilchez said that even without putting the copyright in writing, an IP work (e.g., a poem) is already covered. In this case, she said, copyright in the Philippines is also covered in other countries that are signatory to the TRIPS Agreement or Berne Convention, unless the said country requires formalities. In the case of the USA, for example, IP owners are required to formally file for copyright and make it tangible. (NOTE: The USA is signatory to the TRIPS Agreement)

However, for evidentiary purposes, copyright ownership should be deposited to a copyright office so it would be known that the owner is the original creator of the work.

8. What is the impact of copyright on trademarks?

Mr. Bjorn Martinoff, F1C International

Vilchez answered that trademark protection and copyright protection serves two different purposes.

- Trademark protects a sign that distinguishes a good or a service from another good or service. It has a commercial purpose.
- Copyright on the other hand protects works that involve creativity such as literary or artistic works. It provides exclusivity to the author against reproduction, use, sale, distribution, etc.

The protection however isn't exclusive. Works could apply for both trademark and copyright protection. Vilchez said that a logo that is creative enough could also be protected under copyright law and not just registered as a trademark.

To cite an example, Vilchez said that if the fast food chain Jollibee is protected under copyright law but not registered as a trademark, "Jollibee" could still be used as a trademark by other entities for commercial purposes.

9. Some terms or words are protected that companies sue one another over it. What law does the protection of such terms fall under?

Mr. Bjorn Martinoff, F1C International

Vilchez said the terms are most likely protected as trademarks instead of copyright. Under the law, copyright protection requires "creative" element on the author's work and thus mere words or terms couldn't apply for this protection. However, if the words or terms are distinctive enough, they could be protected as trademarks.

10. It was mentioned that copyright terms could somehow spoil creativity. Could you please further explain this?

Mareb, Asian Institute of Management

Vilchez clarified that these claims were objections expressed by certain sectors against extension of copyright terms to an additional 20 years. Under the TPP, copyright term spans the life of the author plus 70 years after his/her death.

Certain sectors think this extended term will discourage creativity since copyrighted material cannot be used by other artists as basis for their derivative works without paying for royalties. Instead of having more creative works under public domain, the extended term will just put these works under private ownership.

These sectors further argued that the extension would no longer incentivize others to create. They think the protection doesn't serve its purpose in the sense that the author of the work will no longer benefit from the copyright since he/she has already passed away for more than 50 years.

Moderator's Reaction: Tamesis, on the other hand, believes the extended copyright term could benefit creative nations and authors. This will assure them that their work will be protected and that their family will benefit from their work.

Vilchez added that protecting copyrights is a must in the Philippines. A study made by the World Intellectual Property Office shows that in 2010, copyright-based industries in the Philippines contributed 7.34% to the country's GDP in 2010 and employed 14.14% of total employment. Copyright exports at 3.06% of total exports exceeded total copyright imports (0.81%).

i. Reflections from the Philippine Business Sector

ATTY. CIRILO P. NOEL

Board of Trustee
Makati Business Club

Atty. Cirilo P. Noel agrees that the TPP presents huge trade and investment opportunities for the Philippines. He suggested that parallel to making the country's policy regime compliant with TPP obligations, the government should also carefully weigh the implications of Philippine TPP participation on public welfare. Noel shared his point of view on the imperatives for Philippine TPP participation.

Noel started his speech saying that the scale of TPP Agreement could alter global trade, investment, and commerce. The TPP, he said, shall benefit the Philippines and will create for it a huge opportunity to deepen its trade and investment relationships with big economies.

Noel however warned that beyond the pressure of joining the TPP, the Philippines should be able to position itself globally to remain competitive and make its trade and investment efforts complementary to its participation in the ASEAN Economic Community and other FTAs that it is party to. He believes it is prudent for the government to prepare for TPP participation by taking into account the following imperatives:

1. Ensure policy / regulatory reforms to comply with TPP obligations.
2. Enhance government capacities and provide safety nets to help industries compete in the international scale.
3. Address issues on ease of doing business.
4. Address foreign ownership issue.
5. Enable the business community to forward its positions and concerns in relation to TPP so the government is effectively equipped when it negotiates for TPP participation.

ATTY. PERRY L. PE

President
Management Association of the Philippines

Atty. Perry L. Pe believes that the Philippines could be TPP-ready without necessarily amending the Philippine Constitution. He cited possible legislative actions that would allow the country to address current restrictions such as foreign participation in telecommunications and large-scale mining sectors, professional practice of foreign lawyers in the Philippines, and foreign land ownership.

Pe believes that while it is best for the Philippines to amend and lift the economic restrictions of the Philippine Constitution, not amending it will not hinder the country from being TPP-ready. He cited possible legislative ways for the Philippines to address economic restrictions under the Constitution. These are as follows:

- Define the term “large scale exploration, development, and utilization of minerals”. Pe referred to Article 12 of the Constitution and financial technical assistance agreement (FTAA) which can be adopted to minerals, petroleum, and other mineral oils.
- Lift foreign ownership restrictions in telecommunications sector by amending the Public Utility Law which included telecommunications in the list of public utilities. Pe said that the Constitution did not define telecommunications as public utility.
- Allow long-term land lease to address 60-40 foreign restrictions on land ownership.
- Minimize and quantify the definition of “practice of law” to allow foreign lawyers to practice in the Philippines.

Pe however suggested amending Article 22 of the Philippine Constitution which states that circumventing other provisions of the law could be considered as “acts inimical to the Philippine Constitution”.

MR. GEORGE T. BARCELON

President

Philippine Chamber of Commerce and Industry

Mr. George Barcelon confirmed PCCI’s support in pushing for Philippine participation in the TPP. He stressed the need for the Philippines to prepare for TPP accession. The Philippines, he said, should know the offensive and defensive and interests of each sector in order to ensure that TPP participation shall mean “Towards Philippine Progress”.

Barcelon believes that despite the Philippines’ good economic performance, which is primarily driven by overseas Filipino workers (OFWs), the country needs to join the TPP. Signing the TPP Agreement, he said, would allow the Philippines to entice more FDIs into the country, help SMEs grow, and create more jobs that will make Filipinos stay in the Philippines instead of working overseas.

Barcelon said that PCCI has supported Philippine participation in FTAs, and has done multiple education campaigns and business consultations to help increase FTA awareness and secure stakeholder buy-in. The PCCI commits to champion Philippine participation in the TPP hoping that it will result in Philippine prosperity.

In preparing for TPP participation, Barcelon said that the Philippines should be able to identify its competitive edge and know the defensive and offensive interests of priority sectors, including interests in relation to TPP’s impact on their value chains. He believes this is imperative especially in light of concerns raised by some sectors with regard to national treatment for FDIs, intellectual property, environment, as well as expected trade-offs in opening up industries and markets.

j. Final Open Forum

MS. MONETTE HAMLIN

Moderator

President, Team Asia

Dr. Cielito Habito, Atty. Gladys Vichez, and Mr. Francis De Leon welcomed questions and comments from the audience.

1. For many Conference participants, TPP Agreement remains to be a difficult topic to understand. How could concerned stakeholders better understand the TPP? Is it possible to come up with a TPP for Dummies?

Ms. Monette Hamlin

Moderator

Dr. Habito recognized that the TPP Agreement, given the level of details covered by its 30 chapters, is very technical and poses a challenge for certain audiences who wish to understand it. He explained however that certain details have to be discussed as these cater to specific types of audience, particularly industry practitioners who are watching issues specific to their sectors and professions.

The challenge is to ensure that information needs of different types of audience are met. There has to be a way to make TPP messaging more accessible to everyone. TPP should be explained on a broader level to the general public but at the same time, the demand for details of a specific audience should be addressed.

Habito said that through the TPP Conference, the TRADE Project hopes it has started the process of communicating TPP to different stakeholders and kicked off national discourse on the topic. TRADE, he said, shall continue to do its part in catering to different sectors' need to better understand TPP. Teehankee assessed the readiness of the Philippines to join the TPP vis-à-vis the TPP ISDS Obligations. He gave examples of the Philippines' experiences on ISDS.

2. When could the Philippines officially take part in the TPP Agreement? What is the projected timeline?

Ms. Monette Hamlin

Moderator

Habito explained that the TPP Agreement was signed on 4 February 2016 but is yet to come into force when ratified by TPP parties whose combined GDP have reached 80% of the 12 TPP parties. It is only when the agreement has come into force that the 12 TPP Parties can start accepting new TPP entrants.

It is estimated that it will take the Philippines at least 2-3 more years before it can formally apply for TPP participation.

Habito emphasized that to be able to join the TPP, the Philippines must be accepted by all 12 TPP parties. He said that someone commented, "it's not a matter of Philippine readiness, it's a matter of whether they (TPP parties) want us in".

Part of the TPP roadmap is securing all parties' buy-in in Philippine TPP participation. He said that so far, half of the TPP parties have said they would welcome the

Philippines. These countries are the United States, Canada, Mexico, Australia, Malaysia, and New Zealand.

3. Viet Nam is fast catching up with the Philippines. What are the major steps that the Philippines should immediately take in the meantime that it is not yet part of the TPP, in order not to completely lag behind Viet Nam?

Dr. Habito talked about the threats of Viet Nam's TPP participation. Viet Nam, being the "closest substitute" to the Philippines, is expected to lure away trade and investments from the Philippines. Some companies reportedly plan to transfer to Viet Nam since doing so will give them easier access to the 11 other TPP parties. Another adverse consequence is the possibility of investors and traders from the Philippines' biggest trading partners (i.e., USA and Japan) doing business with Viet Nam instead of the Philippines.

To address these threats, Habito said the Philippines must send clear signals that the country shall be part of the TPP. He recognized that TPP participation also poses issues that might have serious implications on public welfare, such as TPP obligations on intellectual property which could impact access to cheaper medicines. However he also said that the Philippines must weigh these issues against potential losses if the Philippines does not participate in the TPP Agreement. He asked, "Do we want to be fully part of it or do we just want to be a mere bystander?"

4. Intellectual Property is an elective in the College of Law. A survey among law schools shows many are in favor of including IP and TPP topics in commercial and corporation law discussions. What is your suggestion on this topic?

Atty. Dulce Punzalan

Executive Director and Proprietor, Crea 8 Innov 8 Marketing

Atty. Vilchez said that IP is very important for an inventive and creative country such as the Philippines. She believes IP should be a major subject in law schools and not just an elective. She suggested offering IP subject in engineering courses and other affected course programs. She reiterated her point of view that education on IP should start at a young age. It should be taught in basic education, high school, and technical schools.

Reaction from the Moderator: Ms. Hamlin opined that the Philippine culture tolerates pirated goods. Sharing a story about her son's experience against piracy, she said the current environment seems to think buying and using pirated movies and stuff is natural. This mindset, she said, has to be changed through education and values formation.

5. Triz is a Russian term for "inventive problem solving". It is a subject taught in ASEAN countries, USA, and United Kingdom. Since the Philippines is a major exporter of electronics/semi-conductor products, can Triz be included as a regular subject in schools which offer engineering courses? Doing so will help us become more competitive in manufacturing. What are your thoughts and/or recommendations on this?

Atty. Dulce Punzalan

Executive Director and Proprietor, Crea 8 Innov 8 Marketing

Recognizing the importance of electronics manufacturing in the economy, Mr. De Leon said that countries with high electronics and semiconductor FDIs have higher capacity to export products. It is important for the Philippines to entice FDIs in electronics and

semiconductors to ensure that its level of exports will not suffer. FTAs such as TPP, he said, will open opportunities for countries to entice FDIs in electronics/ semiconductors.

He also added that semiconductor and electronic products do not need FTA to trade at zero tariff because these products enjoy de facto “FTA treatment” under MFN. It enjoys preferential treatment in both MFN and FTA.

- 6. *Education is important in promoting IP rights but may not be enough. Existing structure of IP laws doesn't provide incentives for consumers not to support/buy pirated goods. There are still a lot of avenues for people to get pirated goods. If we join TPP, will there be more restrictive legal environment where IP regime would chase people providing and consuming pirated content and infringing patent?***

Atty. Vilchez said IP in the Philippines is protected by sufficient number of laws and treaties. But continuous work to enforce these policies is important. She commended the government for its progress in IP promotion and protection, citing its strong campaign against piracy and other enforcement activities. She pointed out though that since IP is a private right, there would be no prosecution of IP infringement without participation of the IP owner or author of a creative work.

Joining the TPP will be a step up in the Philippines' IP initiatives. To be fully compliant with TPP's IP obligations, the Philippines needs to amend its IP Code and align its policies with TPP's copyright provisions on, among others, Technological Protection Measures (TPM) and removal of Rights Management Information (RMI).

k. Synthesis

MR. JOHN D. FORBES
Senior Adviser
The Arangkada Philippines

Mr. John Forbes enumerated the things that the audience heard and learned at the Conference, including Rules of Origin, intellectual property, negative list approach, etc. He said that the discussion on TPP has just started and a lot of other relevant TPP obligations remain to be discussed and understood such as, among others, environment, labor, and SMEs. Prior to closing his synthesis, Forbes recognized the reforms recently made by the government but urged the next administration to decide early on the country's game plan regarding the TPP.

Forbes thanked everyone who made the conference possible. He was glad to have not just an overview of the TPP but also to learn of the details contained in the TPP Agreement. He observed how complicated the ROO structure is and wondered how open the Philippines would be in liberalizing its sectors. He noted the policy reforms needed in order for the Philippines to join the TPP and agreed that policy consistency is critical in encouraging FDIs.

Forbes said that the TPP discussion has just begun and reminded the participants about other key provisions on the TPP such as those pertaining to environment, labor, SMEs, government procurement, etc.

He remarked that because the Philippines opted not to join the TPP when it was just starting, the Philippines is now playing catch-up. He wondered what made the Philippines decide not to join the TPP negotiations earlier when a number of ASEAN countries decided to take part of it. He expressed concern about the potential trade losses and adverse impact that the Philippines shall face once the TPP takes effect.

He recognized the legislative reforms made by the Philippines to make itself more globally competitive in trade and investment such as the passage of the Competition Law, the Customs Modernization Act, and Cabotage Law, as well as efforts to remove restrictions on financial services that are currently in the Foreign Investment Negative List. He urged the government to quickly decide on the Philippines' TPP participation and act on the reforms that will make it TPP-ready. While the changes that TPP requires may be difficult to implement, Forbes said that TPP also provides parties enough lead-time to implement reforms. He also emphasized that the Philippines need not amend its constitution to become eligible for the TPP.

He closed his speech echoing Dr. Habito's calling for a national discourse on whether the Philippines will "want to be full participant to TPP or just content itself with being a mere bystander".

ANNEX A: SPEAKER PROFILES

THE PHILIPPINES AND TPP: Opportunities and Challenges

17 March 2016

SPEAKER AND MODERATOR PROFILES



MR. DANIEL MILLER is the Head of the Office of Economic Development and Governance with the U.S. Agency for International Development (USAID) in Manila, Philippines. He was assigned as the Acting Senior Development Advisor in USAID Mongolia from March 2015 to August 2015. Previously, Mr. Miller was the Director of the Food Security Office in USAID India where he led and managed agriculture and food security, climate change and environment, and disaster management activities. Prior to working with USAID, he worked as a consultant for the World Bank, Asian Development Bank, and numerous international NGOs. Mr. Miller has a Bachelor's Degree in Biology from the University of Wisconsin – Madison and a Master's Degree in Forestry from the University of Montana. He also studied international agriculture at the University of Melbourne.



MR. JOHN GOYER is the U.S. Chamber of Commerce's Senior Director of Southeast Asia. He concentrates on developing and implementing the Chamber's ASEAN regional projects, as well as its bilateral programs with individual countries in the region. Before joining the Chamber, Mr. Goyer served as vice president of the Coalition of Service Industries (CSI), a U.S.-based membership association that promotes the liberalization of international trade and investment in services. He was also a member of the U.S. Government Industry Trade Advisory Committee (ITAC), advising the U.S. government on information technology, electronic commerce, and telecommunications issues in U.S. trade agreements. Earlier in his career, he was the senior director of the US-ASEAN Business Council. He holds a Master's degree in International Public Policy from the Johns Hopkins University School of Advanced International Studies.



DR. CIELITO F. HABITO is a Professor of Economics at the Ateneo de Manila University, where he served as Director of the Ateneo Center for Economic Research and Development for 11 years. He currently heads the USAID Trade-Related Assistance for Development (TRADE) Project, and writes his weekly column "No Free Lunch" in the Philippine Daily Inquirer. As former Secretary of Socioeconomic Planning and head of the National Economic and Development Authority (NEDA), he served as the country's chief economic planner in the Cabinet of President Fidel V. Ramos from 1992 to 1998. He has since held board directorships in various corporations and foundations, including the Manila Water Company, Steel Corporation of the Philippines, Metrobank, Metrobank Card Corporation and Lepanto Consolidated Mining Company, among others, and is Chairman of Brain Trust Inc. and Operation Compassion Philippines. He holds a Ph.D. and Master of Arts degree in Economics from Harvard University.



MR. JOHN PETERSON is the acting Managing Director of Indonesia, Philippines and Brunei District for FedEx Express, the world's largest express transportation company. Based in the Philippines, he has been in his current role since July 1, 2015. His responsibilities include managing a staff of more than 400 employees and overseeing corporate strategy and management in Indonesia, Philippines and Brunei which is a part of the FedEx Asia Pacific Division. He joined FedEx in 1997 in the Customer Experience Operations division. He has served in various positions in Australia, Singapore, Thailand and Vietnam. Prior to accepting his latest assignment, he served as Senior Manager, Vietnam Operations.



MR. FRANCIS DE LEON is a freelance International Trade Consultant and Lecturer, who works with various local and international firms/associations. He was a Senior Trade & Industry Development Specialist in the Bureau of International Trade Relations (BITR) under the Department of Trade and Industry (DTI) from 1999 to 2009. Accordingly, his experience with the BITR encompassed being: Portfolio Head for Non-Preferential (WTO/APEC) and Preferential Rules of Origin (All Philippine FTA engagements); Philippine Lead Negotiator for ASEAN-India FTA, All Philippine Preferential Rules of Origin and Preferential Tariff Certification Procedures; Alternate Negotiator for CEPT-AFTA; Philippine Head for both ASEAN Task Force on ROO and ASEAN-India Trade Negotiating Committee; Philippine Alternate Head for ASEAN Coordinating Committee on CEPT-AFTA; and Chairman for the Philippine Technical Working Group on Rules of Origin, and the Philippine Sub-Committee on Tariff and Trade for ASEAN-India FTA. He holds a Master of Science degree in Economics from De La Salle University.



MR. RUY Y. MORENO is the Vice Chairman of the Center for Global Best Practices. He concurrently holds the positions of chairman of the Philippine-Myanmar Business Council, executive director of the International Chamber of Commerce Philippines, and director for operations of the private sector-National Competitiveness Council. He has extensive experience in marketing and general management with firms in the consulting, accounting, electronics and telecommunications sectors both in the Philippines and overseas particularly in Viet Nam. He worked with Arthur Andersen (AA) as a Partner in Viet Nam, and SGV & Co. as Senior Manager. From 1995 to 2000, he was the first Honorary Consul General of the Philippines in Ho Chi Minh City to assist Filipino nationals while promoting closer economic ties between Viet Nam and the Philippines. He holds a Master's degree in Business Management from the Ateneo de Manila University.



MS. GLENDA T. REYES worked with the USAID-Trade Related Assistance for Development Project (USAID-TRADE) as Component Lead on Trade and Investment Policy. Prior to joining USAID-TRADE in 2014, she was Head/Assistant Director of the Services and Investment Division of the AEC Department of the ASEAN Secretariat, where she provided technical support to the ASEAN high level and senior officials meetings on matters relating to trade in services and investment in the context of establishing a single market and production base. As Head of the Division, she led the ASEAN Secretariat in the servicing of the meetings of the ASEAN Coordinating Committees on Investment (CCI) and Services (CCS) by facilitating their deliberation on investment and services issues, and providing substantive technical support in the development and implementation of strategic initiatives to achieve free flow of investment and services and freer flow of skilled workers. She holds a Master's degree from the University of Melbourne.



ATTY. PERRY L. PE is the President of the Management Association of the Philippines (MAP) for 2016. He is also the Head of the Project Development and Finance Department of the Romulo Mabanta Buenaventura Sayoc & de los Angeles Law Office. He specializes in mergers and acquisitions, corporate and project finance, and capital market transactions. He has various positions in academic institutions, including being the current Dean of the Palawan State University Law School, and a Trustee of the De La Salle University in Manila, and the University of St. La Salle in Bacolod City. He also sits as Trustee of the Foundation for Economic Freedom (PEF), and the Honorary Consul General of the Kingdom of Denmark in Manila. He previously served as Chair and President of the Philippine Association of Law Schools. He holds a Master of Laws degree from the Columbia University in New York.



AMB. MANUEL A.J. TEEHANKEE is International Counsel and a Professor of International Law at the Ateneo Law School, where he is Program Adviser for the LLM Program and Executive Director of the Center for the Rule of Law. He is also a Research Fellow at the Graduate Institute's Center for Trade and Economic Integration in Geneva. He was the Philippine Permanent Representative to the World Trade Organization in Geneva (2004 to 2011) and Chair of the WTO's Committee on Trade and Environment (2008-2011). A lawyer by training, he served as Undersecretary of the Department of Justice and Government Corporate Counsel for the Philippine government. He is admitted to practice law in New York and the Philippines, and his experience includes appearing before international arbitral tribunals under WTO, ICSID, ICC, SIAC and UNCITRAL rules. He holds Master of Law degrees from the University of Michigan Law School and the London School of Economics and Political Science.



ATTY. RAPHAEL PERPETUO M. LOTILLA currently chairs the Center for the Advancement of Trade Integration and Facilitation (CATIF) and the Asia-Pacific Pathways to Progress Foundation. From 2005 to 2007, he was in government as Department of Energy (DoE) Secretary in the Cabinet of President Gloria Macapagal Arroyo. He was previously Deputy Director-General (DDG), with the rank of Undersecretary, of the National Economic Development Authority, from 1996 to January 2004. He also served as Regional Programme Director of the Partnerships in Environmental Management for the Seas of East Asia (funded by the Global Environmental Facility and implemented by the United Nations Development Programme), Chief Executive Officer and President of the Power Sector Assets and Liabilities Management Corporation (PSALM), Deputy Director-General of the National Economic and Development Authority, and Professor of Law at the University of the Philippines. He holds a Master of Law degree from the University of Michigan Law School.



ATTY. KRISTAL LYN T. UY, a technical assistant for the newly-enacted Competition Law, worked with the USAID Trade Related Assistance for Development Project (USAID-TRADE) in the Component on Competition Policy and Environment. She is a Senior Legal Manager for SM Prime Holdings, Inc., and a Consultant for the Legal Affairs Department, House of Representatives. She specializes in litigation and dispute resolution; corporate and special projects; appellate practice; antitrust and trade regulation; government contracts, public-private partnership arrangements and privatization projects; public procurement law; securities law; international law; investment mergers; and energy. She placed 7th in the 2010 Philippine Bar Examinations. She holds a Juris Doctor degree from the Ateneo de Manila University.



MS. ISABELA ROSARIO G. VILLAMIL, a technical assistant for the newly-enacted Competition Law, worked with the USAID-Trade Related Assistance for Development Project (USAID-TRADE) in the Component on Competition Policy and Environment. She previously worked with USAID-TRADE as a Competition Policy Specialist, delivering a comprehensive memorandum outlining legal, economic, technological and other justifications to define “public utility” as the term applies in the Philippines. She was involved with the Asian Development Bank’s project “Assessing Trade Facilitation and Transport Logistics Performance in the Pacific” to develop a framework for the analysis to link trade and transport flow for the Pacific region, and to draft a trade profile highlighting the level, composition and performance of intra and inter-regional trade. She is pursuing her Ph.D. in Economics at the University of the Philippines.



DR. BEAVER R. TAMESIS is the President and Managing Director of Merck Sharp & Dohme (MSD) Philippines, the first Filipino to occupy this position. He has a strong track record with his 20-year experience in MSD across several key franchises and in the Asia Pacific region. He joined MSD in 1995 as medical director for the Philippines where he successfully established MSD’s medical and scientific leadership. In 2002, he became business unit director (BUD) for the Bone and Joint franchises. In the following two years, he acquired regional experience as AP regional marketing director for another important franchise, Diabetes, where he spearheaded the launch of Januvia in seven countries. Since 2007, he has been MSD BUD for the Cardiovascular and Metabolic Access lead for the country. He holds a medical degree from the University of the Philippines College of Medicine.



ATTY. MARIA GLADYS C. VILCHEZ, a Partner at the Hechanova Bugay Vilchez & Andaya-Racadio Law Offices, specializes in intellectual property law, corporate law and family law. She is a former senior Hearing Officer of the Bureau of Legal Affairs under the Intellectual Property Office of the Philippines (IPOPhil), where she worked for the last 5 years. As hearing officer, her penned decisions have not been a subject of appeal. She also consulted on the corporatization of state universities and colleges with the Commissioner of Higher Education. She has extensive experience in real property development such as handling compliance requirements of the Department of Agrarian Reform (DAR), Housing and Land Regulatory Board (HLURB), the Department of Environment and Natural Resources (DENR), and the local government units, and advises on all aspects of the development and operation of land development projects. She holds a Juris Doctor degree from the Ateneo de Manila University.



ATTY. CIRILO P. NOEL, a Certified Public Accountant and lawyer, is a member of the Makati Business Club’s Board of Trustees. He is the Chairman and Managing Partner of SyCip Gorres Velayo & Co. (SGV). His areas of expertise include international inbound and outbound investments, tax advisory and planning, tax advocacy and litigation. He was for many years the Head of the firm’s Tax division. He was a former governor of the Management Association of the Philippines and a former trustee of Philippine Business for Education. He was a former member of the Ernst & Young (EY) Global Advisory Council, and the EY Asia Pacific Advisory Council. He was the former Presiding Partner of the EY ASEAN Partners Forum. Atty. Noel was former President of the Harvard Law Alumni Association of the Philippines, current fellow of the Harvard International Tax Program, and former member of the board of trustees of the Harvard Club of the Philippines. He holds a Master of Laws degree from the Harvard Law School.



MR. GEORGE T. BARCELON is the President of the Philippine Chamber of Commerce and Industry (PCCI). He has been with PCCI for 30 years but took an active role in the organization only in the past five years when he served as chairman in the services committee that includes the ICT. He is the president of Integrated Computer systems, IT hardware and infrastructure provider; ICS ICT Logistics & Service Corp., IT systems quality service business; Paramount Vinyl Products Corp., a footwear and rubber manufacturer; edit Corp., a plastic sheeting and leatherette manufacturer; Key West Realty Corp., provider of office space for business process outsourcing centers; Interwood, Inc., warehouse and logistic provider; and Keywest Marketing, provider of Wi-Fi and cellphone cards. He is a trustee and member of the Philippine Exporters Confederation, Business Processing Association of the Philippines, Rotary Club of Makati, Cardinal Santos Hospital Foundation and Greenhills West Homeowners Association. He holds a Chemical Engineering degree from De La Salle University.



MR. JOHN D. FORBES is a private business consultant, author, and public speaker residing in Manila. He is Senior Adviser for The Arangkada Philippines Project at the American Chamber of Commerce of the Philippines and chairman of its Legislative Committee and Senior Counselor of Vriens and Partners Pte. Ltd. of Singapore. He is the author of Arangkada Philippines 2010 and two AmCham Roadmaps to More Foreign Investment in the Philippines. The American Enterprise Institute published his monograph Jamaica: Managing Political and Economic Change in a Third World Democracy. Educated at Georgetown, Princeton, and Harvard universities, Mr. Forbes served as an American diplomat for 25 years, beginning in Viet Nam and the Philippines. He also worked in the US Congress, the Policy Planning Staff, and as a Special Assistant to the Undersecretary of Political Affairs. His consulting practice

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assists clients with major trade and investment projects in the Philippines and has assisted large multinational firms and several international development agencies.

ANNEX B: CONFERENCE PARTICIPANTS

#	Company
1	
2	Moog Controls Corp
3	Isla Lipana & Co.
4	Philippine Chamber of Commerce and Industry
5	PCCI
6	Brain Trust Inc.
7	Tax Management Association of the Philippines; Inc.
8	Philippine Exporters Confederation; Inc. (PHILEXPORT)
9	FedEx Express
10	Navarro Amper & Co. / Deloitte Philippines
11	Embassy of Canada
12	JG Summit Petrochemical Corp.
13	CLB Engineering & Supply; Inc.
14	Meralco Industrial Engineering Services Corporation
15	R. S. Bernaldo & Associates
16	Asian Institute of Management
17	FedEx Express
18	DLSU - Manila
19	Republic Cement Services Inc.
20	Delgado Brothers Group
21	Business Profiles
22	Isla Lipana & Co.
23	Manila Bulletin
24	Aboitiz Equity Ventures
25	Emilio Aguinaldo College
26	The Standard
27	Aviso Valuation & Advisor
28	ANZCHAM
29	RI Chemical Corporation
30	Motorola Solutions Philippines; Inc.
31	FedEx Express
32	PeopleSparx; Inc.
33	Arms Corporation of the Philippines
34	Network for Enterprising Women
35	House of Investments; Inc.
36	DuPont Far East Inc.
37	Benguet Corporation
38	New Zealand Trade & Enterprise
39	Motorola Solutions Philippines; Inc.

#	Company
40	FICO Philippines
41	US-ASEAN Business Council
42	PNA
43	GE
44	Great Wall Advertising Philippines; Inc.
45	New Zealand Embassy Manila
46	Will Decena & Associates; Inc.
47	EON The Stakeholder Relations Group
48	PILMICO Foods Corp.
49	Metropolitan Bank and Trust Company
50	Japan External Trade Organization (JETRO) Manila
51	Isla Lipana & Co.
52	Beacon Environmental Management Systems; Inc. (BEMS)
53	Universal Robina Corporation
54	Embassy of Malaysia (Trade Office) ; MATRADE
55	Du-Baladad and Associates (BDB Law)
56	Phoenix Sun International Corporation
57	GE
58	Tan; Frankum & Associates
59	Asian Institute of Management
60	U.S. Embassy Manila; Philippines
61	SL Agritech Corporation
62	SGV & Co.
63	Wallace Business Forum; Inc.
64	Network for Enterprising Women
65	Bases Conversion & Development Authority
66	I-Metrics Asia Pacific Corporation
67	The American Chamber of Commerce of the Philippines; Inc.
68	Hechanova Bugay & Vilchez Law firm
69	Asian Development Bank
70	Malaya Business Insight
71	Health Solutions Corporation
72	AmCham Philippines
73	Consumer CreditScore Philippines Inc.
74	Union Bank of the Philippines
75	The Manila Times
76	Philippine Exporters Confederation; Inc. (PHILEXPORT)
77	Emerging Asia Capital Partners
78	Mondelz International
79	QBE Seaboard Insurance Philippines; Inc.
80	Emperador Distillers Inc.

#	Company
81	Makati Business Club
82	Pentathlon Systems Resources; Inc.
83	A-Teams Consultants / PHAREX Health Corp.
84	Prime Options
85	
86	Packaging Experts
87	Megacem; Inc.
88	Cruz Marcelo & Tenefrancia
89	US - ASEAN Business Council Inc.
90	F1C International
91	F1C International
92	BDO
93	Meralco Industrial Engineering Services Corporation
94	Bureau Veritas SA
95	D.M. Consunji; Inc.
96	National Federation of Hog Farmers; Inc.
97	Philippine Star
98	APCO Worldwide
99	EON The Stakeholder Relations Group
100	CHEERS Corporation
101	Texas Instruments Philippines; INC.
102	King Air FBO; Inc.
103	Nague Malic Magnawa & Associates Customs Brokers
104	Ignite
105	US Chamber
106	GE
107	CHEERS Corporation
108	Deloitte Philippines
109	The Manila Times
110	Delegation of the European Union in the Philippines
111	Ligaya Management Corporation
112	Isla Lipana & Co.
113	EON
114	King Air FBO; Inc.
115	Makati Business Club
116	Business Mirror
117	Crea 8 Innov 8 Marketing
118	Stock Market School Foundation Inc.
119	
120	MEBS Global
121	Philippine Daily Inquirer

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#	Company
122	Hechanova Bugay & Vilchez Law firm
123	Young Entrepreneurs Association / Minka MXN Inc.
124	Solid Guard Security Services; Inc.
125	U.S. Embassy Manila; Philippines
126	Will Decena & Associates; Inc.
127	Management Association of the Philippines
128	Salvador and Perez
129	TPT International Inc.
130	CHEERS Corporation
131	MultiWorld International
132	Rags2Riches
133	Pag-Asa Steel Works; Inc.
134	FedEx Express
135	Business World
136	Philippine Institute for Development Studies
137	
138	Philippine Hoteliers Inc.
139	CLMC Group
140	ECCP
141	MetroBank Foundation; Inc.
142	Embassy of Japan
143	Embassy of Japan
144	The American Chamber of Commerce of the Philippines; Inc.
145	Universal Rich Property and Management Corporation
146	Mida Trade Ventures International Inc.
147	FedEx Express
148	Network for Enterprising Women
149	UCPB-CIIF Finance & Development Corp.
150	Philippine Exporters Confederation; Inc. (PHILEXPORT)
151	Navarro Amper & Co. / Deloitte Philippines
152	Australian Embassy in the Philippines
153	Unicapital Securities; Inc.
154	Wallace Business Forum
155	San Miguel Pure Foods Company Inc.
156	MAP
157	Yupangco Holdings Corporation

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